

## Attorneys united in 'aggressive' push to overturn Florida's gay-marriage ban

### HIGHLIGHTS

A diverse group of lawyers spent 2014 fighting for marriage equality in Florida. Their efforts paid off.



Attorney Elizabeth Schwartz, right, hugs Karla Arguello, who married Catherina Pareto, left, in court after Judge Sarah Zabel lifted the stay, allowing same-sex couples to marry on Monday, Jan. 5, 2015. | **WALTER MICHOT** - MIAMI HERALD STAFF

BY KATHLEEN MCGRORY

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When six same-sex couples decided to sue Miami-Dade Clerk Harvey Ruvin for marriage licenses, they turned to Miami Beach attorney Elizabeth Schwartz.

Schwartz had long been considered one of South Florida's top champions for alternative families. In 2010, she had helped overturn a state law prohibiting gay people from adopting children.

Marriage equality was never her priority, she said. But she quickly came to see it "as a proxy for the ways we deny dignity to gay, lesbian, bisexual and trans people."

Schwartz was among the Florida attorneys who spent the last 18 months fighting the state's ban on gay marriage. Some have a personal connection to the historic fight. Others simply said it was the right thing to do.

Bernadette Restivo, who argued a case in Monroe County, said she got involved because the Florida Keys are known for acceptance and tolerance.

"My [law] partners and I felt that this case should come from Key West because of the enormous gay community," Restivo said, noting that all three of the firm's partners are straight women.

The battle for marriage equality in Florida took place on multiple fronts. Attorneys filed more than a half-dozen legal challenges in various trial courts and in federal court.

Schwartz, who is married to Miami Herald columnist Lydia Martin, was involved in one of the first suits in January 2014.

Schwartz has focused on her practice on the gay and lesbian community for nearly 20 years, she said. In one of her early cases, she represented a man who was locked out of his apartment by the family of his deceased life partner. She later helped hundreds of gay and lesbian clients plan for their estates, and have children via surrogacy programs and sperm banks.

Schwartz took an interest in the marriage equality fight in 2013, when the U.S. Supreme Court threw out a key provision of the Defense of Marriage Act in a decision known as Windsor.

That's when the legal strategy came into focus, she said.

"Our feeling was that after Windsor, [same-sex] couples in Florida and across the country couldn't wait any more," Schwartz said. "Our plan was to push aggressively on every front."

Her clients were the six Miami-Dade couples and the LGBT-rights group Equality Florida.

Schwartz teamed up with civil rights attorney Shannon Minter of the National Center for Lesbian Rights in San Francisco, and several other attorneys. Minter had argued a landmark marriage equality case in California, and worked on the gay adoption case in Florida.

Their argument for marriage equality was simple, Schwartz said.

“Just because the voters voted and the Legislature passed [gay marriages bans], that doesn’t make them constitutional,” she said. “They are a violation of equal protection and due process in both the Florida and federal Constitution.”

Several weeks later, a similar challenge was brought in Monroe County.

Restivo, the attorney who filed the lawsuit, said she, too, had been inspired by the Windsor decision.

“I can remember the day we were sitting here — the three of us law partners — and we were like, ‘Holy cow! Why isn’t someone filing this in Key West? We should be jumping on this,’” she said.

Restivo was soon introduced to Aaron Huntsman and William Lee Jones, a gay couple looking to marry in Key West. Her team began building a legal strategy.

By that point, the lawsuit had already been filed in Miami-Dade County. But Restivo said she and law partners Jessica Reilly and Elena Vigil-Fariñas saw a reason to bring the question to a Monroe County judge.

“We thought we’d have a much better chance of prevailing here,” Restivo said.

They were right. Monroe County Chief Circuit Judge Luis Garcia was the first to strike down the state’s same-sex marriage ban on July 17.

A separate team of lawyers from the American Civil Liberties Union challenged the gay-marriage ban in federal court. Their clients were eight same-sex couples who had married outside of Florida and SAVE, South Florida’s leading LGBT-rights group.

“It was a natural collaboration,” said ACLU staff attorney Daniel Tilley. “We share office space with SAVE. We were constantly talking about advocacy efforts.”

The collaboration extended beyond that. Attorneys from each of the different cases held frequent conference calls with one another. They shared research and resources in the 18 months after Windsor.

“It was never about one case,” SAVE Executive Director Tony Lima said. “It was about all of the cases. We were able to really collaborate and make sure we had a unified strategy.”

Schwartz said the teamwork helped push the cases through the legal system.

“I can’t tell you how many times I’ve had to tell anxious clients that the wheels of justice grind at a slow pace,” she said. “So while this isn’t a final order, yes, it is certainly a quicker result than what we could have dreamed of.”

Schwartz said she hopes her efforts — and those of the other Florida attorneys — will contribute to the growing momentum nationwide.

“There’s a consensus even among those who are opponents of marriage equality that the train has left the station,” she said. “This is not something that can be stopped.”

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