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HEADLINE: Judge in California Voids Ban on Same-Sex Marriage

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BODY:

In a victory for city officials here, a state judge ruled on Monday that California's ban on same-sex marriage was unconstitutional, overturning a statewide proposition passed in 2000 that defined marriage as between a man and woman.

In a tentative ruling, the judge, Richard A. Kramer of San Francisco County Superior Court, said "the denial of marriage to same-sex couples appears impermissibly arbitrary," thus violating the equal protection clause of the state's Constitution. The ruling will not be made final until the judge meets with the various parties to the litigation on March 30.

While welcoming the decision, which came in a lawsuit filed by the city against the state, Mayor Gavin Newsom of San Francisco said it was "only the beginning" of a long legal battle that would probably be decided by the California Supreme Court. Mr. Newsom said marriage licenses would not be offered to same-sex couples in San Francisco while the litigation was pending.

"We will continue to respect the decisions of the court," Mr. Newsom said.

Even so, celebrations erupted at City Hall, as same-sex couples crowded into a news conference held by Mr. Newsom and other city officials, and gay and lesbian leaders said there would be revelry throughout the evening in the Castro, the city's best-known gay district. Marches and rallies were announced in at least a dozen other cities across the state.

"Today we truly believe that California is a better place than it was yesterday," said John Lewis, who exchanged kisses with his partner of 18 years, Stuart Gaffney, in front of a phalanx of cameras at City Hall.

A spokesman for Bill Lockyer, the California attorney general, said the judge's ruling was being reviewed and had no further comment.

In an interview on MSNBC, Gov. Arnold Schwarzenegger said he supported the existing state law. "If they change it because of the Supreme Court of California, then we go with that," Mr. Schwarzenegger said. "But right now this is just the first phase of a legal challenge."

Defenders of the state's marriage laws said the ruling would be appealed as soon as it was made final.

"This was not a good decision for us, I acknowledge that," said Glen Lavy, senior counsel with the Alliance Defense Fund, a Christian group based in Arizona, adding that it was only "the first stop in the judicial battle in California."

Mathew D. Staver, president and general counsel of Liberty Counsel, which represents Campaign for California Families, a group in Sacramento that has opposed San Francisco's bid to legalize same-sex marriages, denounced the ruling as "ludicrous."

"Marriage should not be undermined by the stroke of a pen from a single judge," Mr. Staver said in a statement. "This ruling, which flies in the face of common sense and millennia of human history, will pour gasoline on the fire ignited by the pro-marriage movement."

Mr. Newsom opened the doors of City Hall to same-sex marriages in February 2004 only to have them closed and the licenses invalidated by the California Supreme Court. The high court determined that Mr. Newsom had exceeded his authority as mayor, but it did not consider the constitutionality of state laws restricting marriage only to unions of a man and a woman.

In the ruling on Monday, Judge Kramer was responding to a lawsuit filed by the city and more than a dozen same-sex couples, including Mr. Lewis and Mr. Gaffney, to challenge the state's restriction on the sexes of married couples. The restriction is based on a law enacted by the Legislature in 1977 and a statewide initiative approved by the voters in 2000, known as Proposition 22.

Judge Kramer's ruling left no argument against same-sex marriage unexamined, and virtually no glimmer of light for the attorney general's office or the other groups that filed briefs in support of current state law. At one point, Judge Kramer compared some of the arguments made by same-sex marriage opponents to those made in cases dealing with antimiscegenation laws.

In reviewing an argument by the attorney general's office that California's domestic partnership law was evidence the state does not discriminate against same-sex couples, Judge Kramer invoked arguments once made on behalf of segregated schools.

"The idea that marriage-like rights without marriage is adequate smacks of a concept long rejected by the courts," he wrote, "separate but equal."

Mr. Lavy of the Alliance Defense Fund said that Judge Kramer, who was appointed to the bench by a Republican governor, Pete Wilson, was highly respected but a captive of the socially liberal city in which he lives. Mr. Lavy said supporters of the existing state marriage laws expected to fare better in the higher courts.

"We have understood all along that San Francisco is not exactly our best venue and it would have been an immensely difficult decision for him to make a ruling in our favor," Mr. Lavy said. "Regardless of how neutral a judge wants to be, you live in the political environment you live in, and you are going to have that pressure."

Dennis Herrera, the San Francisco city attorney, said he had "every confidence" that Judge Kramer's ruling would stand. He cited a series of similar court rulings around the country recently that favored same-sex marriages, including one last month by a judge in Manhattan. That ruling is being appealed by Mayor Michael R. Bloomberg of New York.

"The trend of the law is clear," Mr. Herrera said. "It's time to leave discrimination in the background."

William B. Rubenstein, a professor of law at the University of California, Los Angeles, said that Judge Kramer's ruling "was not out of the mainstream" and that his reasoning was reflected in other decisions around the country, beginning with a ruling in Hawaii in 1993.

"If this were 1975, it would be rather shocking," Professor Rubenstein said of Judge Kramer's ruling, "but in 2005 it is totally consistent with what courts have been doing for the last decade or so."

Conservative groups have said that they will go the route of the ballot box and seek a constitutional amendment in California if they lose in the courtroom, a threat they repeated on Monday.

Kate Kendell, executive director of the National Center for Lesbian Rights, which along with the American Civil Liberties Union and Lambda Legal joined the City and County of San Francisco in the lawsuit against the state, said everyone involved knew that a victory in the Supreme Court might not be enough.

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"We have to melt hearts and open minds and that can't be done in the courtroom," Ms. Kendell said. "That is done at P.T.A. meetings, Kiwanis clubs and neighborhood potlucks."

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GRAPHIC: Photo: Diane Sabin, left, and her partner, Jewelle Gomez, celebrated yesterday at City Hall in San Francisco after a local judge ruled that the state's ban of same-sex marriage was unconstitutional. (Photo by Jeff Chiu/Associated Press)

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