

One Court, Three Judges and Four States With Gay Marriage Cases

By ERIK ECKHOLM

CINCINNATI — The steady march of judicial approval for same-sex marriage over the past year ran into some skepticism here on Wednesday as a three-judge federal appeals panel heard arguments in six same-sex marriage cases from four states.

In three hours of back-and-forth questioning, it appeared that neither side could take victory for granted in the United States Court of Appeals for the Sixth Circuit, where the cases from Kentucky, Michigan, Ohio and Tennessee were heard by two judges appointed by President George W. Bush and one by President Bill Clinton.

Judge Jeffrey S. Sutton, one of the Bush appointees and a likely swing vote among the three, repeatedly asked why gay rights advocates wanted to use the courts to hasten an outcome they were gradually winning through elections and changes in attitude.

"I'd have thought the best way to get respect and dignity is through the democratic process," he said, expressing a view that, in practice, would most likely deliver a victory to the states seeking to



BY WILLIAM WHELAN FOR THE NEW YORK TIMES

keep bans on same-sex marriage.

As they debated the cases, all three judges and several lawyers referred repeatedly to the transformed legal landscape of the last year, in which more than two dozen lower courts and two appeals courts have ruled that gay couples have a right to marry, and to the expectation that the Supreme Court would soon hear the issue.

from declaring same-sex marriage to be a fundamental right deserving court intervention.

In often caustic questions, Judge Martha Craig Daughtrey, the Clinton appointee, left no doubt where she stood. When the lawyer for Michigan said that the courts should not tamper with an institution as deeply rooted as marriage, she replied that bans on interracial marriage were also deeply rooted before the Supreme Court found them unconstitutional. "That was the law across a huge swath of the Southern states," she said.

The third judge, Deborah L. Cook, another Bush appointee, spoke little during the unusual proceeding in which one state's case followed another without any breaks. But she seemed to favor the right of states to ban same-sex marriage.

If this court were to rule against same-sex marriage, it would create greater pressure on the Supreme Court to rule on the issue to clear up the contradictory decisions among appeals courts.

The blitz of hearings here "is a result

of the avalanche of federal court decisions on marriage in the last year, all of them ruling the same way," said Susan Sommer, director of constitutional litigation for Lambda Legal, which helped to represent gay couples from Ohio who asked the state to recognize their marriages from other states and put both parents' names on birth certificates.

Offering poignant images to the argument, three lesbian couples in the case, each with a newborn baby, sat in the courtroom gallery for much of the afternoon, their infants alternately cooing and feeding on bottles.

Kentucky and Michigan asked the appeals panel to reverse District Court rulings striking down their bans on same-sex marriage, which were adopted by voters a decade ago. Ohio and Tennessee asked the panel to overrule decisions mandating them to recognize same-sex marriages performed in other states.

A core issue, lawyers representing the states said again and again, was whether the federal courts had a right to overrule the will of the people.

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