

National

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Gay Marriage Opponents Set to Continue Court Battle

By ERIC ECKHOLM

Leading opponents of same-sex marriage vowed on Wednesday to push ahead with their legal fight, noting that several federal appeals courts had not yet ruled on the issue and that the Supreme Court could still decide to leave it up to the states.

Even as the list of states authorizing same-sex marriage swells, the opponents noted Justice Anthony M. Kennedy's order on Wednesday to temporarily block a federal appeals court ruling striking down the marriage restrictions in Idaho. The temporary order came as a surprise to many advocates on both sides of the issue, since the Supreme Court on Monday had allowed similar decisions from three other appeals courts to take effect.

"The marriage battle will continue," said Jim Campbell, a senior legal counsel at Alliance Defending Freedom, a Christian legal group that has defended

marriage will be struck down. Rather, the opponents argued that Monday's Supreme Court action, which had the effect of permitting same-sex marriage in five states and may soon overturn bans in six more, was not necessarily a sign that the court would establish such marriages as a nationwide right.

Instead, they see a good chance that when the Supreme Court directly considers the issues, it will "rule in favor of the people's right to define marriage as it has always been defined," as the National Organization for Marriage put it.

The cases now making their way through appeals courts, legal experts agree, may well yield one or more decisions in favor of state marriage restrictions and all but force the Supreme Court to take a case for a fuller ruling on the issue.

Advocates for gay rights, as well as many independent legal scholars, say the opponents are engaged in wishful

thinking. They say that the Supreme Court, with Monday's decision not to intervene in appeals-court findings in favor of same-sex marriage, knowingly unleashed a current that will be unstoppable.

"The shift toward marriage equality is overwhelming, in popular opinion, among elected officials and in the courts," said Suzanne B. Goldberg, the director of the Center for Gender and Sexuality Law at Columbia Law School. "It's extremely hard to imagine that marriage equality won't be the ultimate national resolution."

The opponents pin their legal hopes in part on the mixed messages in the Supreme Court's 5-to-4 decision last year, in *United States v. Windsor*, that struck down part of the Defense of Marriage Act. The majority opinion, as well as the dissenting views, asserted that the states have primary control over

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Seeing hope in an order issued by Justice Anthony M. Kennedy.

marriage restrictions in several states. Mr. Campbell said that while it was unclear whether the temporary stay imposed by Justice Kennedy would be prolonged — gay rights advocates predicted that it would be lifted within days, perhaps after Justice Kennedy consulted the rest of the court — his hesitation "suggests that the marriage question will continue to be litigated and that the Supreme Court hasn't decided this issue one way or another."

The opponents disputed the assessments of many legal experts, who have said it appears all but inevitable that the remaining state bans on same-sex mar-