



Written by [Dave Bohon](#) on August 10, 2012

Federal Judge Upholds Traditional Marriage in Hawaii

A federal judge has ruled in favor of a Hawaii law that defines marriage as between a man and a woman, as well as a constitutional amendment that gives the state legislature the power to maintain the traditional definition of marriage.

The plaintiffs in the case, two lesbian women who wanted to “marry” and a separate homosexual man, had filed the federal lawsuit last year, arguing that the 1998 state constitutional amendment giving lawmakers power to legislate on behalf of traditional marriage, as well as the law defining marriage as only between a man and a woman, violated the U.S. Constitution’s Due Process and Equal Protection Clauses.



But in his August 8 ruling Judge Alan C. Kay, a Reagan appointee, found that Hawaii’s legislature had a legitimate interest in legislating on behalf of traditional marriage. “Throughout history and societies, marriage has been connected with procreation and childrearing,” wrote Kay in his decision, which ran to 117 pages. “... It follows that it is not beyond rational speculation to conclude that fundamentally altering the definition of marriage to include same-sex unions might result in undermining the societal understanding of the link between marriage, procreation, and family structure.” He added that “to suddenly constitutionalize the issue of same-sex marriage ‘would short-circuit’ the legislative actions that have been taking place in Hawaii.... Accordingly, because Hawaii’s marriage laws are rationally related to legitimate government interests, they do not violate the federal Constitution.”□

The judge also noted that across the nation “citizens are engaged in a robust debate over this divisive social issue. If the traditional institution of marriage is to be reconstructed, as sought by the plaintiffs, it should be done by a democratically elected legislature or the people through a constitutional amendment,” rather than through the courts.

[Alliance Defending Freedom](#) (ADF), a conservative legal advocacy group, represented the Hawaii Family Forum, which was allowed to defend the marriage law and the amendment in federal court after Democratic Governor Neil Abercrombie refused to do so. “This ruling affirms that protecting and strengthening marriage as the union of one man and one woman is legitimate, reasonable, and good for society,” commented ADF attorney Dale Schowengerdt, who represented the Hawaii Family Forum. “The people of Hawaii adopted a constitutional amendment to uphold marriage, and the court rightly concluded that the democratic process shouldn’t be short-circuited by judicial decree.”

The Associated Press noted that the case “put Gov. Neil Abercrombie in the unusual position of both being a defendant in the lawsuit while supporting the plaintiffs’ claims, saying a same-sex marriage ban is unconstitutional.” The judge’s ruling denied a motion by the Hawaii Family Forum to dismiss Abercrombie as a defendant in the case. “The group argued Abercrombie has no place on either side of the lawsuit, partly because he is not the state official in charge of issuing marriage licenses,” reported AP. “Abercrombie signed Hawaii’s civil union legislation into law last year, allowing same-sex and opposite-sex couples to enter into a civil union with the same state rights and responsibilities as



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traditional marriage.”

In a statement Abercrombie said he disagreed with the ruling and would join the homosexual plaintiffs in their appeal. “To refuse individuals the right to marry on the basis of sexual orientation or gender is discrimination in light of our civil unions law,” the governor argued. “For me, this is about fairness and equality.”

[Baptist Press News](#) reported that the case will now be appealed to the Ninth Circuit Court of Appeals, which has one of the most liberal reputations of any U.S. appeals court. “The case eventually could have a major impact on the nation because 30 states have amended their constitutions to define marriage as between one man and one woman,” reported the Baptist news source.

Focus on the Family’s [CitizenLink](#) noted that traditional marriage has been under assault in Hawaii for nearly 20 years. “In 1994, in response to a lawsuit seeking to impose same-sex marriage on the state, lawmakers amended the marriage statute to clarify that it is reserved only for a man and a woman,” the pro-family news site recalled. “In 1997, they followed up by submitting a constitutional amendment to voters that declared that the power to define marriage was to be reserved for the legislature alone. That amendment passed in 1998, 69 percent to 29 percent.”

But in 2011, the state legislature passed a measure legalizing civil unions, giving homosexual couples the same legal rights granted to married couples. That action led to the present lawsuit now working its way up the federal judicial ladder.

ADF Litigation Counsel Holly Carmichael said that Kay’s lengthy decision was “very well-reasoned and thought-out,” adding that the “point of the decision — that marriage is between one man and one woman — is a completely rational and good thing for society. It re-emphasizes what we have known for so many years.”



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