



Written by [Joe Wolverton, II, J.D.](#) on November 9, 2011

N.J. Court Allows Homosexual Marriage Suit to Proceed

Last Friday a superior court in New Jersey held that a “marriage equality” suit may proceed. The ruling had the effect of partially denying a motion to dismiss filed by New Jersey Attorney General Paula Dow.

The complaint against the state was filed by [Lambda Legal](#) on behalf of Garden State Equality ([GSE](#)), a statewide “gay rights” organization. Joining the suit as co-plaintiffs are [seven homosexual couples](#) and their children who all claim to have suffered under various provisions of the Garden State’s current civil union statute.



The complainants have requested that the court declare the civil union law unconstitutional and enjoin enforcement of it. Specifically, the suit argues that as applied to citizens of the state of New Jersey, the law at issue violates the Due Process and Equal Protection clauses of the 14th Amendment of the U.S. Constitution, as well as similar provisions of the New Jersey state constitution.

The 14th Amendment reads in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In the decision handed down last week, Superior Court Judge Linda Feinberg ruled against the plaintiffs’ claim that the New Jersey civil union statute violates the 14th Amendment’s protections. She permitted the portion of the suit challenging the law’s conformity with the state constitution, however.

Feinberg’s ruling held that while homosexual couples have no fundamental right to marry (thus not implicating the civil rights guarantees of the 14th Amendment), they retain the right to prove that the civil union law unequally (and illegally) provides traditional couples with greater benefits than homosexual couples.

“I don’t think that the court can remain silent and take no action if ... the result is that those benefits are not equal in the protections,” Feinberg [held](#).

The bifurcated ruling will likely result in an ultimate hearing on the merits of the case before the judges of the New Jersey Supreme Court.

In a [statement](#) to the press made after the ruling was handed down, Lambda Legal’s Deputy Legal Director Hayley Gorenberg was apparently pleased with the judge’s decision:

We are delighted that the New Jersey Superior Court will allow this case to continue and permit us to demonstrate how the legislature’s crafting of a status other than marriage for same-sex couples has failed to provide them the equality promised by the New Jersey Constitution. Civil union relegates New Jersey’s same-sex couples to a second-class status that keeps them and their



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families vulnerable. By moving to dismiss, the government was trying to prevent us from showing exactly how the current classification system based on sexual orientation harms families. New Jersey's exclusion interferes during medical crises, denies them health insurance, and leads to discrimination against them even in funeral homes. These families need marriage equality and should not have to live with a law that treats them as inferior.

Steven Goldstein, chairman of Garden State Equality, called Feinberg's ruling "a sweet moment ... It is time for the state of New Jersey to end the evil experiment of civil unions that is failing same-sex couples."

The Superior Court's latest ruling is not the beginning of the history of litigation involving this law. In 2006, the state Supreme Court held that in the extension of benefits and civil rights, the state could not discriminate against homosexual partners. The ruling stated that the method of preventing unequal treatment should be left up to the state legislature.

That same year, Lambda Legal filed a claim on behalf of several homosexual couples which landed in the New Jersey Supreme Court in 2006. The suit made similar arguments as the one decided last week, but that court held that the issues raised required a hearing in the lower courts.

Then, in 2009, a Superior Court judge permitted a "divorce proceeding" between two homosexuals to go forward, but pointedly declared that the ruling in no way went so far as to give either de jure or de facto legalization of homosexual "marriage" in the state of New Jersey. Further, he warned that the ruling allowing the divorce to proceed could not be used as controlling precedent in courts of that state.

When the previous suit was filed, Governor Chris Christie (pictured above) took the opportunity to [assure voters](#) that he would never sign into law a bill legalizing "gay marriage" in New Jersey.

Currently, there are six states that solemnize homosexual "marriages": New York, Massachusetts (where the measure was signed into law by current Republican presidential hopeful` Mitt Romney), Connecticut, Iowa, Vermont, and New Hampshire. Homosexual "weddings" are also permitted in Washington, D.C.

In the states of Illinois, Delaware, Hawaii, California, Wisconsin, Oregon, Nevada, Rhode Island, and Washington some form of legal recognition of civil unions exists.

In the wake of such decisions and the number of states joining the "gay rights" parade, some observers worry that such will lead to the forced recognition of gay "marriage" in all 50 states because of the requirements of the Full Faith and Credit Clause of the Constitution.

Pundits warn that the homosexual lobby and their allies in the press and in Congress will use the Full Faith and Credit Clause as a sword to force their will upon the entire country. However, for those who hold the Constitution sacred and wish to avoid any sort of unnecessary tinkering with it, the analysis described above is faulty and misrepresents the intent of the Constitution, particularly the Full Faith and Credit Clause.

Several years ago, this very issue was addressed in a decision handed down by the U.S. District Court in Tampa, Florida. In that ruling, U.S. District Judge James Moody, Jr. correctly held that "The Supreme Court has clearly established that the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy. Florida is not required to recognize or apply Massachusetts' same-sex marriage law because it clearly conflicts with Florida's legitimate public policy of opposing same-sex marriage."



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Judge Moody's opinion was correct and, more importantly, it was constitutionally sound.

Article IV, Section I of the Constitution reads:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

In this matter of fundamental constitutional importance, it is crucial to understand precisely what the Full Faith and Credit clause was and was not intended to do. First, as a matter of indisputable historical record, states have occasionally refused to acknowledge marriages legally entered into in other states. According to the Supreme Court's interpretation of the Full Faith and Credit Clause, states that have valid public policy exceptions to legal acts of other states do not have to recognize those acts. Some argue that such exceptions would disrupt the smooth and unregulated movement of citizens.

There is an additional aspect of the Full Faith and Credit Clause that would protect states from being constitutionally forced to give legal effect to homosexual unions contracted in other states. The exact wording of the Full Faith and Credit Clause requires that states give "full faith and credit" to the "public acts, records, and judicial proceedings of every other state." Marriages, strictly speaking, are not judicial acts, they are licensed acts and as such they do not fall under the Full Faith and Credit umbrella, any more than a license to practice law in one state guarantees that same right in a neighboring state. The Full Faith and Credit Clause, then, does not require one state to validate a same-sex unions entered into in another, but actually protects it from having to do so.



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