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The Fight Over Gay Adoption Heats Up

By Michael A. Lindenberg

Gay rights supporters scored another major victory in court Tuesday, when a state judge in Miami tossed out a statute that had for more than 30 years barred gay people in Florida from adopting children. The decision came after a week packed full of dueling expert testimony over whether any evidence supports the state's contention that children are put at risk when raised by gay parents. The answer, said Miami-Dade Circuit Judge Cindy S. Lederman, is not at all: "The Department's position is that homosexuality is immoral. Yet, homosexuals may be lawful foster parents in Florida and care for our most fragile children who have been abused, neglected and abandoned. As such, the exclusion forbidding homosexuals to adopt children does not further the public morality interest it seeks to combat."

Yet, despite the good news for gays contained in the ruling, the decision is hardly the last word on the issue. The state has vowed to appeal, and the issue is likely to end up before the Florida Supreme Court, which upheld the ban once before in 1995. On the federal level, the U.S. Supreme Court has already let stand lower court rulings that upheld Florida's law, the nation's strictest ban on gay adoption. ([See a video on the backlash against gay marriage in Florida.](#))

Meanwhile, conservative activists across the country are working hard to make sure that no court, at any level, has the final word on gay adoption. Like [gay marriage](#) before it, conservatives are looking at the issue of who can raise children as one best decided at the ballot box, not in the courthouse. Those efforts received a boost on election day in Arkansas, where voters easily passed a law that restricts any unmarried couple living together from adopting children. Arkansas joined Florida, Nebraska, Utah and Mississippi as the only states with laws that either directly or indirectly ban adoption by gays.

Similar statehouse fights are pending in South Carolina, Georgia, and Tennessee, says gay adoption expert and advocate Jennifer Chrisler, and more are likely to follow, as conservatives try to duplicate their successful strategy to ban gay marriage state by state. "The other side was very strategic about their efforts to ban gay marriage," Chrisler, executive director of the Family Equality Center in Boston, told TIME. "They

were able to bring that issue to the attention of the American people well before Americans were ready to have that conversation. They are likely to use a similar strategy when it comes to parenting issues."

Supporters of a traditional definition of marriage have pushed for statewide votes in more than 30 states, and gay marriage has survived in none of them. Those bans, together with existing legislation, make gay marriage expressly illegal in 45 states. And while the outcome of the legal challenges to California's recent vote to ban gay marriage will be watched closely, [even gay rights activists say the momentum is draining from the gay marriage fight](#).

"Iowa is the only state in the country where we have an open marriage case pending before a court," Chrisler said. (The Iowa high court will hear oral arguments in December.) "So we expect the battle to move now to issues like gay adoption and foster parenting, There isn't anywhere left for the other side to go on marriage." ([See a video from a gay wedding.](#))

But despite the similarities in tactics, the fight over gay adoption won't necessarily be a repeat of the anti-gay-marriage campaign. Chrisler and others contend that the arguments against gay adoption will be more difficult to make than those against gay marriage. "It's not nearly as divisive an issue as the definition of marriage," she says. "For the most part, people think of adoption and foster-parenting as children's issues. [What's best for the child?](#)"

Just as critically, there are key legal differences. Unlike gay marriage, which seemed to burst upon the scene all at once when Massachusetts Supreme Court made it legal, courts began slowly to recognize gay rights as far back as 1985. Several states — including California, Maryland, Massachusetts, Nevada, New Jersey, and New York — already expressly forbid discrimination against gays seeking to adopt. A handful of other states, even without specific legislation, allow gay adoption.

What's more, even states that prohibit gay adoptions have a very hard time refusing to recognize adoptions that are done in other states. Unlike marriage licenses, which are administrative in nature and subject to less powerful constitutional protection from state to state, an adoption takes effect by an explicit ruling by a judge. Adoption rulings are, therefore, the kinds of decisions that the U.S. Constitution's Full Faith and Credit Clause was designed to protect across state borders.

Still, this month's divided results in Arkansas and Florida suggest the fighting has just begun. With gay rights supporters predicting more victories in the courts, conservatives are ready to fight back at the ballot box. D'Arcy Kemnitz, executive director of the National Lesbian and Gay Law Association, told TIME that's a fight gays and lesbians are willing to have. After all, she says, courts have traditionally stood up for minority rights, no matter how unpopular.

But if the courts and the electorate continue to reach conflicting conclusions, the fight could be a long one.

"We've made tremendous progress with our litigation strategy," said Crisler. "Look how far we've come from

2004, when we had the Kerry defeat and ballot measures [that successfully banned gay marriage] in 13 states. But you can only take on strategy so far. What we are looking for now is a real change in the hearts of Americans, making them understand that we are part of their communities, that we worry about homework, play dates, and being good parents — all the things that everyone else worries about."

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