

## **Idaho's gay marriage ban remains in state constitution, though unenforceable**

By KIMBERLEE KRUESI, Associated Press

BOISE, Idaho (AP) — Same-sex marriage is now legal in all 50 states, but nestled in the Idaho Constitution remains the provision that defines marriage as only between a man and a woman.

The Supreme Court struck down all gay marriage bans nationwide last week, making Idaho's constitutional marriage definition unenforceable.

However, removing the language will likely be an uphill battle. Amending the Idaho Constitution first requires approval from the Republican-dominated Legislature. The proposal must then win a simple majority in a voter referendum — a tough task for even lesser politically-charged initiatives.

Idaho is one of 30 states that amended their constitutions to ban gay marriage that have not yet take steps to repeal their amendments, even though they have been rendered unenforceable by the Supreme Court's gay-marriage decision.

"It might be difficult to remove the language, but it's the right thing to do," said Leo Morales, acting executive director of the American Civil Liberties Union of Idaho. "Lawmakers have sworn an oath to uphold the law. It makes sense to clean up the books."

Idaho's gay marriage ban has been enshrined in the state constitution since 2006 after winning 63 percent of the vote.

Gay rights supporters argue removal is the natural next step to comply with the Supreme Court's ruling. But Republican lawmakers and gay marriage opponents counter that there is no legal need to change the constitution.

"Idaho should not remove that language," said Julie Lynde, executive director of Cornerstone Family Council. "There is no reason to obliterate traditional marriage. It's a symbolic and historic piece of language."

Furthermore, when Idaho lawmakers gather in Boise at the beginning of 2016, they'll be kicking off the legislative session in an election year. Republican lawmakers will be less likely to cast a vote that could be used against them by an opponent.

"My opinion is that no legislative action is required," said Senate Majority Leader Bart Davis of Idaho Falls. "Whether the Legislature chooses to do something or not, that's still up in the air. But right now, (the ban) is unenforceable as required by law."

The Idaho Constitution is subject to the Supreme Court, meaning the state must defer to the court's decision even if its own laws differ. But having conflicting state and federal laws can cause confusion, Morales said.

For example, in 2013, a sheriff in Kootenai County declared that the Boy Scouts of America promoted a lifestyle that violated the state's sodomy law. Morales said the sheriff incorrectly interpreted an unenforceable state law because it was still on the books, even though the Supreme Court banned laws that attempted to regulate or criminalize sexual activity among consenting adults in 2003.

Idaho's history of removing obsolete provisions from its constitution began with the original document in 1890. At the time, Idaho disenfranchised anyone who practiced polygamy, encouraged polygamy or supported organizations encouraging polygamy as a way to strip Mormons of their right to vote, holding office or serving on juries.

Today, the Idaho Legislature is prominently led by Mormons in both chambers, but the state didn't remove the anti-Mormon language until 1982. More than 100,000 people —a third of voters— voted to keep the ban.

Democratic Rep. John McCrostie of Boise, currently Idaho's only openly gay lawmaker says protecting unenforceable language is useless. He supports removing the language as quickly as possible.

Idaho's gay marriage ban was struck down in October.

Gay rights activists say the next hurdle is pushing legislation to protect lesbian, gay, bisexual and transgender people from employment and housing discrimination. Idaho's Human Rights Act does not offer sexual orientation and gender identity protections.

Earlier this year, for the first time in nearly a decade, lawmakers granted a hearing on the anti-discrimination legislation. While it was defeated in a legislative committee, it was a sign of hope for gay rights supporters.

"It's an exciting time for the LGBT community, not just for Idaho but for the entire nation," McCrostie said.