

Gay marriage outcome today uncertain

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By Frank Phillips, Globe Staff | January 2, 2007

Supporters of same-sex marriage are scrambling to hold together a shaky coalition of lawmakers today in hopes of blocking a vote on a proposed constitutional amendment that would ban same-sex marriage in Massachusetts.

Both sides in the emotion-packed debate said yesterday that an air of uncertainty has gripped today's constitutional convention because of the recent Supreme Judicial Court ruling saying lawmakers have a constitutional duty to vote on the proposed amendment. Just weeks ago, advocates of same-sex marriage had confidently predicted the convention would quietly kill the petition, which is being pushed by social conservatives and Governor Mitt Romney.

"We don't know what's going to happen for sure, but it does seem certainly a possibility that a vote on the petition will take place," said Arline Isaacson, cochairwoman of the Massachusetts Gay and Lesbian Political Caucus.

On Nov. 9, 109 House and Senate lawmakers voted to recess the joint convention until today, without taking up the petition. Same-sex marriage supporters hoped to kill the measure today -- the last day of the current legislative session -- by recessing again. But if lawmakers vote directly on the measure, Isaacson said the petition has more than the 50 votes needed to advance it closer to the 2008 statewide ballot.

Isaacson and leaders of groups opposed to same-sex marriage agree that the unanimous decision last week by the Supreme Judicial Court has sharply shifted the dynamics of the political struggle. The justices declared that legislators had a constitutional duty to vote on a ballot initiative to ban same-sex marriage, but also said that the SJC could not order the Legislature to vote.

Many among the slim majority who on Nov. 9 had voted to recess the joint convention are struggling to reconcile their belief that gay marriage is a civil right not to be subject to popular referendum and the court's unambiguous decision.

"We are very definitely struggling with the court's clear decision that we are obligated to vote on the merits of the petition," said state Representative Jay Kaufman, a Lexington Democrat and a strong advocate of same-sex marriage.

Kaufman voted in November to recess, saying, like many of his colleagues, that he feels obligated to prevent what he considers discrimination from being included in the state constitution. He said he is torn over his decision in light of the court's decision.

"I am not alone," said Kaufman. "I've spent many hours rereading the constitution and in phone calls with colleagues. Many of us are struggling with the decision and the consequences."

Those pushing the amendment, who had all but conceded defeat two months ago, say they are increasingly optimistic that the court opinion has shifted the political ground in their favor.

"We are hearing rumblings at the State House hallways that the 109 legislators are very concerned over the court's ruling," said Kris Mineau, president of the Massachusetts Family Institute, which led the petition drive.

Representative Philip Travis, a Rehoboth Democrat and a strong opponent of same-sex unions, said the court decision was the catalyst that has turned the tide. "They had victory in their jaw and it was snatched right from them," he said.

Romney, who leaves office Thursday, was making calls yesterday to key lawmakers. A vote to keep the petition alive would also give him a major political victory; he has used his opposition to same-sex marriage in his efforts to reach conservative voters as he readies for a run for the White House.

Both sides also agree that the stakes are high in today's outcome and the decision will mark a major crossroads for the fate of the country's only legalization of same-sex unions.

Backers of the proposed constitutional amendment collected 170,000 signatures to get the measure on the ballot in 2008.

The state constitution provides that the citizens' petitions for constitutional amendments need to attract 50 or more votes in two successive legislative sessions in order to be placed on the ballot. If the petition against same-sex marriage fails to get the necessary vote today, it will die at midnight when the 2006 session legally ends. Both sides agree there are fewer but still sufficient votes in the newly elected Legislature for the petition to win final approval to appear on the 2008 ballot.

"The vote today is the vote," said Marc Solomon, campaign director of MassEquality, which is spearheading the campaign to keep same-sex marriage legal. "We are at the final hour. This will determine whether Massachusetts can move on."

Mineau said the Legislature's decision would be historic. But he also argued that the future right of citizens to petition for changes in the state constitution is under fire.

Isaacson, by contrast, said language in the state constitution that speaks of equal protection and minority rights trumps a provision added in 1918 providing for citizen-driven petitions to amend the two-century year old document.

Gay leaders and their legislative allies, including House Speaker Salvatore F. DiMasi, spent the last few days assessing the impact of the court's decision and trying to shore up the coalition. DiMasi has argued to his House colleagues that a ballot referendum in 2008 over gay marriage should be avoided, putting him at odds with Senate President Robert E. Travaglini, the convention chairman who is pushing his Senate colleagues to put the issue before the voters.

In his conversations with lawmakers and other strategists, DiMasi warned of the political impact of a 2008 ballot fight, according to those he has spoken with in recent days. He has painted a picture of an election that would draw huge sums of money from around the country for what could be a heated and mean-spirited campaign that would stir up prejudice against the gay community. Isaacson said she is convinced the amendment would win in a statewide referendum, although current polls show support for same-sex marriage.

Isaacson said supporters of same-sex marriage have not decided on a strategy for today's convention, mainly because legislators have been on holidays and it has been difficult to take a head count.

She declined to discuss what tactics are being considered. But their most viable options include pushing another vote to adjourn the convention for the year or recessing it to midnight, when the session legally expires.

If a majority were to approve such a move, the initiative petition would be blocked from appearing on the 2008 state ballot. Another option would be for enough same-sex marriage supporters to boycott the session so that it did not have a quorum to conduct business. ■