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Federal court: Gay marriage is state issue

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A federal appeals court on Friday ruled it was premature for a gay Mission Viejo, Calif., couple to file a lawsuit challenging laws that deny gays and lesbians the right to marry and that the issue should be hashed out in state courts first.

After the Orange County clerk twice denied Arthur Smelt and Christopher Hammer a marriage license, the couple sued in 2004, claiming that state and federal laws recognizing marriages only between a man and a woman are unconstitutional.

A three-judge panel of the 9th U.S. Circuit Court of Appeals recognized that the case touched on a topic "fraught with sensitive social policy considerations" but ruled the couple should wait for the state courts to sort out the issues. A state appeals court is awaiting arguments on a lawsuit challenging the state law that outlaws gay marriage.

The outcome of the state litigation could preclude federal courts from weighing in, wrote Judge Ferdinand F. Fernandez.

Legal experts said it was clear the panel wanted to avoid ruling on the issue.

Judges also found the couple did not have legal standing to challenge the federal Defense of Marriage Act because they had never been married. The act allows states to refuse to recognize gay marriages from another state.

Hammer, 46, said the judges' reasoning "sounded an awful lot like the doublespeak in George Orwell's *1984*. If we were married, why would we be in court complaining about not being able to get married?"

The case has caused a rift in the same-sex marriage movement, with the major civil rights groups worried that the suit could lead the U.S. Supreme Court to rule that state laws banning gay marriages are constitutional.

Jennifer Pizer, senior counsel for Lambda Legal Defense and Education Fund, a group promoting gay and lesbian rights, was relieved by Friday's ruling.

"It recognizes that some of these important questions remain for a future day in an appropriate case," she said.

Richard C. Gilbert, a lawyer for Smelt and Hammer, said they probably will appeal the case to the Supreme Court.

"We've said from the beginning that the only thing that's ever going to matter is what the U.S. Supreme Court has to say," he said.

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