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Slow, steady campaign for same-sex marriage in Arizona



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Capitol Media Services

PHOENIX -- Gays hoping to wed in Arizona should not look for legal relief soon.

The four couples who filed suit Monday to void Arizona's ban on recognizing same-sex marriages are not asking U.S. District Court Judge John Sedwick for an immediate injunction. That could have forced the issue into court within weeks.

Instead, attorney Shawn Aiken is biding his time. He wants a full-blown trial on the merits -- and, then, hopefully, a permanent injunction requiring the state to start issuing marriage licenses to gays.

But that could take months -- or even longer.

At the same time, Sedwick's willingness to strike down both a long-standing state law and a 2008 voter-approved state constitutional amendment could turn on what is now playing out in Denver. That is where the 10th U.S. Circuit Court of Appeals is going to hear arguments about a federal judge's ruling in Utah saying that gays can legally wed in that state.

An appellate court ruling that gays have a legal right to marry could weigh heavily on what Sedwick decides.

Ultimately, though, the issue will have to be decided by the U.S. Supreme Court which probably won't get the Utah case until at least next year, long after when Aiken is hoping to get a ruling here.

What the justices will do is anyone's guess. While they ruled in favor of gays last year on two related issues, they more recently stayed the Utah judge's order and halted same-sex weddings there while the issue is litigated.

In essence, the arguments of the four Arizona couples is similar to the one accepted by that federal judge in Utah.

They claim that the Arizona ban violates their individual rights under the equal protection and due process provisions of the U.S. Constitution. Aiken argues the ban is "arbitrary and invidious discrimination."

"A state law that singles out homosexuals for disfavored treatment and imposes inequality on them violates the principle of equal protection under the law," he argued in his legal filings to Sedwick. He said that is precisely the effect of Arizona's restrictions, denying gays the right to marry a chosen partner and denying them the "benefits and protections of marriage."

But Aiken has a fallback position he is advancing for two of the couples. They were legally wed in California but reside in Arizona.

He said the U.S. Constitution already requires Arizona to honor opposite-sex marriages performed in other states. Aiken said Arizona has no legal right to decide that same-sex marriages performed legally elsewhere are not entitled to legal recognition.

"The Full Faith and Credit clause requires that one state recognizes (things like a) death certificate, birth certificate," Aiken told Capitol Media Services. "And court judgments and marriage certificates fall right in the same category."

But even that argument may not be a slam-dunk.

Last year, the U.S. Supreme Court voided provisions of the federal Defense of Marriage Act, which forbid the federal government from recognizing same-sex marriages performed in states where they are legal. That has since led to changes in various laws and regulations entitling

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legally wed gay couples to things like being able to file joint federal tax returns and get survivor benefits.

But there's another provision of DOMA the justices did not address. It says states need not recognize same-sex nuptials from other states.

Aiken said, though, he believes courts will rule that DOMA provision cannot trump the couples' constitutional rights.

The last time courts addressed the issue in Arizona was in 2003 when the state Court of Appeals unanimously rejected arguments that the state law restricting marriage to two people of the opposite sex is illegally discriminatory. The judges said legislators are entitled to conclude the permitting marriage only among heterosexuals promotes the state's interest in procreation and raising children in stable families.

Judge Ann Scott Timmer, writing the appellate decision even before the 2008 constitutional ban, said it is legally irrelevant that the state allows marriage of heterosexual partners who either cannot or choose not to have children. Timmer, now a justice on the state supreme court, wrote that if gays want the right to wed they had to take their case to the Legislature -- or directly to the people through an initiative drive.

Backers of same-sex marriage had crafted such a measure for the 2014 ballot. That bid to have voters overturn their own 2008 ban ended up being scrapped amid divisions within the gay community about the timing.

Instead, the initiative is being recrafted for 2016, with proponents saying that voter turnout is likely to be more favorable in a presidential election year.



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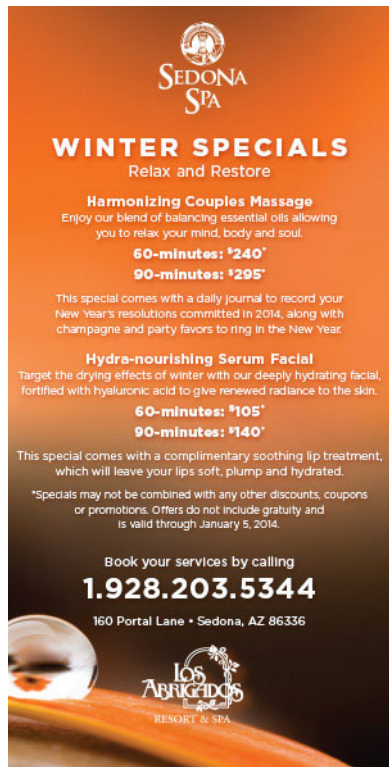
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