

# THE WEEK

Like 68k

Follow



Get THE WEEK Magazine

- Subscribe
- Give a gift
- Digital subscription

[WORLD](#) | [U.S.](#) | [POLITICS](#) | [BUSINESS](#) | [TECH](#) | [SCIENCE](#) | [ENTERTAINMENT](#) | [SPORTS](#) | [LIFESTYLE](#) | [LANGUAGE](#) | [CARTOONS](#) | [PUZZLES](#) | [STORE](#)

BVLGARI

SHOP LAST MINUTE GIFTS



## 4 pivotal gay rights court cases you should know about

The U.S. judicial system has become the main battlefield in the fight for equal rights

By [Jillian Rayfield](#) | January 28, 2014

927

Like 189

Share



Virginia Attorney General Herring says he believes the state's gay marriage ban is unconstitutional. (AP Photo/Steve Helber)

Since the early hours of 2014, there has been a flurry of activity in the courts over state bans on same-sex marriages. On New Year's Eve (apparently while also [presiding over](#) the ball drop in New York City), Supreme Court Justice Sonia Sotomayor granted a request by the state of Utah to temporarily block same-sex marriages, after a federal judge struck down a law prohibiting them in the state.

Utah is just one of 33 states that have banned gay marriage. Those states have found themselves under legal assault since the Supreme Court last year struck down a portion of the Defense of Marriage Act and allowed Proposition 8, California's ban on same-sex marriage, to be nullified.

Whatever happens in Utah, it's likely to have a domino effect in other states. In Oklahoma, for starters, a different federal judge [struck down](#) a similar state law, but blocked gay couples from marrying until a federal appeals court rules on the Utah case.

The number of lawsuits challenging the constitutionality of these bans continues to grow — in the last two weeks alone, attorneys representing same-sex couples in both Florida and Arizona have filed new challenges — making it very likely that the fight will ultimately make its way back to the Supreme Court.

As Lyle Denniston explained at [SCOTUSBlog](#), the Supreme Court's decision to block Utah's marriages indicates that the justices are indeed watching the legal wrangling closely. "The ruling can be interpreted as an indication that the court wants to have further exploration in lower courts of the basic constitutional question of state power to limit marriage to a man and a woman," Denniston wrote. "Had it refused the state's request for delay, that would have left at least the impression that the court was comfortable allowing same-sex marriages to go forward in the 33 states where they are still not permitted by state law."

Until the Supreme Court agrees to hear one or more of these cases, the issue will continue to play out in the lower courts. Here are four hot cases to watch:

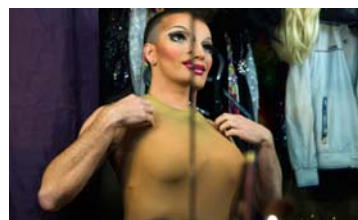
GET 4 **FREE** ISSUES  
OF THE WEEK

CLICK HERE

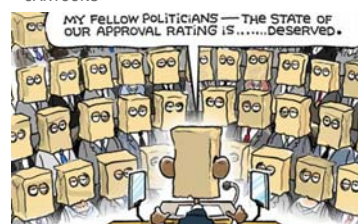
### MOST POPULAR ON THE WEEK

1. *Avengers: Age of Ultron*: Everything we know so far
2. Watch 8 of the best performances from the 2014 Grammys
3. Obama's State of the Union in 10 lines
4. How to fail at almost everything and still win big
5. Watch *The Daily Show* mockingly beg Sean Hannity to stay
6. 6 science-based tips for making friends
7. 4 pivotal gay rights court cases you should know about
8. How will Obama's new myRA retirement plan work?
9. This Japanese bra automatically unhooks when you find true love
10. 22 TV shows to watch in 2014

### CAPTURED: A PHOTO BLOG



### CARTOONS



THE WEEK STORE

### 1. Virginia

Though two challenges to Virginia's ban on same-sex marriage have been proceeding for some time, in the past few months the atmosphere surrounding the lawsuits has shifted completely. After years of Republican Gov. Bob McDonnell and uber-conservative Attorney General Ken Cuccinelli leading the state, in November voters elected Gov. Terry McAuliffe and Attorney General Mark Herring, Democrats who both support same-sex marriage.

Last week, Herring [announced](#) that he believes the law is unconstitutional, will not defend it in court, and is joining one of the two lawsuits to overturn it. "The Commonwealth will side with the plaintiffs in seeking to have the ban declared unconstitutional," he said in a statement. This case is scheduled for a hearing this week.

Aside from being one of the most imminent court fights over gay marriage, adding to the drama in Virginia are some of the players: The [lead attorneys](#) for the plaintiffs are David Boies and Theodore B. Olson, the same pair that brought the challenge to Proposition 8 to the Supreme Court.

### 2. Michigan

U.S. District Judge Bernard Friedman says he [will hear arguments](#) on Feb. 25 in a lesbian couple's challenge to Michigan's ban on adoption by same-sex couples. The lawsuit also challenges the state ban on gay marriage as a whole, which was passed by voters in 2004 as a constitutional amendment that defines marriage as being between a man and a woman. Attorneys representing the state have argued that "Michigan supports natural procreation and recognizes that children benefit from being raised by parents of each sex who can then serve as role models of the sexes both individually and together in matrimony."

However, Friedman has [referenced](#) the Supreme Court's DOMA decision in the past, explaining that he allowed the couple's case to go to trial because the high court "has provided the requisite precedential fodder for both parties to this litigation."

Just don't take that to mean this case is a done deal in favor of the plaintiffs. "I am in the middle," Friedman says of the case. "I have to decide this as a matter of law."

### 3. Pennsylvania

Pennsylvania is the last state in the Northeast holding out on legalized gay marriage. But there are a whopping seven lawsuits (at least) circulating in the courts. Each challenges various aspects of the 1996 law, which defines marriage as being between a man and a woman and does not recognize same-sex marriages performed in other states where they are legal. One suit, brought by the ACLU, is scheduled for a hearing in June.

On a political level, these court cases are threatening to make things a tad contentious in the capital. As in Virginia, Pennsylvania's new Democratic Attorney General Kathleen Kane announced just a few weeks after taking office that she [will not](#) defend the ban in court. "I cannot ethically defend the constitutionality of Pennsylvania's version of DOMA," she [said](#). "I believe it to be wholly unconstitutional."

Unlike Virginia, however, Pennsylvania's governor is a Republican. Tom Corbett is an uneven opponent of LGBT rights, though still an opponent: He has said that he will defend keeping the gay marriage ban on the books, and in the past has [compared](#) same-sex marriage to incest. But recently he changed his position on a bill banning discrimination based on sexual orientation, announcing his newfound support.

### 4. Ohio

Back in December, Ohio District Judge Timothy Black invalidated part of the state's ban on same-sex marriages, overturning the state's refusal to recognize marriages that occur in other states where such marriages are legal. "That is, once you get married lawfully in one state, another state cannot summarily take your marriage away, because the right to remain married is properly recognized as a fundamental liberty interest protected by the Due Process Clause" of the Constitution, he wrote in his opinion.

The state has said it will appeal this decision, and the narrow nature of Black's ruling means that Ohio's own ban on same-sex marriage is safe for now. But Black also noted in his ruling that this may not be the case for long: "[A]lthough the question of whether Ohio's refusal to grant same-sex marriages also violates Ohio same-sex couples' right to due process and equal protection is not before the court in this case, the logical conclusion to be drawn from the evidence, arguments, and law presented here is that Ohio's violation of the constitutional rights of its gay citizens extends beyond the bounds of this lawsuit."



[Shop Now](#)

**Sign up for our free email newsletters**

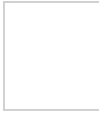
your email address here

[SIGN UP](#)

**AND FOLLOW US ON**



PRINT 927 Like 189 Share



**Jillian Rayfield**

Follow @jillrayfield

Jillian Rayfield is a freelance writer in New York. In the past, she has written for *Salon*, *MSNBC*, *Rolling Stone*, *New York Magazine's Daily Intel*, and *Talking Points Memo*.

#### EDITORS' PICKS



Sochi's vibrant gay culture



Don't take this man's ambitions seriously



The evolution of football's play-by-play



What if the culture war never ends?



How to be a Downton-worthy servant



How will Obama's myRA retirement plan work?

#### MORE FROM THE WEEK AND AROUND THE WEB



(JAN 2014): New "Rule" Has Drivers Furious & Shocked...

Sponsored



Welcome to the National Zoo T-Shirt

The Week Store



Life Lessons One Year Later (7/17/13)

Sponsored



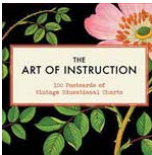
The Drinker's Dictionary

The Week Store



Don't Break the Wine Bottle Puzzle

The Week Store



Art of Instruction Post Cards

The Week Store



5 money-saving tax moves to make right now

The Fiscal Times



Is pot now essentially legal in America?

The Week



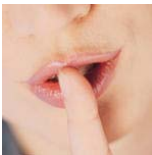
Secret Lives of the U.S. Presidents

The Week Store



Homeowners Get a Bailout This Year...

Sponsored



10 annoying sounds you need to stop making

The Week



7 Common Mistakes That Trigger Alzheimer's in Your Brain

Sponsored



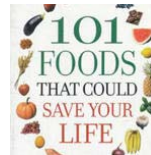
Best Pick Up Lines of All Time

Sponsored



Why men and women still can't get along at work

The Fiscal Times



101 Foods That Could Save Your Life

The Week Store

928 comments



Join the discussion...

Oldest ▾ The Week

Share Login ▾

**Michaellaborde** · a day ago

More perverted , makes me want to throw up stories of how unelected judges will trump the voters in more states.

122 ^ | 44 ▾ · Reply · Share ›

**Bree Zee** → Michaellaborde · a day ago

When the voters are wrong, they should be trumped. Perhaps you'd be willing to put your rights and privileges of citizenship up for vote to the majority.

135 ^ | 25 ▾ · Reply · Share ›

**slapshot1188** → Bree Zee · a day ago

So Bree, Janna, James. Here is a respectful question:

Where does it end? My honest question is: If it is a man's right to marry another man, should someone that is bi-sexual be able to marry a man and a woman if they all love each other? Or 2 men and 2 women? I am honestly not trying to be a jerk and use some of the silly argument about marrying trees or animals or kids. I just do not see how you could possibly say that the same argument that gay couples make can't be used for poly-amorous couples. Where gay rights supports would challenge the sex of the parties, poly-amorous couples would challenge the restriction on the number. If that's the case, supporters should be honest and state that is their end goal. That any adult can marry whatever number or combination of adults they desire. Then we can have an open and honest discussion about what we envision our society to be a decade from now.

50 ^ | 12 ▾ · Reply · Share ›

**Sarge** → slapshot1188 · a day ago

Slapshot... Polygamy is not in question here. There have been lobbyists for years and years for them and it is a separate discussion and cause entirely. Keep in mind that people that wish to marry multiple partners can at least still marry one at a time, so their rights are in tact. You also know that trees, animals and children cannot give consent to marriage and that is why those things will never happen. The goal of THIS fight for equality does not have any undertones of trying to pass further legislation to include polyamorous situations, but those folks have been around for eons trying to pass that legislation.

71 ^ | 9 ▾ · Reply · Share ›

**slapshot1188** → Sarge · a day ago

Perhaps I am just dense... but to me it is the same argument. That the government cannot tell a citizen who they cannot marry. Your argument that a poly couple can marry one person is invalid. It's the same as saying a gay man can marry a woman. A poly group of 3 or more who profess love to each other and want to get married seems to face the same theoretical discrimination that gay couples do. Who gets to draw the line?

32 ^ | 10 ▾ · Reply · Share ›

**Sarge** → slapshot1188 · a day ago

You said you're dense, I didn't. You may see this as the same argument but the SSM equality fight is to recognize relationships and families of gay people and provide the same protections, benefits and pitfalls of marriage. For you to lump polyamorous supporters in with the LGBT is pretty irresponsible considering that they ALREADY have the right to marry and gay people do not.

51 ^ | 9 ▾ · Reply · Share ›

**slapshot1188** → Sarge · a day ago

I may be dense but you sure do not seem to be seeing what I am saying either. Please see Bree's response. Perhaps she better explains it.

16 ^ | 3 ▾ · Reply · Share ›

**Sarge** → slapshot1188 · a day ago

I did read Bree's response. I tend to lean towards disagreeing with her as

SUBSCRIBE TO THE WEEK

PRINT + DIGITAL	PRINT	DIGITAL
		
Get both print + digital	Get home delivery	iPad, Android, or Kindle Fire

[SUBSCRIBE](#) / [SUBSCRIBER LOGIN](#) / [CURRENT ISSUE](#) / [GIVE A GIFT](#) / [BACK ISSUES](#) / [CLASSROOM SUBSCRIPTIONS](#) / [RSS](#)  
[AD INFO](#) / [PRIVACY POLICY](#) / [TERMS & CONDITIONS](#) / [THE WEEK UK](#) / [SITE MAP](#) / [CUSTOMER SERVICE](#) / [CONTACT US](#)

© 2014 THE WEEK Publications, Inc. All rights reserved. THE WEEK® is a registered trademark owned by Felix Dennis. THEWEEK.COM is a trademark owned by Felix Dennis.