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Marriage Case

Four couples file a lawsuit in federal district court challenging Arizona's ban on same-sex marriage.
 By Glenn Gullickson - Jan 16, 2014

Attorney says Arizona marriage equality case could be decided in 2014

The attorney representing four gay couples challenging Arizona's ban on same-sex marriage in federal district court said he hopes that there will be a decision in the case this year.

"It's time for this issue to be decided in Arizona," Shawn K. Aiken said about the class action lawsuit he filed Jan. 6 in U.S. District Court in Phoenix.

Aiken is representing three male couples and one female couple in a bid to legalize same-sex marriage by overturning Arizona's one man-one woman constitutional definition of marriage approved by voters in 2008.

In the brief filed with the court, Aiken said that it's expected that the same-sex marriage issue will eventually be decided by the U.S. Supreme Court.

But in an interview with Echo Magazine, the attorney said he'd like to get the question decided in Arizona, where he estimated there are about 21,000 same-sex couples in committed relationships.

Aiken said that it could be expected that a dismissal of the complaint would be requested in the state's response, which is expected 30 days after the filing of the lawsuit. Defendants in the case include Arizona Gov. Jan Brewer and Attorney General Tom Horne.

Aiken said the case has been assigned to Judge John W. Sedwick. The court's website lists Sedwick as a visiting judge who is based in Alaska.

Assuming the case goes forward, the judge would decide a date for a hearing. Any decision could be appealed to a higher court.

Aiken noted that a similar case in Utah took nine months from filing to a decision, which is now under review by an appeals court.

The lawsuit argues that Arizona's ban on same-sex marriage violates the equal protection and due process clauses of the U.S. Constitution's 14th Amendment.

Aiken said the Arizona lawsuit is not coordinated with similar lawsuits in other states challenging marriage bans.

The attorney said he has no associations with LGBT advocacy groups, like Equality Arizona and the Human Rights Campaign (HRC), and did not consult leaders of those groups before filing the lawsuit.

"I don't know what those folks think about the case," he said. "I'm not one of the lawyers from the [LGBT] community."

Aiken's clients are longtime Arizona residents in established relationships. Among the group are two couples who married in California and two sets of parents.

Aiken's brief outlines the challenges the couples face in a state where their relationships are not recognized, including the issues of one-parent adoptions by same-sex couples in Arizona and the problem of being legally restricted from assisting in medical decisions for a partner.

Lead plaintiffs Joseph Connolly and Terrel Pochert are a couple Aiken said he's known for 15 years after meeting in the Tempe church they attend.

Aiken said he and the men started discussing the issue in early December. It was about six months after landmark U.S. Supreme Court ruling that struck down portions of the Defense of Marriage Act (DOMA), which resulted in several other court actions around the country, but Aiken noted there hadn't been much movement locally toward same-sex marriage.

Other plaintiffs were found, but there are no relationships between the couples, who Aiken said had not met before the lawsuit was filed.

Clark Rowley, a 27-year resident of Arizona, said he and his partner, David Chaney, signed on to the lawsuit just a couple of weeks before it was filed after a friend whose a paralegal at Aiken's firm told them about the case.

Rowley said he's not an activist, but the issue of being unable to marry his partner in their home state has weighed on him. "What is the problem here? That is my question to the state," he said.

"Hopefully we can make a difference," Rowley said. "We want to be part of trying to make it easier for others who are in the same boat. The key is opening doors for individuals like ourselves."



Attorney Shawn K. Aiken will represent the four plaintiffs.
 Photo courtesy of ashrlaw.com

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Rowley said that he's aware of local LGBT advocacy groups, but expressed impatience with their efforts. "I don't think they're moving fast enough," he said.

Mason Hite, an Arizona native, said he and his husband, Christopher Devine, were interested in being plaintiffs in the case as a way to fight for their 8-year-old son, who could be legally adopted in Arizona by only one of his dads.

Hite said his family's story contributes to the case's narrative. "They wanted families with children to represent that demographic in our community," he said. "It's important for non-LGBT undecided people out there to see us as a real family."

Hite said the DOMA ruling "really kind of opened our eyes to what we have available federally now, and what we don't have available to us locally."

A supporter of HRC, days after the lawsuit was filed Hite said he hadn't heard from LGBT advocacy groups. "I would assume that they're behind us," he said.

But after the lawsuit was filed the plaintiffs did hear from the media, who pounced on the story about the latest effort to challenge the state's definition of marriage.

Rowley said he's not part of the lawsuit for the publicity. "We live a very normal life. To be thrown into a spotlight like this can be intimidating," he said. He said he is avoiding reading negative blog postings after the case was filed.

Hite said he and his husband committed to the case despite the possible drawbacks, but will keep their son out of the spotlight.

Aiken said he was pleased with media reports as well as a positive reaction from the legal community.

An attorney for about 30 years and a partner in the Aiken Schenk law firm, Aiken acknowledged that the marriage equality case is a departure from his routine practice, which emphasizes business litigation, mediation and arbitration.

Aiken is also involved in a class action lawsuit that challenges the hotel and car rental taxes that are funding sources for the University of Phoenix Stadium.

Aiken's co-counsel for the case is his daughter, Ellen Aiken, an attorney who focuses on family law at Sacks Tierney in Scottsdale. -E

Plaintiffs introduced in Arizona same-sex marriage lawsuit

The brief filed with the U.S. District Court District of Arizona challenging the state's definition of marriage introduces the four couples who are plaintiffs in the case.

- **Joseph Connolly and Terrel Pochert**, residents of Pinal County, met in Michigan in 1995 and moved to Arizona in 1997. They married in California in 2008.
- **Suzanne Cummins and Holly Mitchell**, residents of Maricopa County, have been in a committed relationship since 2007. They became foster parents in 2009 and adopted two children in 2010 and 2011, including one with a chronic medical condition. The brief notes that because of Arizona laws, Cummins is the legal adoptive parent and Mitchell has no legal rights.
- **Clark Rowley and David Chaney**, residents of Maricopa County, have been in a committed relationship for more than five years. They had a commitment ceremony attended by 300 family and friends in 2010 in Scottsdale. The brief notes that Chaney has type 1 diabetes and since they can't be married in Arizona Rowley has no role in medical care decisions.
- **Mason Hite and Christopher Devine**, residents of Maricopa County, have been in a committed relationship since 2002. They married in California in 2008, became foster parents in 2011 and adopted a son in 2012, with only Hite's name on the birth certificate.