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A woman holds a rainbow flag with her bouquet before getting married to her fiancée in West Hollywood, California, July 1, 2013.

LUCY NICHOLSON/REUTERS

## Marriage equality suit filed in Arizona

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By Emma Margolin (/person/emma-margolin)

Three-hundred-and-sixty miles away from the conservative stronghold of Utah – where the U.S. Supreme Court left in legal limbo (/thomas-roberts/court-halts-utah-gay-marriage) hundreds of same-sex marriages on Monday – four gay couples in Arizona began the courtroom battle of changing another red state's marriage laws.

In a federal class-action lawsuit filed Monday, plaintiffs argue Arizona's 17-year-old ban on same-sex marriage violates gay couples' constitutional rights to equal protection and due process under the 14th Amendment.

The case is one of dozens of suits filed across more than 15 states against laws prohibiting gay couples from marrying, and one of the first federal challenges in the 9th Circuit since the U.S. Supreme Court cleared the way for federal agencies to begin recognizing same-sex marriages. That case, *United States v. Windsor*, which gutted the federal Defense of Marriage Act (DOMA,) as well as two more landmark decisions, *Loving v. Virginia*, which struck down bans on interracial marriage, and *Lawrence v. Texas*, which invalidated anti-sodomy laws, all play significant roles in the Arizona complaint. Its language also reflects what marriage equality advocates and opponents alike believe to be inevitable—that the nation’s highest court will soon have to answer the question of whether any ban on same-sex marriage falls in line with the U.S. Constitution.

“It is widely expected that the Supreme Court will eventually resolves this issue,” reads the brief. “Until that decision, plaintiffs seek this court’s declaration that the U.S. Constitution bars Arizona from the same discriminatory conduct that the Windsor court declared unconstitutional.”

Arizona has prohibited gay couples from marrying since 1996, when the legislature passed a law banning such unions. In 2008, voters moved to enshrine that ban in Arizona’s Constitution. Proposition 102, which added to the state constitution the definition of marriage as between one man and one woman, passed with 56% of the vote.

Shawn Aiken, who, along with his daughter Ellen Aiken, is representing the plaintiffs, said he sensed a shift in public opinion since the 2008 vote, but is more interested in protecting the constitutional rights of Arizonans, not their views on marriage.

“Support for me and my clients is uneven out there, I get that,” said Aiken. “But you got to do what you got to do.”

According to a May survey, public opinion is actually on Aiken’s side, despite the state’s conservative representation. Fifty-five percent of Arizonans said they were in favor of allowing gay couples to marry, according to the Behavior Research Center’s Rocky Mountain Poll, (<http://www.azcentral.com/news/politics/articles/20130514arizona-poll-gay-marriage-marijuana.html>) and 35% said they were against it.

Republican Gov. Jan Brewer, however, one of the named defendants in the suit, has so far been no friend to the gay community in her state. Last year, Brewer defended a law passed by the Arizona legislature that would have prevented same-sex couples from getting benefits given to heterosexual spouses of state employees. The law was put on

hold following a legal challenge, but Brewer asked the U.S. Supreme Court to take the case and allow it to go into effect. Her appeal was denied.

(<http://www.buzzfeed.com/chrisgeidner/supreme-court-denies-appeal-by-arizona-gov-jan-brewer-on-par>)

Brewer's office did not immediately return a request for comment as to how the state plans to proceed in the same-sex marriage suit. Stephanie Grisham, press secretary to Attorney General Tom Horne, said his office hadn't yet received the case and would need to review it before determining the next steps.

In addition to prohibiting gay couples from marrying in Arizona, the law also prevents the state from recognizing same-sex marriages performed elsewhere in the country. Two of the couples challenging Arizona's ban were legally married in California, but are not entitled to any state benefits or federal benefits that hinge on residence—such as Social Security survivor benefits, or those granted under the Family and Medical Leave Act.

The Arizona challenge came just hours after the U.S. Supreme Court put a temporary hold on same-sex marriages in Utah, which for two-and-a-half weeks was the 18th state where gay couples could wed. While Aiken insists he was not trying to orchestrate his suit with the Utah decision, he conceded the timing “certainly helped.”

“Utah brought the issue to the front of everyone's minds, and I think that has locally made the case we filed much more interesting,” said Aiken, who had reached out to national civil liberties groups, like the American Civil Liberties Union and Lambda Legal, without success. “National wasn't interested, but that probably would change now,” he said.

Judge John Sedwick, a George H.W. Bush appointee, will hear the suit in Arizona later in the year. The state will have to file its response within 30 days. “If we could get to a decision in 2014, that's as good as we can hope,” said Aiken.

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