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Suit to overturn Arizona gay-marriage ban filed

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January 08, 2014 12:00 am • [By Howard Fischer Capitol Media Services](#) 19

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 longer.

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

[x]

the Utah case until next year, long after when Aiken is hoping to get a ruling here.

The couples claim 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," Aiken argued in his legal filings to Sedwick.

He said Arizona's restrictions deny gays the "benefits and protections of marriage."

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 said. “And court judgments and marriage certificates fall right in the same category.”

Last year the U.S. Supreme Court voided provisions of the federal Defense of Marriage Act, which forbade the federal government from recognizing same-sex marriages performed in states where they are legal.

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

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

Backers of same-sex marriage had crafted a measure allowing it in Arizona for the 2014 ballot, but the effort fell apart amid divisions within the gay community about the timing.

Instead, the initiative is being retooled for 2016.

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