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## Class Action Lawsuit: Ariz.'s Gay Marriage Ban Is Unconstitutional (<http://www.topclassactions.com/lawsuit-settlements/lawsuit-news/12047-class-action-lawsuit-claims-arizonas-gay-marriage-ban-unconstitutional/>)

By Anne Bucher  
January 8, 2014

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On Monday, four same-sex Arizona couples filed a class action lawsuit, claiming the state's voter-approved ban on same-sex marriage is unconstitutional.

In the class action lawsuit, the plaintiffs cite the U.S. Supreme Court's *June U.S. v. Windsor* decision, which found a portion of the federal Defense of Marriage Act (DOMA) was unconstitutional. As a result of this decision, legally-wed gay couples can file joint federal tax returns and are entitled to survivor benefits.

Immediately following the passage of DOMA in 1996, Arizona banned same-sex marriage. In 2003, the Arizona Court of Appeals rejected arguments that the same-sex marriage ban was illegally discriminatory, finding that state legislators were within their rights to conclude heterosexual marriage promotes the state's interest in procreation and child-rearing. In 2008, Arizona voters approved an initiative to include the ban as part of the state constitution.

The plaintiffs argue that the constitutional amendment violates their rights to equal protection and due process under the U.S. Constitution. The class action lawsuit seeks to "permanently enjoin the enforcement of any and all other provisions of Arizona law that may deny Plaintiffs equal access to the benefits of marriage in the State of Arizona, including the right of same-sex couples to marry in or have their out-of-state marriages recognized by the State of Arizona."

Attorney Shawn Aiken told U.S. District Judge John Sedwick that the same-sex marriage ban is "arbitrary and invidious discrimination." He argued that Arizona's ban on gay marriage unconstitutionally denies gays the benefits and protections provided by marriage.

"A state law that singles out homosexuals for disfavored treatment and imposes inequality of them violates the principle of equal protection under the law," Sedwick said.

Although the U.S. Supreme Court opinion overturned portions of DOMA prohibiting the federal government from recognizing same-sex marriages in states where they are legal, the justices did not rule about the constitutionality of a provision of DOMA that gives states the ability not to recognize same-sex marriages from other states.

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The plaintiffs filed the gay marriage class action lawsuit on behalf of themselves and others who are similarly situated. They seek to certify two sub-classes. The first includes all individuals who reside in Arizona and meet the legal requirements to marry in Arizona, but are prohibited from marrying someone of the same sex by Arizona law.

The second proposed subclass includes individuals who reside in Arizona and were legally married to someone of the same sex under the laws and procedures of another state, and whose marriage is not recognized under Arizona law.

This class action lawsuit was filed the same day the U.S. Supreme Court reinstated Utah's ban on same-sex marriage pending a ruling by the Tenth Circuit Court of Appeals.

The plaintiffs are represented by Shawn K. Aiken, Heather A. Macre and William H. Knight of Aiken Schenk Hawkins & Riccardi PC and Ellen K. Aiken of Sacks Tierney PA.

The **Arizona Gay Marriage Class Action Lawsuit** is *Joseph Connolly, et al. v. Janice K. Brewer, et al.*, Case No. 2:14-cv-0024, in the U.S. District Court for the District of Arizona.

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