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Arizona same-sex couples challenge state laws

Jude Joffe-Block, Fronteras Desk | Take Two | January 24th, 2014, 9:50am



Jude Joffe-Block

Terry Pochert and Joe Connolly are plaintiffs in a January suit that take on the state's definition of marriage.

Across the country the legal landscape for same-sex marriage is changing, and fast. In the Southwest in recent weeks, courts in New Mexico and Utah have delivered victories to gay marriage proponents. Now in neighboring Arizona, some gay and lesbian couples are challenging their state's definition of marriage.

From the Fronteras Desk, Jude Joffe-Block reports (<http://www.fronterasdesk.org/content/9453/arizona-same-sex-couples-challenge-state-laws>).

The two lead plaintiffs in the case are couple Joe Connolly and Terry Pochert. On a recent evening the pair prepared dinner together in their kitchen in Maricopa.

"Cheese soup for dinner tonight," Pochert said.

"We like no-fuss meals," said Connolly as he added croutons to a salad.

The couple has been sharing no-fuss meals for almost 19 years.

Before they ate, the two men said grace.

Pochert and Connolly's faith – they attend a Lutheran church – is a big reason why they have decided to challenge Arizona laws that don't recognize same-sex marriage.

"Gay and lesbian people in the state in faiths where they allow same-sex marriage – but the state does not – it is denying gay and lesbian people of faith the right to the sacrament of marriage," Connolly said.

The couple was married legally in California in 2008.

"It would have been wonderful to have a church filled with people here in our own congregation and our friends," Pochert said. "But we just couldn't do it here in Arizona."

Opponents of same-sex marriage argue allowing gays to marry would infringe on their own faith. And they've already weighed in.

In 2008, Arizona voters approved a constitutional amendment that defined marriage as between a man and a woman, and reinforced existing state statutes. Arizona does not recognize legal same-sex marriages performed outside of the state, either.

Earlier this month, Pochert and Connolly filed a lawsuit with three other couples challenging those laws. Some of the plaintiffs have not been able to jointly adopt children in the state, because the state only allows a "husband and a wife" to jointly adopt.

LGBT advocates in the state are working on a ballot initiative campaign for 2016 that would repeal the 2008 constitutional amendment. But plaintiffs in the case say they prefer to take this issue to the courts.

Shawn Aiken, a lawyer Pochert and Connolly know from church, is representing the couples.

"This is a bit far away from what I normally work on," said Aiken, who specializes in business law.

"But what makes it so exciting, I think for me and every lawyer is, these are the kind of cases that we hope to be involved in as members of the community. As students in law school, we just hope to be modestly close to a case an issue and clients that can change how many decades of discriminatory treatment," Aiken said.

Last June the Supreme Court struck down part of the federal Defense of Marriage Act, which had denied federal marriage benefits to same-sex couples.

Aiken's argument challenging Arizona's denial of state marriage benefits to his clients relies heavily on that decision.

"And to put it simply, it is to say, why can the state government do what the federal government cannot," Aiken said.

The Supreme Court has still not yet weighed in on a key question, which is whether state bans on same-sex marriage are legal.

But the court's ruling in June striking down DOMA gave many same sex-advocates a new sense of optimism that a majority of justices could be sympathetic to their arguments in a future case on that question.

"It really opened the floodgates to litigation, both by folks inside the movement and folks outside the movement," said Douglas NeJaime, a UC Irvine law professor. "So that's why we have seen now almost 40 lawsuit pending around the country in a variety of states."

Lately, the pace of change has been dizzying.

In New Mexico, the state's highest court ruled last month that same-sex couples could marry.

The next day, a federal district judge in Utah struck down that state's ban. Federal district judges in Ohio and Oklahoma have also sided with gay couples.

But despite this, NeJaime said this legal debate is far from settled.

"Even though we have seen district courts favoring same-sex couples claims in the last few weeks, we are likely to see other decisions come out the other way," NeJaime said.

In other words, rulings from other judges and appeals courts that say states do have the right to only recognize marriages between a man and a woman if they choose to.

In the past, this uncertainty in the courts prompted the LGBT movement to try to carefully plot out its legal moves.

But now there's a flurry of litigation all over, and it includes some attorneys new to this legal area.

Jenny Pizer from the national LGBT advocacy group Lambda Legal said the energy at this moment is exciting, but it's still vital all parties pushing for change stay coordinated.

"With any issue where a court case affects not just the litigants, but a whole community of people, folks in that community try to plan and work together to try to have good results in cases like that, because everyone has to live with the result," Pizer said.

Any one of these pending lawsuits could wind up in front of the Supreme Court, which then could decide for the whole country whether states must recognize same-sex marriage.

