

Lambda Legal joins fight challenging Arizona's same-sex marriage ban

By Glenn Gullickson

A national LGBT legal rights organization has joined the battle for marriage equality in Arizona by filing a lawsuit that challenges the state's ban on same-sex marriage.

Lambda Legal filed its lawsuit on March 13 in U.S. District Court in Phoenix on behalf of seven same-sex couples and two surviving spouses of long-term relationships.

Jennifer Pizer, Lambda Legal senior counsel based in Los Angeles, said Arizona's ban on same-sex marriage violates the couples' right to equal protection and due process guaranteed under that U.S. Constitution.

The lawsuit is the second to be filed in Arizona on the issue and one of several in states around the nation as the fight for same-sex marriage rages in the courts after the U.S. Supreme Court decision last summer striking down a key provision of the Defense of Marriage Act (DOMA).

Plaintiffs seek licenses

The lead defendant in Lambda Legal's Arizona case is Nelda Majors, who has been in a 56-year relationship with her partner Karen Bailey. The women have raised two of Bailey's great-grandnieces together.

"We've done what most couples hope to do, we've grown old together," Majors said during a press conference announcing the lawsuit. "It's wrong that I can not marry the one person I cherish most in this world."

In advance of filing the lawsuit, Bailey and Majors sought a marriage license on March 4 at the Maricopa County Superior Court Clerk's office and were turned away.

Another plaintiff couple, David Larance and Kevin Patterson, were also rebuffed when they sought a marriage license on March 10.

Other plaintiff couples have been married in states where same-sex marriage is permitted, but their unions are not recognized by the state of Arizona, which has had a one man-one woman constitutional definition of marriage since voters approved it in 2008.

"They are officially unmarried in the state of Arizona," Pizer said. "Without marriage, they are left vulnerable. They are entitled to basic fairness."

Pizer said same-sex couples in Arizona have to assemble a "big pile of legal documents" to gain protections that would be available through marriage. She noted that the state does not offer same-sex couples alternatives to marriage, such as civil unions or domestic partnerships.



Jennifer Pizer

Nelda Majors (left) and Karen Bailey



Photo by Randy Bingham

Timing of lawsuit

The filing of the Lambda Legal lawsuit was announced two weeks after Arizona Gov. Jan Brewer vetoed Senate Bill 1062, which created a nationwide furor over legislation that would have allowed discrimination of the LGBT community.

Pizer said the timing of the lawsuit was not related to the controversy, but acknowledged that the veto of SB 1062 had caused people to think about anti-gay discrimination.

Similar lawsuits have resulted in rulings striking down gay marriage bans in Utah, Oklahoma, Kentucky, Virginia, Texas, Ohio and Michigan, but those

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decisions have been put on hold pending appeal.

Lambda Legal is also challenging same-sex marriage bans with lawsuits in Indiana, Virginia and West Virginia and other organizations have filed suits in other states.

Pizer was involved in the battle last year to help Bisbee become the first Arizona municipality to establish civil unions. But as recently as last summer, she indicated at a community meeting in Phoenix that it was unlikely that a challenge to Arizona's same-sex marriage ban would be forthcoming.

Since then local and national LGBT organizations have introduced Why Marriage Matters Arizona, an educational campaign that's seen as a prelude to a possible 2016 vote on the issue.

Pizer said that effort helped lay the groundwork for the lawsuit, which she called part of a "synergistic effort to achieve marriage equality in Arizona."

Lambda Legal's lawsuit got the endorsement of Rebecca Wining, president of Equality Arizona, the statewide LGBT human rights organization. Attorneys at the Phoenix law firm Perkins Coie are serving as local pro bono counsel.

The road to equality

Pizer said plans for the Arizona lawsuit had been in the works for a while. "At a certain point, you can't wait any longer," she said. "Our clients have day-to-day needs."

The lawsuit and electoral efforts represent "multiple roads to roam" toward the goal of marriage equality, Pizer said. "The point is getting there."

States that have approved same-sex marriage by popular vote, legislative action or court decisions have created a "Swiss cheese" approach to equality across the nation, with 17 states and the District of Columbia offering same-sex marriages.

Pizer acknowledged the widely held belief that the U.S. Supreme Court will eventually decide the

marriage equality issue with a ruling that could apply nationally.

A case challenging Nevada's definition of marriage that could be headed for the Supreme Court is expected to be considered by the Ninth Circuit Court of Appeals in San Francisco later this year. Since that district includes Arizona, a ruling there could have an impact on the state.

Hearings are set for April on challenges to laws in Utah and Oklahoma before the 10th U.S. Circuit Court of Appeals in Denver.

Second lawsuit

Pizer said there's nothing inconsistent about filing a lawsuit similar to one filed two months earlier by Phoenix attorney Shawn Aiken, and suggested that the two groups could collaborate.

Aiken's group has no ties to LGBT organizations, and in a telephone interview with *Echo Magazine* the attorney said that he was informed of the Lambda Legal lawsuit two days before it was filed. He said the lawsuits outline similar arguments.

"It never hurts to have a second lawsuit on a question of this importance," Aiken said. He said there's a "genuine interest" in having the two groups work together.

Aiken's lawsuit originally listed four couples from Maricopa and Pinal counties as plaintiffs, but an amended complaint added three couples from Tucson and Flagstaff.

The Lambda Legal lawsuit names Arizona Attorney General Tom Horne as the defendant, but Aiken said he's dropped state officials from his lawsuit and named clerks of courts in Maricopa, Pinal and Coconino counties, where same-sex couples have been denied marriage licenses.

While officials around the country have been declining to defend state same-sex marriage bans, Arizona officials have shown no such inclination. In a response to Aiken's lawsuit filed with the court on Feb. 24, the state demanded a trial by jury in the action.

Aiken said his group will make a motion for summary judgment and expects developments in the case by summer. **-E**

The plaintiffs

Stories of the plaintiffs involved in Lambda Legal's lawsuit challenging Arizona's definition of marriage touch on the LGBT community's "hot button" issues, including parenthood, hospital visitation, bi-national couples and what happens when a same-sex spouse dies.

- **Karen Bailey and Nelda Majors**, of Scottsdale, have been together for 56 years and retired to Arizona after building a business in Texas. They raised Bailey's two great-grandnieces, now ages 15 and 21.
- **David Larance and Kevin Patterson**, of Phoenix, have been a couple for seven years and adopted two daughters, ages 4 and 7. Patterson is the adoptive father since Arizona doesn't allow adoptions by same-sex couples.
- **Michelle Teichner and Barbara Morrissey**, of Phoenix, have been a couple for 10 years and married in New York in 2013. When Teichner has been hospitalized, Morrissey's right to be present has been questioned.
- **Jessica and Kathy Young**, of Phoenix, have been together for 10 years and married in New York in 2013. Since Jessica is the birth mother of their 7-year-old son, Kathy has no legal relationship with the boy.
- **Kelli Olson and Jennifer Hoefle Olson**, of Tucson, have been together since 2004 and married in 2013 in Minnesota. They have twin girls, with Jennifer as the birth mother.
- **Vicente Talanquer and Kent Burbank**, of Tucson, have been together since 1994 and married in Iowa in 2013. They are adoptive parents of two sons, ages 12 and 14, with Vicente as the legal father.
- **C.J. and Jesus Castro-Byre**, of Tempe, married in Washington State in 2012. Jesus, a native of Mexico, applied for a green card after their marriage.
- **Patrick Ralph**, of Phoenix, is the surviving husband of the late Gary Hurst, who died in 2013. The men were together for 39 years and got married in California in 2009. Patrick was not allowed to be listed as Gary's husband on Gary's death certificate.
- **Josefina Ahumada**, of Tucson, is the surviving wife of Helen Battiste, who died in 2013. The women married in New Mexico in 2013, but the state of Arizona rejected Josefina's application for Helen's death certificate.