



Gay rights supporters hold a rally on the Pennsylvania State Capital steps after a ruling struck down a ban on same-sex marriage in Harrisburg, Penn. May 20, 2014. **Mark Makela/Reuters**

Arizona points to procreation to defend gay marriage ban

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By Meredith Clark

Attorneys for Arizona have dusted off a vintage argument to defend the state's ban on marriage for same-sex couples.

Marriage can't include gay couples, court papers filed Wednesday argue, because "the State regulates marriage for the primary purpose of channeling potentially procreative sexual relationships into enduring unions for the sake of joining children to both their mother and their father." By that argument, the marriages of the couples challenging the ban do not serve the state's purpose.

"Same-sex couples can never provide a child with both her biological mother and her biological father. When a same-sex couple takes steps to create a child, they must involve at least one

person of the opposite sex, and that involved third party will be a biological parent of the created child,” the papers said.

What about couples that don't want children or who can't conceive? Since nearly half of all U.S. births are the result of unintended pregnancy, state attorneys argue, heterosexual couples should be allowed the legal protections of marriage – just in case they “experience unintended pregnancies or ... simply change their minds” about having a baby.

And for couples struggling with infertility, they “might find out otherwise due to the medical difficulty of determining fertility, or they might remedy their infertility through modern medical advances.” The court papers make no mention of possible third party involvement in helping those couples procreate.

Four couples filed a lawsuit in January challenging Arizona's ban, arguing that it violates equal protection and due process rights for gay couples. The plaintiffs are seeking the right for gay couples to marry in Arizona and for the state to recognize marriages performed in elsewhere.

Voters in Arizona approved a constitutional amendment banning same-sex marriage in 2008. The state legislature outlawed marriage for same-sex couples in 1996. The ban is being defended by a group called the Alliance Defending Freedom, a religious group that calls itself a “legal ministry.” The organization's lawyers have been named special assistant attorneys general by Arizona's attorney general.

All the states that have same-sex marriage bans in place also face challenges to the laws. Washington, D.C., and 19 states have already enacted marriage equality laws.

