



In Depth [FROM FERGUSON TO FLAGSTAFF: Racial, economic divides pose challenges](#) [Riding high at North](#)

[Home](#) / [News](#) / [Local](#) / [State-and-regional](#)

Attorney for Arizona: Married gay man not a victim of discrimination

September 09, 2014 6:00 am • [Howard Fischer Capitol Media Services](#)

[\(1\) Comments](#)

PHOENIX — An attorney for the state told a federal judge here late Monday it's "unfortunate" — but not illegal — that Arizona will not recognize a man legally married in California as his husband's legal survivor.

Byron Babione, a lawyer for Alliance Defending Freedom, said Arizona voters were legally entitled to define marriage as solely between one man and one woman because they have something gay couples do not, "namely the natural capacity to create children and to provide those children with their biological mother and biological father."

Babione, appointed a special assistant by Attorney General Tom Horne to defend the 2008 constitutional amendment, also said while states are supposed to recognize each other's legal contracts, that does not extend to contracts of marriage. And he said Fred McQuire, whose husband died last month in Tucson, is not the victim of discrimination.

"By declining to recognize plaintiff's California marriage license, the state has not treated him differently than any man-woman couple who sought to evade Arizona's marriage law by marrying in another state," Babione wrote. "The state prohibits all persons residing in this state from evading the laws of this state relating to marriage by going to another state or country for solemnization of the marriage."

U.S. District Court Judge John Sedwick will hear arguments Friday on the emergency motion filed on McQuire's behalf, indicating a quick ruling.

That means Sedwick could decide this particular issue long before the 9th U.S. Circuit Court of Appeals, whose rulings set precedent for Arizona and the entire region, rules on the larger issue of whether state laws banning same-sex marriages are legal. That court heard legal arguments Monday over similar laws in Idaho, Nevada and Hawaii but is not expected to rule for weeks, if not longer.

Green Valley residents McQuire and Martinez, together for 45 years, got married last year in California after Martinez was diagnosed with a fatal disease. Attorney Jennifer Pizer of Lambda Legal Defense and Education Fund, said without the recognition of their marriage, McQuire will not be eligible to get Martinez' Social Security and other benefits, money she said he needs to keep their house.

"The events giving rise to (McQuire's) motion are unfortunate," Babione wrote. But he said the state officials who he seeks to force to recognize the California marriage are charged with enforcing the policy affirming marriage as solely the union of one man and one woman.

"The people of Arizona recognize that marriage — a social institution of utmost importance — has

always existed to steer naturally procreative relationships into enduring unions and to connect children to both their biological mother and their biological father," Babione wrote. And he said while voters in some other states have chosen to redefine it into an "any two persons institution," Arizona voters are entitled to choose not to do so.

Questions of procreation aside, Babione told Sedwick that temporary restraining orders — what Pizer is seeking here for McQuire — are generally designed to preserve the status quo while a legal issue is hashed out.

"Plaintiff's motion, however, seeks to change the status quo by requiring the state, for the first time ever, to recognize a same-sex relationship as a marriage," Babione wrote.

But Pizer said he is misstating the law.

"TROs are to prevent irreparable harm," she said. "Among the different harms are that the death certificate will be done improperly ... and Fred will be harmed."

Pizer also disputed Babione's contention that McQuire's desire to have his California marriage recognized is trumped by an Arizona law refusing to recognize marriages from other states that are not legal here.

She pointed out that Arizona law actually says marriages valid where performed "are valid in this state." What's at issue is that law does spell out exceptions, ranging from marriage to one's parent or grandparent, between siblings, as well as with someone's uncle, aunt, nephew, nieces or cousins.

"And then Arizona wrote a specific anti-gay exception into that statute," Pizer said. "That's what's being challenged and that's what the state has to defend."

The possibility Sedwick would side with McQuire clearly worried Babione. In his legal filings, he told Sedwick that if he's going to rule that McQuire is legally the widower of George Martinez, he should limit his ruling only to this particular instance and not order Arizona to start recognizing marriages legally performed in other states.

Copyright 2014 Arizona Daily Sun. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.

More State-And-Regional Stories

[Clean Elections chief: Horne broke campaign law](#)

[Study: Gilbert best place for Hispanic businesses](#)

[Uranium mining ban near Grand Canyon on appeal](#)



[Deluge: Cars engulfed as rain sets record for Phoenix](#)

Trending Articles and Offers

ADVERTISEMENT



[See 3-D sidewalk chalk pictures that almost defy reality!](#)



[\(SEPT 2014\) New Rule in Arizona Leaves Drivers Shocked & Furious...](#)



[Is Garcinia Cambogia TOO effective at producing weight loss? It's flying off the shelves, get yours!](#)



[Ancient Superfood KILLS Fat Like a Furnace](#)

Recommendations

[Primary losers must remove campaign signs by](#)

Sponsored Links

Thursday (AZ Daily Sun)

[What Really Fuels the HIV/AIDS Epidemic in Black America?](#) (TheBody.com)

[3 of 4 Arizona voters were no-shows](#) (AZ Daily Sun)

[Manhunt that locked down two Flagstaff schools Monday ends in arrest](#) (AZ Daily Sun)

TeamViewer - Buy now



teamviewer.com

Easy and Secure Remote Software, Buy now with Satisfaction Guarantee
