

NEWS ([HTTP://WWW.KANSAS.COM/NEWS/](http://www.kansas.com/news/)) > POLITICS & GOVERNMENT ([HTTP://WWW.KANSAS.COM/NEWS/POLITICS-GOVERNMENT/](http://www.kansas.com/news/politics-government/))

ACLU, Kansas attorney general both file suits about gay marriage

BY BRYAN LOWRY - EAGLE TOPEKA BUREAU
10/10/2014 1:22 PM | Updated: 10/10/2014 5:59 PM



A pair of lawsuits filed Friday will determine whether same-sex couples can wed in all or none of Kansas' 105 counties. BO RADER/FILE PHOTO

TOPEKA — A pair of lawsuits will determine whether same-sex couples can wed in all or none of Kansas' 105 counties.

A Johnson County judge issued an order earlier in the week to approve marriage licenses for same-sex couples. That came after the U.S. Supreme Court decided not to hear an appeal on a case that struck down same-sex marriage bans in Utah and Oklahoma, which are in the same court circuit as Kansas.

The first same-sex couple to marry in Kansas held their ceremony on the steps of the Johnson County Courthouse on Friday morning.

Johnson County is the only county in the state currently granting licenses to same-sex couples.

The ACLU filed a lawsuit in federal court late Friday on behalf of two same-sex couples, one of which lives in Sedgwick County, to force the state to grant same-sex marriages across the state.

Kerry Wilks and Donna DiTranni live in Wichita and have been together for five years. The other plaintiffs, Kail Marie and Michelle Brown, have been together for 20 years and live in LeCompton.

The complaint argues that the state's same-sex marriage ban, passed as a constitutional amendment in 2005, violates the 14th Amendment of the U.S. Constitution, which guarantees equal protection under the law.

"Marriage is universally recognized and celebrated as the hallmark of a couple's love for and commitment to one another. ... Lesbians and gay men in Kansas are denied the freedom afforded to different-sex couples in this State to have their loving, committed relationships recognized through marriage," the complaint states.

Doug Bonney, chief counsel for the ACLU of Kansas, said the case is “about as straightforward as it gets” following the 10th Circuit’s ruling that state bans on same-sex marriage are unconstitutional.

“When we go before the judge we’re going to ask for a ruling that makes it clear that this is the law in the state of Kansas,” Bonney said.

The suit names the clerks of the Sedgwick and Douglas County District Courts as defendants.

Another suit was filed with the Kansas Supreme Court on Friday by Attorney General Derek Schmidt.

Schmidt filed an emergency petition with the court to halt an order from Kevin Moriarty, the chief judge of the Johnson County District Court, that allows same-sex couples to obtain marriage licenses.

Schmidt’s brief argues that Moriarty lacked the authority to issue the order.

“The order issued by Chief Judge Moriarty is plainly contradictory to Kansas law and was issued without legal justification or authority,” Schmidt states in the brief.

“There can be no clearer example of an attempt to decide an unripe controversy than an expression of opinion about the manner in which some future lawsuit between unidentified parties might ultimately be resolved,” Schmidt argued.

The attorney general filed his petition with the court after two women were married in Johnson County earlier Friday.

Ron Nelson, a family law expert with a practice in Lenexa, noted that the 10th Circuit has ruled that same-sex marriage is lawful and any state actions to block it are unconstitutional.

“The Kansas Supreme Court’s not going to take an unconstitutional act. And so the attorney general is asking the Kansas Supreme Court to sanction an unconstitutional action, which they aren’t going to do,” said Nelson, who has more than 30 years of experience and serves as legislative liaison for the Kansas Bar Association.

“It is a failing battle,” Nelson said. “I think AG Schmidt is doing one of two things. Either he’s playing to his political base or he knows it’s inevitable and this is the best way to get it effectuated quickly because Judge Moriarty’s order simply starts that in process.”

The Kansas Supreme Court issued a temporary stay on Moriarty’s order to issue licenses late Friday, but said that couples could continue to submit applications. The court rejected Schmidt’s request to declare Moriarty’s order null and void.

The court scheduled oral arguments for Nov. 6, two days after the general election.

Democrat Paul Davis treaded lightly when addressing the issue.

“Ultimately, this issue will be determined by the courts,” Davis said in a statement. “It is important that communities wait until the courts rule on the constitutionality of the law.”

Equality Kansas endorsed Davis for governor over Brownback and Libertarian Keen Umbehr Friday, citing his voting record, but the organization noted that some of his recent public statements "call into question the strength of his commitment to LGBT equality."

Gov. Sam Brownback has repeatedly promised to fight against attempts to overturn the ban on gay marriage approved by voters in 2005.

"Look, the people of Kansas voted on this," Brownback said in his office Friday. "They voted nearly 70 percent to put it in their constitution that marriage is defined as a man and a woman. I will defend that vote. I support that, that marriage is a union of a man and a woman."

Tom Witt, executive director of the LGBT rights group Equality Kansas, rebuked both Schmidt and Brownback in a short statement.

"Sam Brownback and Attorney General Schmidt need to stop playing election year politics with people's lives and allow these legal marriages to proceed," Witt said. "The Federal courts have ruled, and we all know how this will end.

"Delaying the inevitable is a waste of time and taxpayer money, and a gross injustice to LGBT Kansans and their families."

*Reach Bryan Lowry at 785-296-3006 or blowry@wichitaeagle.com
(mailto:blowry@wichitaeagle.com). Follow him on Twitter: @BryanLowry3.*