



A Historic Ruling Makes Gay Marriage Legal in Arizona, but LGBT Leaders Say Much More Must Be Done Here

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By Ashley Cusick - October 22, 2014

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At 10:36 a.m. on Friday, October 17, Michael Jeanes tweeted his followers: "Welcome All to the Clerk's Office. Your marriage license awaits, and we are ready to serve you!"

The most important word in the Maricopa County Superior Court clerk's message was "All." Soon security officers held open the doors to the clerk's Customer Service Center downtown, and a line of same-sex couples began to enter.

The first, Nelda Majors and Karen Bailey, have been together for more than five decades. But it wasn't until that day that the state of Arizona allowed them to obtain a marriage license.

Next were Kevin Patterson and David Larance, who obtained Maricopa County's second same-sex marriage license. Larance and Patterson have been together for eight years and are raising two daughters, so they didn't feel the need to plan a large wedding.

Instead, they married in the courtyard outside the clerk's office, becoming the first gay couple to legally marry in Maricopa County, and perhaps in the state.

John Dorhauer, a United Church of Christ leader overseeing Arizona, New Mexico, and El Paso County in Texas, performed their ceremony. He was riding his bike Friday morning when he got the call that same-sex marriage was legal. He sped home, took a shower, and headed to the County Clerk's Office. Dorhauer had performed same-sex unions before, but never a legal marriage.

In the rush to the clerk's office, Patterson and Larance only remembered to bring one ring, so Dorhauer let the couple borrow his own ring for the ceremony.

After the wedding, the men and their children posed for pictures, huge smiles on their faces.

Larance was not optimistic that this day would ever come: "I've lived here my whole life, and Arizona's always been last when it comes to social change."

But on that day, things were different. "Being in Arizona, and being a native, I feel an immense sense of pride for my state," he said.

Soon after the wedding, the family walked down the sidewalk, holding hands: one dad, one daughter, one dad, one daughter.

Larance and Patterson weren't alone. All day long, couple after couple arrived at the clerk's office, obtained marriage licenses, and went outside to make their relationships official.

Some of the couples were prepared, wearing matching dress clothes and arriving with family members in tow. Others clearly had scrambled to the clerk's office as soon as the news broke. They married in tennis shoes, sandals, T-shirts, and shorts.

No matter how they were dressed, the couples all had one thing in common: They had been waiting a long time.

That afternoon, Phoenix Mayor Greg Stanton opened his office to couples with licenses wanting to be married by judges. And in the courtyard, at least 10 clergymen and -women representing the Unitarian Universalist Church, Reform Judaism congregations, and the United Church of Christ stood holding signs saying: "We stand ready to MARRY YOU!"

And marry same-sex couples they did. Susan Frederick-Gray, reverend of the Unitarian Universalist Congregation of Phoenix, was in the courtyard for most of the day. It had been a long time since she had signed a marriage license.

"Five years ago, I took the position that I was not going to sign any marriage licenses until I could sign them for all couples who wanted to get married," she said. "For me, this is a really powerful day. To have same-sex couples and families in our congregation be given the same status as everyone else is amazing."

She signed 13 licenses by the end of the day.

Frederick-Gray and many of the other clergy there had the couples they married write their names on their signs as a keepsake for the day.

One young woman stood with her hands covering her mouth as she watched the women who had raised her affirm their love, their marriage legally recognized in Arizona for the first

time. She hugged one of the women after the ceremony made it official, whispering just one word: “Mom.”

On paper, the change wasn’t huge. The marriage licenses handed out by the clerk’s office simply featured an extra box, now allowing parties to be called “bride,” “groom,” or “spouse.”

But the feel of the day was joyous. There was at least one proposal in the courtyard. People there cheered on those who came out with licenses in hand. Friends were surprised to see couples they had known for years showing up to take the plunge. One passerby stopped to check out the scene and stayed for at least an hour, watching ceremony after ceremony alone, tears streaming down his cheeks.

Maybe because the change in the law came so suddenly, no protesters marred the cheery scene, though [the Center for Arizona Policy’s Cathi Herrod](#) almost immediately vowed to continue battling against same-sex marriage.

The day had some of the makings of traditional weddings. People handed out solution so bubbles could be blown during the celebrations. Drivers honked horns in support as they passed by the scene.

One man, who wished to remain anonymous, went to the courtyard after a friend suggested there might not be a photographer there. He took photos for free, capturing dozens of weddings and thousands of images by day’s end.

Igor Glenn heard the news that same-sex marriage was legal and brought his one-man band to the scene. He had a cowbell on one foot, a tambourine on the other, a ukulele in his hands, and a harmonica at his mouth. As ceremonies concluded, he played “What a Wonderful World,” “Somewhere Over the Rainbow,” and an original tune he called “Standing on the Side of Love.”

Stephanie O’Hare came down with bouquets and her young daughters in tow. O’Hare owns a floral business. She is bisexual but has been married to a man for eight years. As couples said “I do,” her older daughter, age 4, threw petals.

“My daughter has been to every action for marriage rights,” O’Hare said. “I came because I wanted to show her that if you stand up for something, it can happen.”

By the end of the day, things quieted in the courtyard, but a ceremony still was held every few minutes. The clerk’s office opted not to count [the number of same-sex marriage licenses issued](#) — it does not plan to distinguish between same-sex and other marriages — but an informal count by courtyard observers placed the total at 70 marriage ceremonies in the courtyard alone that day.

Many of the couples marrying did not have vows prepared, but one woman ad-libbed hers. “It doesn’t take a law,” she said. “But it sure makes it nice.”

Each time a ceremony neared its close and the famous phrase “by the power vested in me” began, the crowd would cheer and applaud its new, now legal, ending: “by the state of Arizona.”

Friday’s happenings were both a long time coming and a complete shock.

Same-sex marriage had been banned in Arizona for almost two decades, first by a [1996 legislative statute](#) and then by a [2008 voter referendum](#) that added a constitutional amendment prohibiting the practice and its recognition.

But the pendulum has swung a bit. Before passing the 2008 amendment, Arizona voters rejected a proposition that would have banned same-sex marriage and its recognition in 2006.

And just last year, marriage-equality groups considered presenting voters with [the option of effectively repealing the 2008 constitutional ban](#), but they ultimately decided that [the timing wasn’t right](#), looking to 2016 — a presidential election year, when votes tend to lean toward more socially liberal initiatives — as affording a better chance.

But Arizona’s same-sex couples looking to marry no longer have to wait.

October 17’s end to the state’s same-sex marriage ban came through two similar and fairly recent federal lawsuits. *Connolly v. Roche*, filed in January, and *Majors v. Horne*, filed in March, both sought to have Arizona’s constitutional ban and legislative statute ruled unconstitutional on grounds that they violate the U.S. Constitution’s Equal Protection Clause.

The state did not plan to let plaintiffs in these lawsuits win. Arizona Attorney General Tom Horne said it was in his job description to defend Arizona statutes, particularly those enacted by voter referendum (though he had [no problem battling Arizona’s voter-approved medical-marijuana statute](#) — unsuccessfully, and at great cost — in court). Horne enlisted the Alliance Defending Freedom, a conservative Christian nonprofit, as his co-counsel in defending Arizona’s ban.

U.S. District Court Judge John Sedwick oversaw both lawsuits.

In the first major blow to Horne’s defense, Sedwick responded in mid-September to an emergency petition filed in one of the suits with a ruling in favor of the plaintiff, a widowed Green Valley man. Fred McQuire and George Martinez had been together for more than 40 years but had married in California only this summer. They were added as plaintiffs to

the *Majors* suit over the summer, before Martinez's death. When he passed away, attorneys asked Sedwick to allow McQuire's name to appear on Martinez's death certificate. He did, and for the first time in the state's history, a same-sex marriage performed out of state was recognized in Arizona.

A second blow came in early October, when higher courts sent **two strong messages** during the course of a single week. First, the U.S. Supreme Court declined to hear appeals on marriage cases coming out of several federal circuits. Then, the next day, the Ninth U.S. Circuit Court of Appeals — the San Francisco-based court with jurisdiction over Arizona — ruled that gay-marriage bans in Nevada and Idaho were unconstitutional.

Attorneys for the local plaintiffs filed motions asking Sedwick to decide quickly whether the Ninth Circuit's decision applied in Arizona. The judge gave both sides seven days to make their cases.

Same-sex marriage supporters called on Horne to give up the fight. Why Marriage Matters Arizona, an equality group, delivered more than 5,100 signed petitions to his office **asking him to step aside** and stop defending Arizona's laws, a move attorneys general in several other states already had made. But Horne was not willing to quit, saying in a statement he would continue to defend the constitutionality of the state's laws "unless and until a controlling judicial decision deems those laws unconstitutional."

On Friday, Sedwick delivered the knockout punch. Just a day after the final briefings in the two Arizona lawsuits were due, Sedwick issued decisions in both cases, determining that the state's bans on same-sex marriage were unconstitutional.

Horne had the option to appeal Sedwick's decision, but instead, **he stunningly conceded**. At a press conference held Friday, just after Sedwick's decision was released, Horne acknowledged his loss.

"The probability of persuading the Ninth Circuit to reverse today's decision is zero," he said. "The probability of the United States Supreme Court accepting review of the Ninth Circuit decision is also zero.

"Therefore, the only purpose to be served by filing another appeal would be to waste the taxpayer's money. That is not a good conservative principle. I have decided not to appeal today's decision, which would be an exercise in futility . . . I am issuing a letter today to the 15 county clerks of court [in Arizona] with the directive that, based on today's decision by the Federal District Court, they can issue licenses for same-sex marriages immediately."

Maybe Horne really wants to save taxpayer money, or maybe he wants to leave office on a different note. He was [defeated](#) by Republican challenger Mark Brnovich in the Republican primary in late August and will leave office after a single, scandal-filled term.

Either way, his letter to the county clerks made the impact of his decision clear: “The court has determined that both Article 30 and Section 25-101(C) of the Arizona Revised Statutes are invalid under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Accordingly, and effective immediately, the clerks of Arizona county superior courts cannot deny a marriage license” to same-sex couples, he wrote.

With his signature, Arizona’s attorney general opened the door for judges, pastors, rabbis, and other officiates to sign — legally, as agents of this state — the marriage certificates of “All” Arizona couples.

At the core of the class-action lawsuits that became the basis for Friday’s historic decision are the stories of the countless Arizona couples that sought legal recognition for their committed relationships.

In her role as Law and Policy project director for Lambda Legal — the nation’s largest lesbian, gay, bisexual, and transgender civil rights organization — Jenny Pizer has long had a toe in Arizona’s politics. She worked on issues surrounding health-insurance coverage for domestic partners, and she assisted local municipalities that wanted to provide stronger protections and recognitions for same-sex couples than the state was willing to offer.

Her work was in part intended to be educational. “The idea was to expand visibility of the practical problems people faced because marriage was not available,” she said.

But the fight for full-fledged marriage equality has been tricky nationally, and Pizer and Lambda Legal did not want to push the issue until it seemed likely that they would have a good shot at winning. For three years, Lambda had been in talks with local marriage-equality groups about when the right time might be.

Lambda was involved in the 2013 campaign for a proactive ballot measure that would undo the state’s constitutional ban on same-sex marriage. Fearful that the timing was not right, the measure was put off, but “with an understanding that the work around marriage nationwide was contributing to a steady rise of support on the issue,” Pizer said, “and that the vectors of change indicated there would probably be strong support in 2016.”

Then, last December, litigation in Utah opposing that state’s same-sex marriage ban was successful. Given Utah’s political similarities to Arizona, it appeared to Lambda that the tide might be turning.

But the group remained patient, waiting to see what would happen in a Nevada case pending in the Ninth Circuit while starting preparations to file a case in Arizona when the timing finally was right. Pizer and Lambda began talking to families to see who might be interested in participating in a lawsuit challenging Arizona's policies.

"So we were a little surprised, but not completely shocked, when the *Connolly* case was filed at the beginning of the year," Pizer said.

Unbeknown to Lambda attorneys, Phoenix attorney Shawn Aiken had been preparing a suit on behalf of several Arizona couples, which he filed on January 6. Aiken's work as an attorney did not revolve around LGBT rights. For him, the issue was personal.

Aiken had attended church with a man named Joe Connolly for more than 15 years. Connolly married his partner, Terry Pochert, in California in 2008.

"We didn't want to become the poster boys of gay marriage," Connolly said. "We just wanted to be a couple who are people of faith who are married. The social-justice issue came out of our church. We decided to do something about this because it was not just about us."

Connolly was concerned about same-sex couples at his church who struggled with adopting children and ensuring that their parental rights were protected. "This is about family," he said.

So, late last year, Connolly approached Aiken, inspired by the litigation filed in other states, and asked Aiken whether he knew attorneys who might be willing to file a similar lawsuit here.

Aiken, enlisting the help of lawyers from his office, decided to handle the suit himself.

Pochert believed that faith was important in the case. He and Connolly initially wanted to sue on behalf of their freedom to exercise their religion. Their church would recognize their marriage, but their state would not.

But it soon became clear that the stronger issue — and one that might win — was that of equal protection, a notion the couple also supported.

Aiken and his legal team set about finding other couples that could be plaintiffs in the suit, both locally and across the state. As with Joe Connolly, many of the couples came from the lawyers' personal connections.

By early January, the team had seven couples. Some already had married in other states and were seeking legal recognition in Arizona. Others were unmarried and seeking the right to marry here. Two of the couples were from Flagstaff, three were from the Phoenix area,

one was from Tucson, and one was from Pinal County. Some had children, some did not. They represented a variety of professions and ages.

“They were really this cross-section of the population,” said Heather Macre, a member of the *Connolly* team.

Aiken, Macre, and the rest of the team expected the Attorney General’s Office to file a motion to dismiss their case, but, to their surprise, he filed an answer. “We thought, ‘Okay, we are off to the races,’” Macre said.

Meanwhile, Lambda and Pizer were concerned about the *Connolly* team’s lack of expertise in LGBT civil rights issues. They had seen other cases handled by unfamiliar teams lead to devastating legal consequences, and though same-sex marriage already was banned in Arizona, a failed lawsuit on the books with strong legal reasoning behind a judge’s decision would make the battle harder.

But where things could have become contentious, they instead became collaborative. The Lambda attorneys partnered with a local firm, Perkins Coie LLP, and began gathering stories from their own plaintiffs — in their case, seven couples and three widows — and filed a similar suit, *Majors v. Horne*, in March.

“We wanted to bring to bear the range of powerful stories, with two different efforts, and to connect the cases and community groups so that it would be as unified an effort as possible,” Pizer said.

Jessica and Kathy Young have been together for almost 10 years and married in New York City last year. They became plaintiffs on the *Majors* suit, inspired by the possibility that a win might remedy the legal limbo their marital status created for their young son. Jessica gave birth to the boy using a sperm donor, but under Arizona law, this left Kathy with no legal rights.

“Something we’ve always tried to do is live open and honest. We feel that is a big part of moving the bar forward,” Kathy said. “Where our lives were different [from those of married heterosexual couples] is, if something happens to [Jessica], there’s a question of what happens to him.”

“You should have rights to your kid,” she said, calling a marriage license “a government piece of paper, one that gets you rights.”

Jeff Ferst and Peter Bramley had talked about filing a suit themselves but had trouble finding a legal team. They read about the *Connolly* case in a newspaper and contacted the attorneys to see if they could join in. The Tucson couple describe themselves as “a little bit older.” They met through an online dating site and married a year ago in California.

Bramley said they were interested in joining the suit “because we’re at the time in life that health issues are a little bit more of a concern, and that raises a whole new area of interest.”

Ferst said, “Also, because we are older, I guess we are both sure of ourselves . . . We felt comfortable being exposed and going through the process.”

Barb Morrissey and Mish Teichner joined the *Majors* suit because of the healthcare rights that an overturning of the state’s ban on same-sex marriage might afford them. They have been together 11 years and married in New York last year. Teichner has suffered renal failure, and Morrissey once nearly was denied access to her room in the intensive-care unit, told that only family members were allowed to enter.

Healthcare rights, parental rights, the ability to be on a loved one’s death certificate. All are issues that could be resolved with a single piece of paper: a marriage license.

Pizer and Aiken’s teams worked together on legal issues and partnered with organizations including Why Marriage Matters Arizona, Equality Arizona, and the Human Rights Campaign to gather public support.

For both legal teams, the cases became more than just work.

“It really got personal for all of us,” Macre said. “Hearing each couple talking about how they met, how they came out, just their daily lives — it sort of took it to a different level for me.”

Pizer said, “Every marriage case I work on — and I’ve worked on many — is very personal and consuming. You can’t help but become very close to your clients.”

After the Ninth Circuit ruling struck down marriage bans and Sedwick ordered that all sides file their final briefings quickly, both teams only hoped the judge would be on their side.

And on October 17, he was.

Macre was in a bathrobe getting dressed when she received a single text:

“Congratulations.” She scrambled to check her e-mail, where she found the judge’s ruling.

Later, when she heard that Horne allowed licenses to be issued immediately, she jumped up and down in her heels and suit. Not long afterward, she watched some of the plaintiffs from her case marry and got to be a witness in one wedding.

Pizer was speaking at a conference in California but jumped on a plane as quickly as she could, arriving at the clerk’s office just after the first licenses were distributed.

And for the plaintiffs, the day was just as celebratory.

“We just came together with a legal team that wanted to work on our behalf,” Ferst said. “It shows the little guys — just regular people — can make a difference, change lives, change society.”

Bramley said, “I’ve been introducing Jeff as my husband ever since we got married. But I think it matters to people here when we introduce ourselves that way now, because the state recognizes who we are, recognizes our relationship. I’m really hoping we can get rid of the words ‘gay marriage’ from our lexicon and just replace it with ‘marriage.’ The truth is our relationship is about as normal as Ozzie and Harriet’s was.”

Pizer — who proposed to her now-wife at a celebration for legalized same-sex marriage in California — said: “To see people crying, it tells you something. The kind of raw, honest expression of what has been denied.

“We proceed and make do and build our lives,” she said, but legal recognition “fills an emptiness or soothes a hurt that people frequently don’t acknowledge to themselves.”

Macre said the victory was the biggest in her legal career: “I think part of me hasn’t fully wrapped my brain around it, because it’s so amazing. It’s so much bigger than me, though I’ve always known that. But standing at the courthouse, feeling that warmth, that love, and that support, and being a small part of making that happen, is an indescribable feeling.

“I’m in awe of people’s courage and their waiting and their love,” she said.

Connolly, the namesake plaintiff in the case that would overturn Arizona’s same-sex marriage ban, was running errands on October 17 when he and his husband got the news. They scrambled downtown but accidentally went to the wrong clerk’s office — one that handles divorces, they were told. They ran around the corner to the correct office and watched as couples obtained their licenses and married just outside.

“For us, it was sort of anti-climactic,” Pochert said. “Because even though we won the case, and we were so excited, it started becoming the day for the people getting their marriage licenses and having their weddings. And we just sort of stood in the background. It was really starting to be a day for the rest of Arizona.”

On the Friday night after same-sex marriage was made legal, a celebratory gathering was held at the Southwest Conference United Church of Christ in Central Phoenix. Hundreds of people gathered into a small, packed room. Before the event began, the crowd erupted into applause lasting several minutes.

Various leaders of marriage-equality groups, the attorneys in the two cases, and several of the plaintiffs spoke.

“What a pleasure, what an honor,” Shawn Aiken said. “What an honor it was for these lawyers to make sure that wedding bells ring in Arizona, today and forever.”

The crowd cheered as a couple in the middle of the audience held up their signed marriage certificate.

Phoenix Mayor Greg Stanton also spoke at the event. “I do want to thank the courageous couples who served in this case,” he said. “We honor you and thank you. We are a better city, a better state, because of your courage. It is a civil rights victory for the people of this community, not just LGBT couples. It’s a civil rights victory for everyone in the state of Arizona.”

But, already, the group began to look to what must come next. “This work has paid off, but it isn’t finished,” said Jeremy Zegas, program director of Why Marriage Matters Arizona. “The fight isn’t over until all Americans have the freedom to marry.”

Jenny Pizer seconded him: “We are winning here. We are winning across the country. And we need to take this energy, this brilliant progress, the persuasive powers that all of you are putting to work, and do the next chapter of the work. Because we are not actually done here in Arizona.”

Friday’s decision leaves some legal gray areas. Same-sex marriages are now recognized in the state, but it is not clear yet how this will affect some existing laws, including those surrounding adoption rights.

In terms of new legislation, Pizer and many of the plaintiffs spoke of the need for enactment of state-level non-discrimination protections in housing, employment, and business for LGBT citizens. Just because laws have changed, does not mean attitudes have, Pizer warned.

“SB 1062 passed last year out of the belief that it was important that florists and bakers and people involved in the wedding industry should be able to turn away same-sex couples,” she said. “Let us not think that those attitudes have changed overnight. They are sure to come back again.”

Indeed, the reaction to Friday’s decision was far from universally positive. Governor Jan Brewer released a statement calling it “deeply troubling” that a federal judge would overturn the voters’ decision.

Cathi Herrod, president of the Center for Arizona Policy, the conservative Christian group behind much of the legislation that was torn down on Friday, released a statement expressing her disgust with the ruling.

“Today, we grieve,” she said. “We grieve for the children who now have no chance of growing up with a mom and a dad. We mourn the loss of a culture and its ethical foundation. We mourn a culture that continues to turn its back on timeless principles. But we do not despair. We do not throw in the towel. We do not give up. Just as we have worked to build a culture of life, we will focus on rebuilding a culture of marriage as the union of one man and one woman.”

The Episcopal Church offered to bless all same-sex marriages performed in the state, but Arizona’s Catholic bishops issued a statement calling Sedwick’s decision “a misunderstanding of the institution of marriage.”

At Friday night’s celebration, John Dorhauer, the United Church of Christ leader who earlier had performed the county’s first same-sex marriage, gave a speech aimed at countering such views.

“I speak on behalf of faith leaders who owe the LGBT community a huge apology,” he said. “We have come a long way, but we have a long way to go to win back your trust. We hope that moments like this help to repair the damage created in our relationships with each other. We not only refused to do your weddings; we were the ones who empowered political leaders across the country to think that this was the religious thing to do. I want to offer a heartfelt and sincere apology for the pain we’ve inflicted upon your community. You honor us by being here today and entrusting to us moments like this.”

Dorhauer said he spoke on behalf of the 150 clergy members statewide who gathered outside marriage-licensing offices that day and provided their services for free. “The God who created you as the beautiful children you are celebrates your love for each other and rejoices,” he said.

Zegas informed the crowd that marriages would be performed without charge in the courtyard outside the Maricopa County Superior Court clerk’s office for the next week and that clergy people would be available after the evening’s event to perform marriages for anyone who so desired.

A group of friends eagerly turned to a couple standing among them. The couple looked at each other, smiled, laughed, and shook their heads no. Arizona was ready on October 17, but they weren’t quite ready yet.