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State looks to cut cost of gay marriage court fight

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November 18, 2014 12:00 am • [By Howard Fischer Capitol Media Services](#)

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PHOENIX — The Attorney General's Office is asking a federal appeals court to overturn a judge's ruling that says gays can marry.

But its top litigator insists it's not because he wants to stop same-sex weddings.

Attorney General **Tom Horne** filed a notice Monday with the 9th U.S. Circuit Court of Appeals seeking review of the decision by U.S. District Judge **John Sedwick** that voided both state law and a voter-approved constitutional provision defining marriage in Arizona as solely between one man and one woman.

Since that ruling, gays have been allowed to wed here, and Arizona has recognized same-sex

marriages performed in other states.

But **Robert Ellman**, the state's solicitor general, is telling lawyers for those who sued that they should not be concerned the marriages will stop. Instead, he simply wants to see if there's a way the state can avoid paying the legal fees of the challengers.

In a letter to the attorneys, Ellman pointed out that one federal appeals court has upheld the right of states to limit who can wed, while all the others that have ruled have concluded otherwise. That, he said, creates the "distinct possibility" the U.S. Supreme Court will have to intercede.

The way Ellman sees it, if the justices decide states can ban same-sex marriages, that effectively overturns Sedwick's ruling, which would absolve Arizona of responsibility for paying the costs of challenging the law.

But short of a high court ruling against gay marriage, Ellman told lawyers for challengers not to worry.

"Arizona will not move to dissolve the district court's injunction (allowing gays to wed) during the pendency of the appeal," he wrote.

"Arizona authorities will continue to issue marriage licenses to otherwise eligible same-sex applicants," Ellman continued. "And they will continue to recognize the validity of same-sex marriages unless and until the Supreme Court determines that traditional-marriage laws such as Arizona's are actually unconstitutional."

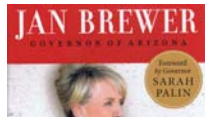
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