

Polygamists challenge Utah's anti-polygamy law

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July 13, 2011

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SALT LAKE CITY (RNS) Utah's complicated history with polygamy starts a new chapter Wednesday (July 13) as a reality-show family challenges the state's ban on plural marriage, a fight that could go all the way to the U.S. Supreme Court.

Nationally known constitutional law professor Jonathan Turley said the federal lawsuit does not call for plural marriages to be recognized by the state. Instead, it asks for polygamy between consenting adults like his clients, Kody Brown and his wives, to no longer be considered a crime.

"We are only challenging the right of the state to prosecute people for their private relations and demanding equal treatment with other citizens in living their lives according to their own beliefs," Turley said in a press release.

The Browns star in the TLC network show "Sister Wives."

Utah Attorney General Mark Shurtleff said the country's ongoing legal wrangling over same-sex marriage will necessarily grow to include plural marriage -- quite possibly centered around this case.

"I'm confident that we can (defend) a challenge all the way to the Supreme Court," Shurtleff said. "Ultimately, this decision is going to have to go there. You see it coming."

The Supreme Court toyed with taking on polygamy five years ago, when it asked for briefs in the case of polygamous police officer Rodney Holm, who was accused of having sex with a 16-year-old plural wife. The justices ultimately refused to hear his appeal.

“The whole case was tainted by (sexual contact with a minor). We didn't die on the courthouse steps, we died inside,” said attorney Rod Parker, who represented Holm. “I don't know if (the Brown case) will be the one, but sooner or later one's going to go there ... if it's factually clean.”

Meanwhile, Kody Brown released a statement saying his is one of tens of thousands of polygamous families looking for “equal treatment.”

“While we understand that this may be a long struggle in court, it has already been a long struggle for my family and other plural families to end the stereotypes and unfair treatment given consensual polygamy,” he said.

The complaint, Turley said, presents seven constitutional challenges to the state's anti-bigamy law; the lawsuit is largely based on the right to privacy.

“In that sense, it is a challenge designed to benefit not just polygamists but all citizens who wish to live their lives according to their own values -- even if those values run counter to those of the majority in the state, ” said Turley, a member of the faculty at George Washington University.

Members of the Salt Lake City-based Church of Jesus Christ of Latter-day Saints once believed in polygamy as a religious tenet, but the practice was abandoned as a condition of Utah receiving statehood in 1896.

Groups calling themselves fundamentalist Mormons have continued the practice, though usually out of the spotlight. The first exception since the 1970s was Tom Green, who was prosecuted for bigamy after promoting his beliefs on national television 10 years ago.

Since his conviction, other challenges have arisen to the polygamy law. Also, a couple who hoped to add a second wife sued when a clerk refused to issue them a marriage license in 2004. Their case was dismissed by a federal appeals court.

The Browns stepped forward to announce the reality show last year. Kody Brown and wives Christine Brown, Janelle Brown, Meri Brown and Robyn Sullivan are well into adulthood and portray themselves as living an otherwise middle-class life. They lived in Lehi, Utah, until last year, when they moved to Nevada with their 16 children after police started an investigation sparked by the show.

No charges have been filed against them, though Utah County Attorney Jeff Buhman said the case remains under investigation. Turley said that investigation has not found evidence of child abuse or underage marriage.