

## Gay marriage ban challenged in North Dakota

News in the [July 9, 2014](#) issue

North Dakota recently became the last of 31 states to have its ban on same-sex marriage challenged as unconstitutional.

The lawsuit was filed on June 6—only hours before a federal judge in Wisconsin struck down a similar ban.

Confusion arose in Wisconsin, however, after clerks in almost all 72 counties began issuing same-sex marriage certificates, and then U.S. District Judge Barbara Crabb in Madison suspended those marriages until the state had a chance to appeal her ruling.

In North Dakota, seven couples filed suit in federal court, arguing that the 2004 voter-approved constitutional amendment—which limits marriage to heterosexuals—violates the equal protection and due process guarantees of the U.S. Constitution. The suit additionally says the state must recognize marriages of same-sex couples who wed in other states, the so-called right to travel also outlined in the 14th Amendment.

Since the June 2013 U.S. Supreme Court decision striking down the section of the federal Defense of Marriage Act that defined marriage as between a man and a woman, judges nationwide have nullified several such bans.

North Dakota attorney general Wayne Stenehjem's office said on June 6 that it could not comment on the specifics of the challenge because it had not yet seen the lawsuit.

"It is important to remember, however, that it is the constitutional duty of the attorney general to represent the state when it is sued," Stenehjem said in a statement. "Ultimately, only the Supreme Court can determine whether North Dakota's enactment is constitutional or not."

The North Dakota Family Alliance, which campaigned for the marriage amendment, said it plans to defend the measure, according to executive director Tom Freier. He

said the alliance “will stand on the North Dakota constitution and with the 73 percent of the people who voted in 2004 to permanently place a definition of marriage in our constitution.”

The lawsuit was filed by Josh Newville, a Minneapolis attorney who also went to court in South Dakota on behalf of six same-sex couples.

“Same-sex couples are identical to different-sex couples in all characteristics relevant to marriage,” the suit states. “Without any legitimate governmental interest, North Dakota has targeted a minority of individuals for discrimination on the basis of sexual orientation.”

Same-sex couples can now marry in 19 states and the District of Columbia, and legal challenges have frozen prohibitions in other states during appeals. Freedom to Marry, which had led the campaign for marriage equality, is tracking the litigation. — *USA Today*