

Let state decide same-sex vows, attorney argues

Abstain, federal judge asked

By [Linda Satter](#)



Legal challenges to Arkansas' ban on recognizing same-sex marriages should be decided in state court, not federal court, an attorney for Pulaski County Circuit-Court Clerk Larry Crane argued Thursday.

In a motion asking U.S. District Judge Kristine Baker to abstain from presiding over a federal lawsuit challenging the ban, attorney David Fuqua cited a 1971 U.S. Supreme Court case, *Younger v. Harris*, which established that federal courts are generally prohibited from granting relief that interferes with pending state proceedings that implicate important state interests.

Fuqua noted that in addition to the federal lawsuit filed by three same-sex couples against Crane and others, a large group of same-sex couples also has a lawsuit pending in Pulaski County Circuit Court that challenges the constitutionality of Amendment 83 to the state constitution and state laws pertaining to the scope of marriage. Amendment 83, which decrees that marriage is between a man and a woman, was passed in 2004 by 75 percent of Arkansas voters.

Pulaski County Circuit Judge Chris Piazza is scheduled to hear the state's motions to dismiss the Amendment 83 challenge on Dec. 12.

On July 18, three days after the federal lawsuit was filed, U.S. District Judge Leon Holmes, the original judge to whom it was randomly assigned, recused. He cited "long-standing, close personal and professional relationships with persons who were leaders in drafting and campaigning for Amendment 83." The case was then reassigned to Baker.

Fuqua's brief notes that the Pulaski County case, *M. Kendall Wright et al v. State of Arkansas*, "is an ongoing judicial proceeding that implicates important state interests."

"The state's interest in regulating domestic relationships is strong," he wrote, "as is its interest in resolving questions of social policy in its court, presided over by its elected judges. Wright raises all the federal claims raised in the present case, and there is no reason to doubt the ability of the state courts to fairly and competently adjudicate federal constitutional questions."

He noted that a decision in the Pulaski County case striking down the strictures against same-sex marriage “will fully resolve the claims of all plaintiffs.”

Fuqua said Crane believes that Arkansans “should have their answer from their state courts, not because it will be a better or more palatable decision but because it will have arrived from officials for whom the electorate is fully responsible.”

Earlier this month, Attorney General Dustin McDaniel certified the popular name and ballot title for a proposed constitutional amendment to define marriage in the state as a union between two people regardless of sex. The proposal, entitled the Arkansas Same-Sex Marriage Amendment, would repeal Amendment 83.

In September, McDaniel certified a similar proposal sponsored by a group called Arkansans for Equality that would simply repeal Amendment 83.

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