

Attorney challenges Utah polygamy ban

THE ASSOCIATED PRESS

SALT LAKE CITY, Utah — When the U.S. Supreme Court struck down Texas' law against sodomy last year, at least one justice foresaw the likes of Brian Barnard. Justice Antonin Scalia warned that the ruling would unleash a wave of challenges to state laws against "bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity."

Sure enough, Barnard, a civil rights attorney, has brought a lawsuit challenging Utah's ban on polygamy. And some legal experts say the case could have a fighting chance because of the Supreme Court's gay-sex ruling.

The federal lawsuit, filed Jan. 12, involves a married couple, identified only as G.

Lee Cook and D. Cook, and a woman, J. Bronson, who wanted to enter into a plural marriage but were denied a marriage license by Salt Lake County clerks. Citing the high court's decision last June in *Lawrence v. Texas*, the lawsuit claims the county violated the plaintiffs' right to privacy with regard to intimate matters and trampled on their First Amendment right to religious freedom.

Barnard has not disclosed his clients' faith except to say that polygamy is a "sincere and deeply held religious major tenet." Utah's constitution bans polygamy, and a 113-year-old Supreme Court ruling holds that the First Amendment does not protect the practice.

Polygamy was part of the early beliefs of Mormon Church but was abandoned

in 1890 as the Utah territory sought statehood. The church now excommunicates members who practice it and has worked feverishly to distance itself from the estimated 30,000 polygamists across the West who say they are following fundamental Mormon doctrine.

Utah Attorney General Mark Shurtleff filed a friend-of-the-court brief in the *Lawrence* case, arguing that overturning the Texas law would open the door to challenges of Utah's polygamy ban. Shurtleff said he believes Barnard's case is headed for the Supreme Court, and predicted the justices would uphold the polygamy ban. "We have a long line of cases saying that the institute of marriage is







the bedrock of society. Therefore, states have a compelling interest in regulating and controlling marriage," he said.

But at least one legal expert said *Lawrence's* logic leads to the legalization of polygamy, since the high court held that morality is not a strong enough justification for the state to ban a practice deemed unpopular or immoral by the majority. "It's not a case people can sniff at," said Richard G. Wilkins, a law professor at Brigham Young University. "If you can't require monogamy, how in the world can you deny the claims of the polygamists, particularly when it's buttressed by the claim of religion?"

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