With New Legal Challenge, Gay Marriage Debate in New Mexico Heats Up

Under pressure from legislators and a vigorous campaign by religious and civil rights groups to legalize same-sex marriage in New Mexico, the state’s attorney general, Gary King, cautioned city clerks on Thursday against issuing marriage licenses to same-sex couples — but at the same time invited litigation, saying that the state’s statute was “vulnerable to challenge.”

“There’s a significant issue relating to our equal-protection clause and whether or not the statute would withstand” a legal challenge over giving same-sex couples the same rights granted to other couples who are married in New Mexico, Mr. King said.

Hours after his statement, delivered to reporters in Albuquerque, Alexander Hanna and Yon Hudson, who are longtime partners, filed a lawsuit against the Santa Fe
County clerk for denying them a marriage license when they applied for it earlier in the day. In March, the American Civil Liberties Union of New Mexico filed a similar lawsuit, which is pending, on behalf of two gay couples in Albuquerque.

“We believe that the clerk, like other public officials in New Mexico, supports the issuance of marriage licenses to all loving couples who wish to get married,” Kate Feric, a lawyer for Mr. Hanna and Mr. Hudson, said in an interview. The lawsuit, she said, “is meant to be the means by which they get the legal clarification they need to proceed with issuing licenses.”

The definition of marriage in the New Mexico Constitution — “a civil contract, for which the consent of contracting parties, capable in law of contracting, is essential” — makes no mention of gender, and that is the central argument of both lawsuits. The distinction exists, however, in marriage license applications used by county clerks across the state, which contain spaces to list the bride and the groom, terms that Mr. King said are “gender-specific.”

It is exactly this ambiguity in the “statutory framework,” he said, that has made the state’s marriage statute the subject of conflicting interpretations, fueling battles in court and in the court of public opinion. According to recent polls, more voters support making same-sex marriage illegal than legalizing it, though by small margins. Among young voters, though, there is solid support for same-sex marriage, mirroring national surveys.

Gov. Susana Martinez, a Republican, has said she believes marriage ought to be between a man and a woman, and she has repeatedly blocked efforts to extend rights to domestic partners and legalize same-sex marriage in New Mexico. She is up for re-election next year. Mr. King, a Democrat, has said he will vie for his party’s nomination.

On Thursday, he made his opinion on same-sex marriage clear, saying, “If I had the authority to overrule the statutory scheme that is out there, I’d certainly consider doing that.” The decision, however, “resides in the Legislature and the courts,” he said.

New Mexico is the only state in the country that does not have any laws that recognize or prohibit the recognition of same-sex relationships, though it is largely surrounded by states whose constitutions restrict marriage to people of opposite sexes. (Colorado is the only exception.)

The battle over legalizing gay marriage in New Mexico began to gather steam in April, when the Santa Fe City Council approved a resolution recognizing it and urging county clerks across the state to issue marriage licenses to same-sex couples. The vote was largely symbolic, but it put pressure on Mr. King after the council members asked in their resolution that he weigh in on the issue.

In May, 94 of New Mexico’s religious leaders signed a statement in support of gay marriage, an idea rejected by the state’s three Catholic bishops in a separate statement.

On Thursday, Mr. King said, “Policy precludes us to issue opinions when there is pending litigation,” referring specifically to the A.C.L.U. lawsuit, the only one that had been filed at the time.

Peter Simonson, executive director of the A.C.L.U. of New Mexico, said the state’s courts had ruled on several challenges to the equal-protection statute, applying to issues other than same-sex marriage. The decisions, he said, “offer strong precedent for the courts to agree with us.”