

# Gay marriage is legal but not on tribal lands

An overlooked story line in equality fight

By FELICIA FONSECA  
Associated Press

FLAGSTAFF, Ariz. — Cleo Pablo married her longtime partner when gay weddings became legal in Arizona and looked forward to the day when her wife and their children could move into her home in the small Native American community outside Phoenix where she grew up.

That day never came. The Ak-Chin Indian Community doesn't recognize same-sex marriages and has a law that prohibits unmarried couples from living together. So Pablo voluntarily gave up her tribal home and now is suing the tribe in tribal court to have her marriage validated.

"I want equal opportunity," Pablo said. "I want what every married couple has."

Pablo's situation reflects an overlooked story line following the U.S. Supreme Court's historic decision this year that legalized gay marriages nationwide: American Indian reservations are not bound by the decision and many continue to forbid gay marriages and deny insurance and other benefits.

## Inherent right to regulate

The reasons vary and to some extent depend on cultural recognition of gender identification and roles, and the influence of outside religions, legal experts say. Other issues like high unemployment, alcoholism and suicides on reservations also could be higher on the priority list, said Ann Tweedy, an associate professor at the Hamline University School of Law in St. Paul,



Matt York/AP Photo

**Cleo Pablo and her wife, Tara Roy-Pablo, stand outside their home in Phoenix in November. Pablo married her longtime partner when gay weddings became legal in Arizona and looked forward to the day when her wife and their children could move into her home in the small Native American community outside Phoenix where she grew up. The Ak-Chin Indian Community doesn't recognize same-sex marriages and has a law that prohibits unmarried couples from living together.**

Minnesota, who has studied tribes' marriage laws.

Advocacy groups largely have stayed away from pushing tribes for change, recognizing that tribes have the inherent right to regulate domestic relations within their boundaries.

"Tribal sovereignty is very important to tribes," Tweedy said. "They don't want to just adopt what the U.S. does."

Pablo follows in the footsteps of a handful of other tribal members in Oregon, Washington state and Michigan who lobbied their governments for marriage equality.

The Navajo Nation is one of a few of the country's 567

federally recognized tribes that have outright bans on gay marriage. Some tribes expressly allow it, while others tie marriage laws to those of states or have gender-neutral laws that typically create confusion for gay couples on whether they can marry.

## Sovereign lands

The mish-mash occurs because tribes are sovereign lands where the U.S. Constitution does not apply.

But Pablo argues in her lawsuit that members of the Tribal Council are violating the Ak-Chin constitution by denying her equal protection and due process — rights also

guaranteed under the federal Indian Civil Rights Act. Her lawyer, Sonia Martinez, said tribal members could have a persuasive argument against gay-marriage bans if their tribe incorporated federal constitutional rights into tribal laws, which she says is the case on the Ak-Chin reservation.

The Ak-Chin Indian Community wouldn't comment directly on Pablo's lawsuit but said marriage laws are a matter for the tribe to decide, not the U.S. Supreme Court.

"Whether our current law stays the same or needs to change, it must still be addressed in a manner that best

promotes and protects the community's sovereignty and right of self-governance, and best reflects the culture, tradition, and morals of the community and all of its members within the confines of our laws," read a statement provided to The Associated Press.

## Change, for some, was easy

Change for some tribes came easily.

The Central Council Tlingit & Haida Indian Tribes of Alaska enacted a marriage statute in March to expand court services. Chief Justice Debra O'Gara said leaders

talked more about whether to allow members of the same clan to marry than members of the same sex.

"There was very little controversy over the same gender aspect because everybody believed it should be open," she said. "Whoever our citizens are should have the same rights as everyone else."

Navajo Nation lawmaker Otto Tso said he would expect a heated debate on the tribe's marriage laws that likely will be brought forth by tribal members. One of them, Alray Nelson, has been outspoken about the Navajo Nation's ban on gay marriage, but he knows he doesn't have support from enough lawmakers to get it overturned.

"They're going to get our attention, and I'm all about listening, hearing them out, hear the concerns," Tso said.

Fred Urbina, general counsel for the Pascua Yaqui Tribe in southern Arizona, said he suspects the tribe's laws that are silent on gay marriage will be questioned in the context of benefits and insurance for employee spouses.

Pablo and her son moved in with Tara Roy-Pablo and her children in Phoenix after she discovered the tribe wouldn't provide insurance to her entire family and she risked arrest if they stayed in her tribal home.

Cleo Pablo said she's never felt unwelcome in the tribal community where she works as a probation officer but doesn't believe she should be treated differently under the law.

"As Native people in the community, we're taught to stand in the background, not create waves," she said. "I've done the opposite. People know who I am, who I was. I wouldn't rock the boat. It gets to the point if you don't say anything, nothing is going to change."

## Oregon bill would regulate hobby drones

By TAYLOR W. ANDERSON  
The Bulletin

SALEM — If you're planning to arm your hobby drone, your window is closing.

Oregon lawmakers are working to add to the state's laws on the small, unmanned aerial systems, better known as drones, that have taken to skies across the country in numbers that have left lawmakers — and pilots — scrambling to create rules that limit their use.

State Rep. John Huffman, R-The Dalles, has become Salem's go-to on drones. He plans to bring a bill next session that he hopes will address concerns about recreational pilots who fly their drones near wildfires, airports and other areas that have frightened commercial pilots and at times prevented firefighting planes from dropping water or flame retardant at crucial times.

"The (Federal Aviation Administration) has gotten roughly 100 notifications from pilots this last year — from manned aircraft — that they have viewed or witnessed drones as they've been flying," Huffman said.

## Spearheaded drone work group

Huffman has for three years spearheaded a drone work group that is rounding out state rules and regulations that will govern the skies while the federal government figures out how it will address a growing demand for the small, remote-operated aircraft.

He and a wide group of civil liberties advocates, business leaders and state agency officials worked in 2012 and 2013 to limit how law enforcement agencies could use drones.

## Feds extend comment period on plan to close areas to mining

Habitat needed for greater sage grouse

By KEITH RIDLER  
Associated Press

BOISE, Idaho — The U.S. Bureau of Land Management has extended the public comment period on the agency's plan to withdraw 10 million acres of public lands in six western states from potential mineral extraction to protect habitat for the greater sage grouse.

The comment period will last about three additional weeks to Jan. 15, with public meetings scheduled in Idaho, Montana, Nevada, Oregon, Utah and Wyoming in December.

The BLM is seeking comments ahead of creating an environmental impact statement before making a final decision on whether to withdraw the public lands for 20 years.

Some aspects federal authorities want to analyze include the economic effects of withdrawing the lands, wilderness characteristics, American Indian resources, mineral resources and recreation.

"We really want to make sure everyone has the opportunity to comment on the proposed withdrawal," said BLM spokesman Mark Mackiewicz.

## Greater sage grouse not endangered

The proposed withdrawal of the lands — subject to an 1872 mining law meant to encourage development of West-



Courtesy of Washington Dept. of Fish and Wildlife

**The greater sage grouse is at the center of a clash over habitat conservation.**

ern land — is part of new U.S. policies announced in September. At the same time, the U.S. Fish and Wildlife Service said sage grouse didn't need federal protections under the Endangered Species Act.

Under the 1872 mining law, federal officials don't have the discretion to deny mining claims. Withdrawing the 10 million acres from being subject to that law would allow BLM officials to block mining claims.

The 10 million acres are already under a two-year freeze from new mining claims while the BLM prepares its environmental impact statement. The freeze doesn't affect mining claims already in place.

Jack Lyman of the Idaho Mining Association said banning mining on 3 million acres in Idaho would limit future mineral extraction.

"This is a big issue for the mining community," he said. "This is where we're going to

find the minerals in the next 5, 10, 20, 50 years."

John Robison of the Idaho Conservation League said withdrawing the lands is a good step.

"The priority of just about everything else over sage-grouse is why this amazing bird was being considered for protections under the Endangered Species Act," he said in a statement.

## Inventory the minerals

John Freemuth, a Boise State University professor and public lands expert, said the two-year review will give the BLM an opportunity to see what kinds of minerals are in the 10 million acres that are considered key sage grouse habitat.

How much, if any, would end up being set aside is unclear. The decision in two years would be made by the administration that follows President Barack Obama's.

## Biologists use new system to track endangered suckers

Associated Press

KLAMATH FALLS — Biologists hope a new underwater monitoring system will be able to give them an idea of how some endangered fish are using Oregon's Link River.

In early December, crews will install 240 feet of plastic pipe equipped with a transponder detection system near the mouth of the Klamath Falls river, The Herald & News reported. Small electronic tags with a unique ID number will be inserted into Lost River and shortnose sucker bellies, allowing the pipe to detect fish as they pass over the sensors.

The detection system will be an array of two rows of 12 pipes, each in 20-foot sections, according to U.S. Fish and Wildlife Service Klamath Falls office lead fish biologist Darrick Weissenfluh. They'll be fastened with concrete anchor bolts and ratchet straps just upstream of a natural reef, where the water is shallow.

The Klamath Falls branch of the Fish and Wildlife Service is funding the \$109,500 project. The system will run entirely on energy generated by solar power panels set up on city property adjacent to the river.

The array could be used to study Lost River and shortnose sucker growth, survival

and movement for the next 10 years.

"It really depends on what information we get," Weissenfluh said. "We need to better understand sucker movements up and down the Link River and through the Link River Dam."

Both species were listed under the Endangered Species Act in 1988 and have suffered from recent fish die-offs and poor survival rates.

Scientists have tagged about 30,000 Lost River and shortnose suckers, according to Weissenfluh. He said scientists believe 1,000 to 2,000 untagged adult suckers live in Lake Ewauna.

The Link River Dam has a fish ladder that allows suckers to move upstream into Upper Klamath Lake, but a transponder system on the ladder has shown that few suckers are using it.

"Annually, usually less than 20 suckers are using the fish ladder," said Weissenfluh. "We don't really know why."

"Are there a substantial number of fish moving upstream past this first reef, but not getting to the fish ladder either because they can't or because they are choosing to spawn in the Link River?" he asked. Research on that possibility hasn't been conducted yet.

## Oregon firefighters rescue owl tangled in fishing line

Associated Press

GRANTS PASS — Wildlife rehabilitation workers say a great horned owl that was tangled in fishing line is resting after being rescued by Oregon firefighters.

The Grants Pass Daily Courier reported that a resident in Shady Cove saw the adult

male owl flapping its wings erratically while high up a tree on Sunday.

Jackson County Fire District No. 4 Captain Rick Mendenhall says the owl was "stuck big time."

Firefighters were able to rescue the bird, which had fishing line wrapped tightly around one wing. They re-

moved the line and put the bird on the ground, but it was too tired to fly.

So they wrapped the owl in a blanket and took it to rehabilitation center Wildlife Images.

Marketing coordinator Devan Ferrell says the owl will be released if and when it regains its wing strength.

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