



Texas Attorney General Appeals Divorces of Gay Couples

Texas Attorney General Greg Abbott is appealing two divorces of homosexual couples married in Massachusetts, which have been granted by Texas judges Tena Callahan and Scott Jenkins. Abbott asserts that protecting the “traditional definition of marriage” involves not acknowledging divorce between couples that are not recognized as “married” in the state of Texas.



Assisting in the appeal are State Representatives Warren Chisum of Pampa and Agriculture Commissioner Todd Staples, who have filed an amicus brief in Dallas’ Fifth District Court of Appeals.

In 2004, Massachusetts became the first state to allow homosexual couples to marry. Jumping on the bandwagon were Connecticut, Iowa, New Hampshire, Vermont, and Washington, D.C. However, when homosexual couples married in these states seek to obtain a divorce elsewhere, they may face obstacles. While New York has been willing to grant divorces to gay and lesbian couples, similar couples in states like Pennsylvania have had difficulty.

Married in Massachusetts in 2006, male couple J.B. and H.B. were granted a divorce by Texas District Judge Tena Callahan, one of the divorces being appealed by Abbott. According to Judge Callahan, hearing the same-sex couple’s petition for divorce was necessary because “Texas’ bans on same-sex marriage violate equal protection under the U.S. Constitution.”

Kelly Shackelford, chief counsel for the Liberty Institute, a conservative organization, is appalled by the judge’s decision to grant these divorces, accusing the judge of “outrageous judicial activism.” She adds, “It’s a backdoor run at establishing same-sex so-called marriage against the people’s vote” because “once you grant the divorce, you are recognizing that there was a marriage.”

Attorney Peter Schulte represents J.B. and explained that the couple split harmoniously, without dispute over property, children, or any of the other popular causes of divorce hostility, but seeks to make the split official.

District Judge Scott Jenkins granted the other divorce being contested by Abbott. Angelique Naylor and her partner, Sabina Daly, were married in 2004. Naylor elected to divorce from Daly, with whom she shares custody of an adopted child, over irreconcilable differences. Naylor challenges Abbott’s appeal, claiming that she is not interested in making a political statement, but simply wants to move on from her marriage.

According to Jennifer Pizer, lawyer for Lambda Legal, “The bottom line is that same-sex couples have families and their families have the same needs and problems, but often don’t have the same rights.” Jennifer Cochran, attorney for Naylor, explains that Naylor has attempted a variety of other avenues to settle custody and financial disputes with her partner, and was forced to turn to divorce proceedings as



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a “last resort.”

Karen Loewy, attorney for the Gay and Lesbian Advocates and Defenders, adds, “It really is an unenviable position that the courts have put these couples in.”

For Abbott, a Republican seeking reelection, the argument simply comes down to legality. Texas does not recognize marriage between homosexual couples. Therefore, granting divorce to such couples is not legal, as it requires the state to recognize the marriage in order to grant the divorce.

Texas voters passed a constitutional amendment by 3 to 1 in 2005 asserting the already established law banning homosexual couples from marrying. Abbott contends that it is the function of the court to “defend the traditional definition of marriage that was approved by Texas voters.”

Instead, these couples are entitled to have their marriages “voided.” Whether “voided” marriages are voided in all states remains unclear, and has been a point of contention for lawyers representing these couples. Cochran hopes that the Attorney General or the appeals court can answer questions about the process of voiding a marriage.

Divorce attorneys for the two homosexual couples have advised their clients to wait for the decision of the appeals court before they proceed further. Arguments on the case are scheduled to take place at the Dallas state appeals court on Wednesday, April 21.



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