

SCOTUS' Same-Sex Ruling Untangles Legal Remedies in Texas

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June 26, 2015 | 0 Comments

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Diego M. Radzinski / *The National Law Journal*

The U.S. Supreme Court's historic 5-4 decision *Obergefell v. Hodges* ended Texas' long-standing ban on same-sex marriage on June 26 as the Lone Star State's lawyers and judges prepare for a day many thought would never come.

"This is probably the most significant constitutional opinion of our generation. It extends the right to marry to a class of people that have never had that right," said Michelle May O'Neil, a Dallas family lawyer whose gay clients once had no way to marry under the Texas Family Code. "And other than a change in our current societal landscape, they might have never had the right."

The ruling now means Texas must not only grant gay couples marriage licenses, it must also recognize marriages that occurred in other states and use state laws to end them when necessary, O'Neil said.

"It opens us up to be able to help people with problems that we haven't been able to help up until this point," O'Neil said. "As lawyers, we now have remedies for them."

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In advance of the ruling, Texas Attorney General Ken Paxton warned the state's county clerks and justices of the peace to await direction from his office before issuing marriage licenses to gay couples. After the ruling, Paxton called it "flawed" and said it will impact religious liberty in the state.

"Today's ruling by five justices of the U.S. Supreme Court marks a radical departure from countless generations of societal law and tradition. The impact of this opinion on our society and the familial fabric of our nation will be profound," Paxton said. "Far from a victory for anyone, this is instead a dilution of marriage as a societal institution."

"This ruling will likely only embolden those who seek to punish people who take personal, moral stands based upon their conscience and the teachings of their religion," Paxton said.

Despite Paxton's concerns, judges in Dallas are already helping gay couples who want to get married immediately. Couples are required to wait 72-hours before getting married under state law—a provision that can be waived by a state district judge. So far 27 Dallas County district judges have agreed to help couples get waivers, said Dennise Garcia, judge of Dallas' 303rd District Court.

"We're going to go ahead and issue licenses," Garcia said. "I know in Dallas County there are a number of judges who are lining up to do ceremonies."

Garcia said judges had anticipated the ruling and expect it could be a busy day for marriage applications in Dallas County. "Because we're a little blue island in a red state of Texas, we thought we might have a little bit of traffic."

As for the impact of the decision itself, "It's just overwhelming to think about it and what this means to us going forward," Garcia said. "From a non-legal perspective, what it will do is solidify the family unit between people who were unable to do it."

In anticipation of the historic ruling, the Texas Supreme Court essentially upheld the right of a gay couple to get a divorce in the state by ruling the Texas Attorney General's Office could not intervene in the case [*See "Texas Supreme Court Upholds Same-Sex Divorce" Texas Lawyer, June 19, 2015.*]

The Texas Supreme Court still considering an attempt by Paxton to void the marriage of a couple who overcame a series of legal hurdles to become the state's first legally married couple earlier this year [*See "Same-Sex Couples Responds to AG's 'Mean-Spirited' Brief" Texas Lawyer, May 21, 2015.*]

"And he has no basis for that now," said Kurt Kuhn, an Austin lawyer who is defending the couple before the high court and believes that AG's case is now moot.

"The AG was clearly wrong," Kuhn said. "It's the law of the land. Any effort by an officer to deny marriage to a same sex couple would be found unconstitutional. The fact that they may not like the law doesn't change their obligation to follow it."