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FILE # ML-47165-12

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November 2, 2012

RQ-1097-GA

The Honorable Greg Abbott
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion to determine whether the Texas Constitution precludes the ability of local political subdivisions from recognizing domestic partnerships by granting benefits previously only available to married couples.

Dear General Abbott:

During the 78th Texas Legislature (2005), House Joint Resolution 6 was passed by the Texas House and Senate, signed by the Governor and ratified by 76 percent of Texas voters in 2005 as Proposition 2. It was incorporated in the Texas Constitution as Article 1, Section 32 as follows:

MARRIAGE. (a) Marriage in this state shall consist only of the union of one man and one woman.

(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage. (Added Nov. 8, 2005.) (emphasis added)

It is widely accepted that the purpose of this provision, referred to as the "Texas Marriage Amendment," is to protect marriage as defined, defend the public value and benefits of marriage and prohibit legal recognition of and government benefits based on any other relationships "similar to marriage" such as civil unions and domestic partnerships. It is clear to me that all political subdivisions of the state, including counties, cities and school districts in Texas are bound to follow this Texas Constitutional provision.

Unfortunately, the plain language and clear legislative intent is either being ignored by a growing number of local governmental entities or these entities don't believe this Texas Constitutional provision applies to their decisions. The

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following governmental entities are just a sample of those who offer some form of insurance benefits to domestic partnerships and/or same sex couples as part of their insurance benefits programs: El Paso County, Travis County, City of Fort Worth, City of Austin, City of San Antonio, and the City of El Paso. Most of these decisions occurred after the effective date of the Texas Marriage Amendment. Additionally, Pflugerville Independent School District recently became the first Texas school district to offer insurance benefits to domestic partnerships. The fact that there is a statewide campaign seeking insurance benefits for domestic partnerships and/or same sex couples is confirmed by the fact that activists recently pushed for a ballot referendum on this issue in Houston.

Thus, it is my belief that this issue is ripe for your office to review and eliminate any doubt about the correct interpretation and application of Art. 1, § 32 of the Texas Constitution. The Texas Legislature worked very hard on this important standard and the Texas voters spoke very loud and clear on this issue at the ballot box. The will and respect of the people of Texas is being trampled and I cannot sit by and watch this any longer.

Accordingly, I submit to your office the following Attorney General Opinion request:

Does Art. 1, § 32 of the Texas Constitution that defines marriage as one man and one woman and prohibits government recognition of any legal status identical or similar to marriage preclude political subdivisions of Texas from providing so-called domestic partnership benefits to their employees?

Thank you for your assistance with this matter and please feel free to contact my office for further information.

May God bless,

A handwritten signature in cursive script, appearing to read "J. P. Fentim".