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D. JOHNSTONE
Provincetown clerk

Same-sex marriage residency law fought

Clerks, 8 couples file briefs with SJC

By Janette Neuwahl
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Less than a year after Massachusetts began marrying same-sex couples, 13 city and town clerks and eight couples who were denied marriage licenses filed briefs yesterday with the state's highest court opposing a requirement that couples who want to get married in the state must say they plan to live in Massachusetts.

"No couple should feel like they have to perjure themselves just to get married in Massachusetts," said Douglas Johnstone, town clerk in Provincetown and the lead plaintiff in the clerks' lawsuit. "But if they don't, by the current cease-and-desist order from the attorney general, they can't" get married here.

Attorney General Thomas F. Reilly, following up on a request from Governor Mitt Romney, told clerks last May that they could officiate only the marriages of same-sex couples who planned to live in the Bay State. In his letter, Reilly explained that if the clerks defy the state order, they could be subject to criminal prosecution. Reilly and Romney cited a 1913 state law that bars marriages in Massachusetts if the couple's home state would not accept their union as legal.

In addition to Johnstone, city and town clerks in Acton, Somerville, Northampton, Worcester, Cambridge, Burlington, Marblehead, Nantucket, Plymouth, Sherborn, Westford, and Rowe filed legal briefs yesterday seeking to overturn the 1913 law.

They argued that by holding same-sex couples to a higher level of scrutiny than heterosexual couples, they are violating the Supreme Judicial Court's Goodridge decision of November 2003 that legalized same-sex marriage. The SJC will hear oral arguments in September.

"I resent the fact that I'm being told I have to treat them differently than I would anyone else that walks through my office," said Wendy Mazza, the Northampton town clerk. "That's not what I was elected for, and it's very upsetting to think we are going to pick and choose who has the right to marriage."

Gay & Lesbian Advocates & Defenders, or GLAD, argued in a brief it filed with the court on behalf of eight out-of-state same-sex couples that the SJC's landmark ruling also applies to nonresidents seeking to marry in Massachusetts.

"The statute says that clerks should not issue licenses to people whose home state would void the licenses, but some states may very well recognize the marriage licenses from here, so at the very least he is interpreting this statute very broadly," said Kevin Batt, a lawyer for Palmer & Dodge who is arguing the case for the 13 clerks. "We believe that states like New York, Connecticut, Rhode Island, Vermont, New Jersey, and Maryland don't have laws on the books to void same-sex marriages."

Nantucket's town clerk, Catherine Flanagan Stover, another plaintiff in the case, feels similarly.

"We have a lot of people who come to Nantucket to get married and a lot of them are from out of state," said Stover. "It seemed to me that the governor was letting his own personal beliefs hijack his impartiality."

Now that the initial briefings are filed, the attorney general's office will file a return brief, and the clerks and couples will have to respond to that before a trial.

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