

June 20, 2012

SENT VIA FACSIMILE

Dear State's Attorney:

We are writing to you about the two lawsuits that have been filed in Chicago by the ACLU and Lambda Legal Defense Fund challenging the Illinois Defense of Marriage Act, which prohibits same-sex marriages in our State. The challenges to the law are based solely on the Illinois Constitution, and the only named defendant in these cases is David Orr, the Cook County Clerk. Through his attorney, State's Attorney Anita Alvarez, Mr. Orr has filed an answer to the complaints agreeing with the ACLU and Lambda Legal and claiming that the Defense of Marriage Act is unconstitutional, a view shared in papers filed by the Attorney General's Office. Because of these actions, there is now no one in either case defending the Act. Without a defense, the Act will be struck down by the Circuit Court.

We have written to the county clerks throughout Illinois urging them to intervene in these lawsuits, based on their role as the public officials charged with the duty of administering marriage licenses in their respective counties. We have offered our assistance, as we have extensive experience nationally in defense of marriage. Indeed, our special counsel, Paul Linton, has authored some twenty *amicus curiae* briefs and law review articles on constitutional issues relating to marriage (*see*, enclosure).

We understand that we would have to be appointed as Special Assistant State's Attorneys if we were to represent your county clerk in court. In the alternative, we could provide any needed assistance to your office staff should you prefer to come into Cook County Circuit Court to defend your clerk's interest here in person. As a public interest law firm, we would be pleased to represent your clerk or otherwise assist you without any cost or obligation on the part of your office, the clerk's office, or your county. If for whatever reason, your clerk would prefer not to be a part of the lawsuit but you or other county officials would care to intervene, we would also be pleased to represent you or any such other officials.

We have litigated numerous high-profile cases relating to marriage and other social issues, in Illinois and across the country. Furthermore, we are now before the Illinois Supreme Court on behalf of proposed intervenors, having persuaded that court to hear the intervention appeal of two Illinois State's Attorneys.

Normally, the government officials in the county where the suit is brought would defend Illinois law against a challenge like this. However, these cases are now on a fast-track toward a preordained conclusion, without any advocate to speak up in defense of our marriage law, and without any party willing to take an appeal up to the Illinois Supreme Court, which ought to pass on such a momentous matter of constitutional dimension and statewide significance.

What many do not realize is that the ACLU/Lambda Legal lawsuits will have statewide implications, including in your county. The twenty-five same sex couples who are plaintiffs in the two suits come from all corners of the State – from Marion to Aurora, from Champaign to Rock Island. Some are in civil unions, but others are not. These couples intend to go to Chicago, obtain same-sex marriage licenses, marry in Cook County, and then seek to have those licenses recognized in their home counties, wreaking havoc on our State’s marriage laws, raising thorny questions about bigamy, spousal benefits, heirship, and *ad infinitum*. Unless decisive action is taken now, there may well be two sets of marriage laws in Illinois, one for Cook County and another for the rest of the state.

Laws similar to our Defense of Marriage Act have been upheld by a substantial majority of the state and federal courts that have considered challenges to those laws. For the most part, the minority of state courts that have decided otherwise have based their decisions on legal principles peculiar to their own state constitutions, not principles that would govern the interpretation of the Illinois Constitution or the outcome of these cases. We believe that the Illinois Defense of Marriage Act will be upheld in court – assuming a party with standing comes forward now to mount a robust defense of the Act.

In the 32 states where marriage between one man and one woman has been put to a vote, marriage has won, usually resoundingly. The results are the same whether the state is “red” or “blue” or somewhere in the middle. The people’s representatives, our legislators in Springfield, have also consistently supported the definition of marriage as between one man and one woman.

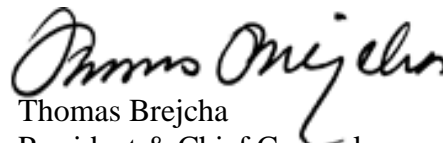
Because time is of the essence, we have asked your clerk to contact us immediately to express his or her interest in being a part of this effort. In order to expedite the process, if your clerk (or you or other relevant government officials) would like to be involved, we would certainly appreciate hearing from you. Again, it is our belief, based on Illinois law and our past experience in similar situations, that the easiest way to proceed would be for you to consider appointing us as Special Assistant State’s Attorneys for the limited purpose of defending these cases for you, or assisting your staff in defense of these cases. We have taken the liberty of enclosing sample language for such a letter of appointment. Please do not hesitate to call us with any questions or concerns you may have.

Very truly yours,



Peter Breen
Executive Director & Legal Counsel

Very truly yours,



Thomas Brejcha
President & Chief Counsel

Enclosures