

Couple's divorce case raises host of questions

PROVIDENCE, R.I. – Can a lesbian couple married under Massachusetts law allowing gay unions obtain a divorce in Rhode Island?

That's the issue before the state Supreme Court, and the decision will be significant enough that the court, in a rare act, invited arguments on specific questions.

Providence Bishop Thomas J. Tobin welcomed the invitation, and in his name attorneys have filed an *amicus curiae*, or friend of the court, brief in the case of Margaret Chambers and Cassandra Ormiston.

They were married in Fall River, Mass., in May 2004, soon after Massachusetts legalized same-sex unions, which are not legal in Rhode Island. Now the couple have filed for divorce in Rhode Island, and the case is being watched around the country.

The bishop's 15-page brief asserts that, far from being a "simple 'divorce' case," it raises "profound questions about human nature and fundamental questions about the nature and extent of representative democracy."

The brief argues two specific points: The U.S. Constitution provides that an issue of such substance can only be decided by individual state legislatures or the citizens of a particular state; and that the federal Defense of Marriage Act passed by Congress is an affirmation of constitutional guarantees for self-government by states.

Among legal questions the case raises is whether a divorce can be granted if a marriage isn't recognized. Would granting the divorce implicitly endorse same-sex marriages? The Rhode Island Legislature has repeatedly rejected such unions. Would it mean Rhode Island must recognize same-sex unions deemed marriages by other states?

"Given the teachings of the church regarding the nature and purpose of marriage and the complementarity of the sexes, Bishop Tobin cannot and will not remain silent," the attorneys wrote.

The bishop's attorneys – Robert A. Destro of The Catholic University of America's Columbus School of Law in Washington and Gerald C. DeMaria and W.T. Murphy of Providence – asserted that while it's the responsibility of politics, and not the church, to justly order society and the state, "the church is duty bound to offer ... her own specific contribution toward understanding the requirements of justice and

achieving them politically.”

The brief challenges the assertions by some that “any attempt to publicly question the legitimacy, morality or equal treatment of such (same-sex) unions will be branded as a symbol of ‘hate,’ a civil rights violation, or both.”

But the bishop is responsible and “must be free as bishop” to teach the morality of the church and the Bible, the brief said. It notes he is the shepherd of nearly 670,000 Catholics in Rhode Island.

“The recognition of same-sex relationships as ‘marriages’ would have profound, radical consequences,” the attorneys argued.

They said the issue is “too important to be debated only in legal briefs” or only by those who know about this case and can enlist legal counsel. Instead, it “deserves the robust, full-ranging debate available in the media and the legislative process,” they said.

The General Assembly or “the people themselves” should resolve the issue, they said. “In (the bishop’s view), the seemingly innocuous jurisdictional question presented here is fraught with difficulty, not only for the state of Rhode Island, but also for the preservation of religious liberty in churches and the lives of myriad individuals throughout the state.”

Chambers and Ormiston are the first gay couple to file for divorce in Rhode Island. Gov. Don Carcieri and Attorney General Patrick Lynch – both Catholics – filed their own amicus curiae briefs, arguing the divorce should be granted.

Carcieri, who opposes gay marriage, takes the position that the decision in no way affects the broader questions. Lynch, who supports such unions, says it does. The American Civil Liberties Union supports granting the divorce, along with the Boston group Gay and Lesbian Advocates and Defenders.

Others who filed briefs arguing against a divorce being granted included the National Legal Foundation and the Marriage Law Foundation.