



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2005

The Honorable Todd Staples
Texas Senate
P.O. Box 12068 - Capitol Station
Austin, Texas 78711

The Honorable Warren Chisum
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Senator Staples and Representative Chisum:

As the sponsors of House Joint Resolution 6, you are well aware of questions that have recently been raised about Proposition 2, the proposed constitutional amendment providing that marriage in this State shall consist only of the union of one man and one woman. In particular, a few anti-amendment advocates this week have claimed that Proposition 2 might somehow threaten traditional marriage in Texas. In my legal judgment as Attorney General of the State of Texas, this argument is wholly without merit.

Proposition 2, as written, is intended to and would in fact safeguard traditional marriage in Texas. The Texas Supreme Court has explained that, in determining the meaning of a constitutional amendment, courts must be guided by the Legislature's intent. *See Beck v. Beck*, 814 S.W.2d 745, 748 (Tex. 1991). Intent, in turn, is discerned from "the language of the amendment, its legislative history, its purpose and the circumstances of its enactment." *Id.*; *see also Tilton v. Marshall*, 925 S.W.2d 672, 677 n.6 (Tex. 1996). Nothing in the language of the amendment, its legislative history, its purpose, or the circumstances of its enactment suggests any conceivable legislative intent to annul traditional marriage in Texas.

The plain language of Proposition 2 does not reflect any intent to annul traditional marriage. Section (a) provides that "[m]arriage in this state shall consist only of the union of one man and one woman." Section (b)—which must be read in light of section (a), *see Tilton*, 925 S.W.2d at 677 n.6—provides that "[t]his state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage." Traditional marriage—between "one man and one woman"—is not "identical or similar to" marriage; it *is* marriage. Read together, both sections reflect a clear legislative intent to protect marriage as it has been traditionally understood and to prohibit state-sponsored creation or recognition of non-traditional alternatives to marriage. An argument that section (b) was somehow intended to nullify section (a) is nonsensical and frivolous as a matter of law.

October 27, 2005

Page 2

Proposition 2's legislative history confirms that the Legislature had no intent to annul traditional marriage in Texas. To the contrary, the evidence is overwhelming that the amendment is designed to protect traditional marriage. As reported by the House Research Organization, "The sanctity of marriage is fundamental to the strength of Texas' families, and the state should ensure that no court decision could undermine this fundamental value." HOUSE RESEARCH ORGANIZATION, BILL ANALYSIS, H.J.R. 6, 79th Leg., R.S. (2005); *see also* S.J. OF TEX., 79th Leg., R.S. A-4 (2005) (Statement of Senator Staples) ("[T]he institution of marriage, as it is defined in law today, should be protected.").

Moreover, as Senator Staples explained during the Senate debate, "[t]his amendment places into our state's constitution a law that was already passed last session, . . . the Defense of Marriage Act. I believe that it is necessary to place this general law that this Legislature has already adopted and is law today into our state's Constitution, because of the challenges to general law that have occurred" S.J. OF TEX., 79th Leg., R.S. A-3 (2005) (Statement of Senator Staples). The Defense of Marriage Act was not intended to nullify—and in fact has not nullified—traditional marriage in Texas. Accordingly, the same will be true of the proposed Texas Marriage Amendment.

Given the plain text of Proposition 2 and the legislative intent, the claim that the proposition could somehow be used to invalidate traditional marriage in Texas is, as a legal matter, completely baseless. Courts will not construe a constitutional amendment intended to protect marriage in a way that would eliminate traditional marriage. That would be contrary to the intent and purpose of the amendment and would constitute legislating from the bench -- a brand of judicial activism I am confident would not occur in Texas.

Sincerely,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

Greg Abbott
Attorney General of Texas