

**By Matthew Crider, JD  
Family Protection Attorney**

On its face, there's something strange about this notion: that a state that does not recognize same-sex marriage will not allow two women, married to one another in a different state, to get a divorce.

But that's the position taken by the state of Texas, which argues that in order to grant a divorce, you've got to admit that a marriage exists in the first place. And the state is not going to do that.

Recently, a state lawyer argued before an appeals court that a District Judge Scott Jenkins violated state law when he granted a divorce earlier this year to a same-sex couple. [Click here for the story, from the Austin American-Statesman.](#)

James Blacklock, a lawyer in the attorney general's appellate division, said that state law forbids any action that recognizes or validates a same-sex marriage granted in another state, even if the point of the action is to dissolve such a marriage.

But Blacklock added that same-sex couples are allowed to legally dissolve their marriages through another route, one called "voidance," which divides property and is recognized nationwide. "This case is obviously about more than that," he said. "This case is about the desire of same-sex couples to have their marriages recognized as law."

Lawyers for the women, who were married in Massachusetts, urged the three-judge appellate panel to preserve the divorce, saying Abbott has no authority to intervene in a case that ended months ago.

"Discrimination against gays and lesbians is really the last area in which state government openly discriminates against its citizens," lawyer Jody Scheske told the court. "If the attorney general's office has its way, we also would deny legal access to divorce."

It's not the first time the issue has made its way to a judge. The attorney general also intervened when a district judge in Dallas, hearing a divorce petition of two men who were married in Massachusetts, found the state's ban on gay marriage violated the U.S. Constitution's equal-protection guarantee.

The Dallas appeals court overturned the ruling in August, finding that gay couples cannot divorce in the state. That decision is not binding on the Austin appeals court.

The state's position on Same Sex Marriages makes it more of a challenge for same-sex couples who have married in states such as California or Michigan to obtain a divorce. Whether other states follow Texas' lead remains an open question.

### **About Matthew Crider, J.D.**

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals through the California divorce process by providing creative solutions as their trusted advisor and legal counselor. His divorce and family law practice focuses on assisting people in dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.

