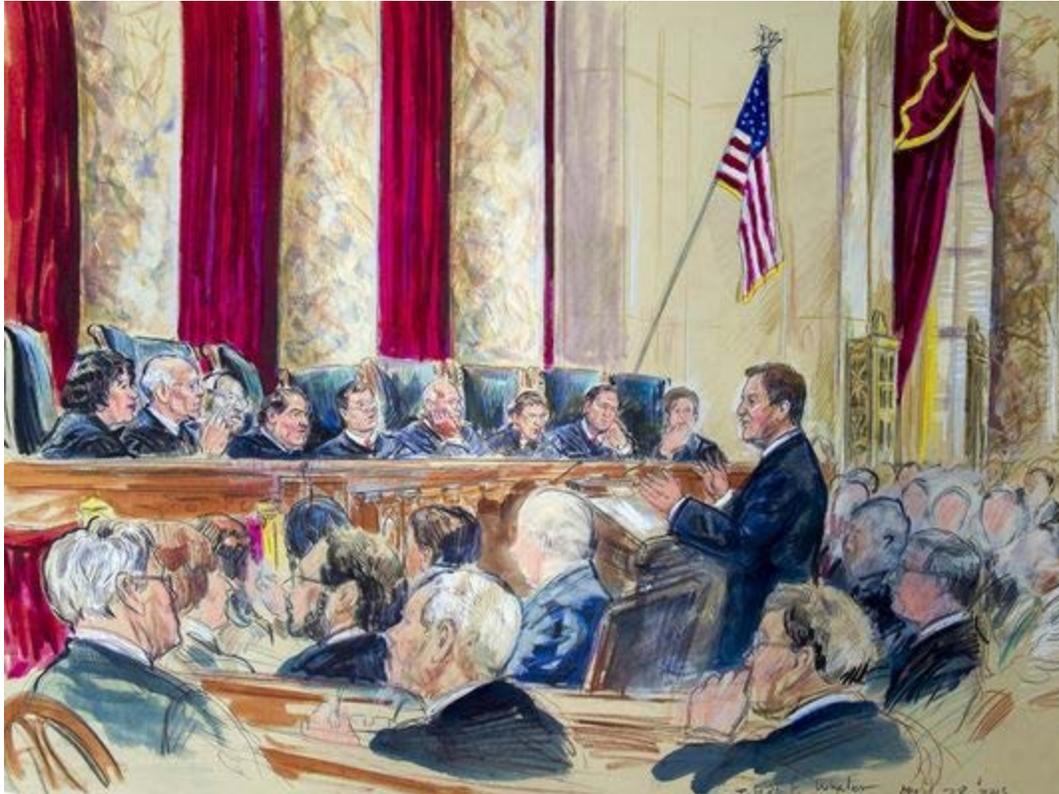


# Tennessee's marriage recognition laws rarely used



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(Photo: Dana Verkouteren / AP)

Tennessee rarely refuses to honor marriages licensed in other states, despite a checkerboard of laws that vary between jurisdictions.

The last time such a dispute was documented in court records was in 1970, according to attorneys for the state. Family law attorneys say the validity of marriages is sometimes an issue during divorces.

The state rule is to generally recognize marriages licensed elsewhere. But the most broad test of that rule is pending before the nation's highest court.

The U.S. Supreme Court is expected to rule in June whether states must allow gay marriages, and if not, whether they must recognize gay marriages licensed in other states.

The state law has not been tested in a way akin to this case since the Supreme Court struck down bans on interracial marriage in 1967, legal analysts say.

Tennessee's law is explicit: It does not recognize or give legal protections to same-sex couples, though they may have been married legally in other states. In the five states with the most people moving to Tennessee, only Florida allows gay marriage. But even that is being challenged in court, and court cases are pending in the other four states — Georgia, Kentucky, Mississippi and Texas — according to Freedom to Marry, a national group that advocates for same-sex unions.

Of the nine states sharing a border with Tennessee, only Virginia and North Carolina have gay marriage laws that are uncontested. It creates a national checkerboard that gay couples say is unconstitutional, while states like Tennessee defend their laws saying it is the public's right to vote for traditional marriage definitions.

When Tennessee Associate Solicitor General Joseph Whalen argued Tennessee's case last Tuesday before the U.S. Supreme Court, he told the justices the last time Tennessee did not recognize a marriage was in 1970.

That case involved a couple who married, had five children and divorced 70 years ago, according to court records. The woman had a daughter from another marriage.

After the divorce, the daughter (from the mother's other marriage) married her stepfather in Mississippi. They had three children together.

When the man died, his wife/stepdaughter fought in a Tennessee court for rights to the deceased man's property. The court ruled that her marriage was not valid because it violated Tennessee laws on marriages among family members and those that criminalize incest.

Tennessee law gives recognition to marriages licensed out-of-state unless those unions violate laws here. In the past, marriages have not been recognized when one person has committed adultery or, prior to 1967, when they involved interracial couples.

Current laws prohibit recognizing marriages among certain closely related family members and gay unions. Forty-eight states set the age of consent to marry at 18, creating little issue of discrimination based on age.

John Hollins Jr., a family law attorney with Hollins, Raybin & Weissman in Nashville, said in 28 years of practice he's never seen an out-of-state marriage that was not recognized based on age of spouses.

He estimated there were about five cases in 28 years where there were disputes whether marriages licensed out of state were valid. Those were in divorce cases where alimony and child custody were disputed, he said, adding that some also involved weddings outside the country.

"It's rare," he said, "But it does happen."

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Marriage in states with the most people moving to Tennessee

In Tennessee, 16 is the minimum age for marriage (with parental consent). There is a ban on same-sex marriage, awaiting outcome of U.S. Supreme Court case.

Kentucky: 18 minimum age with parental consent; ban on same-sex marriage, awaiting outcome of U.S. Supreme Court case.

Georgia: 16 minimum age with parental consent; ban on same-sex marriage, court case pending.

Mississippi: 17 for men, 15 for women for minimum age for parental consent; ban on gay marriage pending outcome of appeals court case.

Florida: 16 minimum age with parental consent; gay marriage is allowed but is being challenged in an appeals court.

Texas: 16 minimum age with parental consent; ban on gay marriage pending outcome of appeals court case.

Source: Internal Revenue Service, Cornell University Law School Legal Information Institute, Freedom to Marry