

Wednesday, April 4, 2007

Gay 'marriage' and the race card

The debate over gay marriage is cruising along: California's landmark case will be heard this year and we're all waiting on Maryland's imminent decision about whether to legalize gay marriage.

Massachusetts Gov. Deval Patrick recently made headlines when he announced that, contrary to a 1913 state law that says couples can't marry in Massachusetts if they can't marry in their home states, he wants the state to register 26 marriages conducted in 2004 to out-of-state gay couples. The new registrations apparently don't carry much weight legally, but surely are symbolic to the couples and the cause.

My beef is with the casual reporting about the 1913 law. Mr. Patrick himself referred to the "[smelly origins](#)" of this law, and newspaper reporters have repeated allegations from gay rights advocates that the 1913 law was passed to prevent interracial couples (who couldn't marry in several anti-miscegenation states) from marrying in Massachusetts.

Sorry, dear readers, but I don't think that is accurate.

I have a copy of the legal memo about the 1913 law sent in May 2004 by David R. Kerrigan of the Massachusetts Attorney General's office to four rebellious clerks who wanted to marry any gay couples who walked in the door. The memo warns the clerks that the 1913 statutes cannot be ignored "based on assertions that they were originally enacted in order to enforce other states' bans on interracial marriages."

Mr. Kerrigan explains that the 1913 law was created as part of a panel on uniform state law, and said couples should be disallowed to marry in Massachusetts if they were trying to marry "an accomplice," or were minors and didn't have parental consent, or weren't legally divorced, or if they were "a white and a colored person."

Aha, you might think, with that last category. But let Mr. Kerrigan continue: "Although some states' prohibitions of interracial marriage were among the numerous prohibitions that the proposed uniform law aimed to enforce, there is not the slightest evidence that this purpose actually motivated the Massachusetts Legislature [underscore in Mr. Kerrigan's memo], which had repealed the Commonwealth's ban on interracial marriage in 1843.

In fact, Mr. Kerrigan writes, the Massachusetts lawmakers of 1843 agreed with a House recommendation that said of the state's ban on interracial marriage:

“[T]his ‘last relic of the old slave code of Massachusetts’ ... ought to be obliterated from the Statute Book of this Commonwealth, ‘as contrary to the principles of Christianity and Republicanism.’”

To say today that Massachusetts lawmakers, who proudly threw open the door to interracial marriage in 1843, wrote a law in 1913 specifically to prevent it is nonsense.

I know this update doesn’t answer the many larger questions that arise with this 1913 law — which will likely be repealed soon, so clerks CAN marry any gay couple who walks in the door — but I want to set the record straight: The 1913 law that requires Massachusetts to respect other states’ marriage laws is neither racist nor unconstitutional, which is why the Massachusetts Supreme Judicial Court upheld it on March 30, 2006 in its Cote-Whitacre decision.

– Cheryl Wetzstein, national reporter, family and social issues, *The Washington Times*