



FACT SHEET MEMO

July 16, 2008

The Real History Behind the 1913 Marriage Residency Law

On Tuesday, July 15, the Massachusetts Senate approved a bill, Senate 800, "An Act Concerning Marriage," that is now before the House of Representatives. Senate 800 would repeal current statutory provisions (M.G.L. c. 207, §§ 10,11, 13, 50) requiring out of state applicants for Massachusetts marriage licenses to prove that their marriage in Massachusetts would be recognized in their home state.

During a brief floor "debate" within which no senator spoke against Senate 800, Senator Dianne Wilkerson (D-Boston) argued that the core of the current marriage residency law, passed in 1913, was motivated by a desire to stop interracial couples, residing in states where interracial marriages were not allowed, from getting married in the Commonwealth. She claimed that the 1913 law was proposed in response to national media reports that a then-prominent black boxer, Jack Johnson, had married a white woman. She called the 1913 law "pernicious," and other senators chimed in, asserting that the current law was "contrived in shame" and "represents a segregationist past."

The trouble is, this supposed history lesson was convincingly refuted in a recent, unsuccessful court case brought by same-sex marriage advocates challenging the original 1913 law. The Supreme Judicial Court held in *Cote-Whitacre v. Dep't of Public Health* that the 1913 law is a valid protection of other states' sovereignty.

At the trial level in *Cote-Whitacre*, then-Attorney General Tom Reilly presented a comprehensive and devastating critique of the very same historical claims that were revived in the more recent Senate debate. Reilly found, for example, that the original law was drafted before the controversy surrounding Jack Johnson had erupted. His analysis showed that Massachusetts had permitted interracial marriages seventy years before, and that there was no campaign in the state to revisit that issue in 1913. Reilly observed on page 73 of his brief that "There was no mention whatsoever of any purpose on the part of the Legislature [in 1913] to limit interracial marriages, nor may such a purpose be inferred, given

that . . . Massachusetts had repealed its laws prohibiting interracial marriage in 1843. Had there been any hint of a purpose to limit interracial marriages, surely the Legislature would not have enacted the law ‘without opposition,’ as reported by the Board [of Commissioners for the Promotion of Uniformity of Legislation in the United States].”

Reilly’s critique was so effective that the opponents of the 1913 law dropped the question, never responding to this portion of the Attorney General’s trial brief and declining to raise the historical issue on appeal. The trial court concluded that Reilly’s trial brief “set forth credible evidence that the original goal of the drafters [of the 1913 law] was to prevent evasion of existing divorce laws, not the limitation of interracial marriages.” None of this was mentioned in the July 15 Senate debate.

The Attorney General’s trial brief and the trial court ruling in the Whitacre case are available online at http://www.glad.org/marriage/Cote-Whitacre/PI_opposition.pdf (see pages 72-78) and <http://www.glad.org/marriage/Cote-Whitacre/coteball.pdf> (see pages 8-9). See also the Attorney General’s appellate brief to the Supreme Judicial Court in the same case noting that the plaintiffs “d[id] not press” their historical claims on appeal, available online at http://www.glad.org/marriage/Cote-Whitacre/AG_Opp_Brief_1913.pdf (see page 21).

The media has reported that some Massachusetts lawmakers continue to have questions about the historical circumstances surrounding the enactment of the 1913 marriage residency law and that the picture of what happened in 1913, and why, has not been entirely clear to them up to this point. The Massachusetts Catholic Conference thus provides this fact sheet, complete with links to illuminating court documents, in the interest of making available the full background. Having all of the facts about what really happened in 1913 is necessary to making an informed vote on Senate 800.

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