

New Pall Falls on Gay Wedding Hopes

Official Says a Massachusetts Law Respects the Bans of 38 States

By PAM BELLUCK

BOSTON, March 30 — Same-sex couples living in states where laws ban gay marriage will not be able to marry in Massachusetts, the state's attorney general said Tuesday.

Although the state's top court has ordered that gay and lesbian couples can begin marrying in Massachusetts on May 17, the attorney general, Thomas F. Reilly, said an obscure 1913 state law prevented the state from issuing marriage licenses to couples who are not eligible to be married in their home states.

"I think there's at least 38 states which do not recognize same-sex marriage," Mr. Reilly said of the 38 states with laws defining marriage as a heterosexual institution. He said Massachusetts should give a list of those states to town clerks so they could refuse marriage licenses to people living there. "They're not entitled to get married in the state of Massachusetts," he said.

Mr. Reilly's interpretation of the law could thwart the plans of couples around the country who had been planning to get married here once such unions became legal.

David Tseng, executive director of Parents and Friends of Lesbians and Gays, said Mr. Reilly's pronouncement was disappointing. "He's supposed to enforce the law for the 21st century, not the last vestiges of the 19th century," Mr. Tseng said. "These politicians are making fugitives of our families who simply want to commit to loving stable relationships and receive the same protections that other citizens do."

Mary Bonauto, a lawyer for Gay and Lesbian Advocates and Defenders, the group that won the Massachusetts case legalizing gay marriage, questioned "whether this law is enforceable" and said it raised "pretty serious questions," including the issue of "treating in-state folks different than out-of-state folks."

Ms. Bonauto also said she believed that residents from some of the 38 states might be eligible because only those states whose laws declared same-sex marriages void would run explicitly afoul of the statute.

Mr. Reilly was at the center of another controversy over gay marriage Tuesday, when he once again refused Gov. Mitt Romney's request to ask the court to push back the start for gay marriages from May 17.

Mr. Romney asked Mr. Reilly to seek a stay after the state legislature voted on Monday to approve a constitutional amendment to ban gay marriage and create civil unions for same-sex couples. That amendment cannot take effect unless it is approved again in the 2005-2006 legislative session and is then approved by the voters in November 2006.

So unless Mr. Romney, a Republican who opposes gay marriage, can find a way to delay the court's ruling, same-sex marriages will be permitted for at least two years before an amendment can ban them.

On Monday night, Mr. Reilly, a Democrat who also opposes gay marriage, said that although he disagreed with the court's decision, he could not find any legal grounds for asking the court to issue a stay.

Mr. Romney repeated his request on Tuesday, sending a letter to Mr. Reilly asking him to appoint a special assistant attorney general to file the action on behalf of the governor if Mr. Reilly was reluctant to do so. "It is not right for the attorney general to leave the governor and the people of Massachusetts without recourse to the courts on a matter of critical importance," Mr. Romney wrote.

At a news conference, Mr. Romney said the Supreme Judicial Court had taken eight months to reach a decision on the case legalizing same-sex marriage, and "I think the people of Massachusetts have the right to have the same level of time and respect."

Mr. Reilly held his own news conference later on Tuesday. "Whether the governor likes it or not, whether I agree with the decision, the plaintiffs have won their case," said Mr. Reil-



Esdras M. Suarez/Boston Globe

Thomas F. Reilly, the Massachusetts attorney general, at a briefing.

House Panel Is Told '96 Law Protects States on Marriage

By CARL HULSE

WASHINGTON, March 30 — The conservative author of the 1996 Defense of Marriage Act urged Congress on Tuesday not to move forward with a constitutional amendment to ban gay marriage, as he and other conservatives predicted the current law would survive court challenges.

Former Representative Bob Barr, a Georgia Republican who was a moving force behind the 1996 law, which allows states to refuse to recognize same-sex unions performed elsewhere, said a constitutional amendment would be an unwarranted intrusion in an area that has historically been left to the states.

"Changing the Constitution is just unnecessary — even after the Massachusetts decision, the San Francisco circus and the Oregon licenses," Mr. Barr told the House Judiciary Subcommittee on the Constitution. "We have a perfectly good law on the books that defends marriage on the federal level and protects states from having to dilute their definitions of marriage by recognizing other states' same-sex marriage licenses."

Mr. Barr agreed with conservative legal scholars that the measure, which was adopted with bipartisan support and signed by President Bill Clinton, could withstand inevitable court tests, though they cautioned that a wayward judge could overturn it.

Bruce Fein, a Justice Department official in the Reagan administration, said the marriage law "is not constitutionally flawed" because it mainly sets out the doctrine that a state can-

not be forced to recognize public policy from other jurisdictions if it conflicts with the state's laws.

The hearing is the first of five planned in the House to allow lawmakers to explore a constitutional amendment that President Bush and other advocates say is necessary in the wake of a Massachusetts court ruling in favor of gay marriage and decisions by local officials to issue marriage licenses to same-sex couples.

The House majority leader, Tom DeLay of Texas, said on Tuesday that the hearings illustrated the "methodical approach" the House was taking.

But Democrats on the House panel joined colleagues in the Senate who have attacked the amendment as a divisive proposal seized on by Republicans to motivate conservative voters. They said such an amendment would impose second-class status on gay and lesbian families.

Representative Jerrold Nadler, Democrat of New York, said, "There are many threats to marriage these days, and half of all marriages end in divorce, but heterosexuals have long succeeded in failing at marriage without any help from lesbian and gay couples."

Representative Steve Chabot, Republican of Ohio and chairman of the subcommittee, said that "rogue judges legislating from the bench" and local officials who have disregarded marriage laws in their own states had led to the need for the amendment.

"We are here today because of those actions and events, not because of a political agenda or election-year plot," he said.

ly, who represented the state in that case and unsuccessfully argued against gay marriage. "And they are entitled to the rights that they have won. And I will not stand in their way. My job is to enforce the law, and I will do that. The governor's job is to implement the law of this state and I expect him to do that."

Mr. Reilly, who is often mentioned as a potential candidate for governor in 2006, when Mr. Romney is likely to seek re-election, said on Tuesday, "We have based our decision on the law and not politics."

Ann Donlan, a spokeswoman for Mr. Reilly, said the attorney general and his staff had evaluated the merits of asking the court for a stay after it issued two rulings legalizing gay marriage. They concluded that the court would probably decide that there was greater harm in denying same-sex couples marriage for more than two years than there was in compelling them to change their status should the amendment pass.

"We've already been before the court twice and made just about every potential argument that one can make," she said, "and all of the arguments have been soundly rejected." Asserting that the court would consider an amendment's chance of passage "highly speculative," she said, "It's not clear that another legislature would approve the same amendment next year and that once it got on the ballot voters would pass it."

Many legal scholars agree that a stay is highly unlikely. James Tierney, a former attorney general of Maine who now directs the attorney general program at Columbia Law School, said Mr. Reilly would be jeopardizing the credibility of his office if he sought a stay when he did not believe it was legally justified.

"The court will see instantly what this is and they won't like it," Mr. Tierney said. "This would kind of cheapen all the other cases that the office of the attorney general has in front of that court."