

Texas may be the most anti-gay state in the union

Americans have come a long way in our understanding and tolerance of each other and other ways of life. For example, in the 1990s the number of private employers voluntarily offering equal opportunity and workplace benefits to gays has risen nationally, from under 50 to more than 2,800.

But such tolerance isn't as apparent in Texas. The state has been passing anti-gay laws since the Legislature first criminalized sexual acts between homosexuals in 1854. While the penalty has decreased from hard labor in a penitentiary to a misdemeanor and fines, the statute is still seen as a threat by gays.

While repeal of such laws should be a high legislative priority for the gay community, that hasn't been the case. Every legislative session a small group of anti-gay legislators file bills meant to intimidate us and divert our attention.

This year, these bills were punitive and unworkable proposals concerning gay adoption and foster care. Most gay political action and money were spent on reacting to these anti-gay initiatives and seeking inclusion as a protected class in employment and hate crimes legislation. Neither strategy worked.

What we should have done was argue strenuously for the repeal of the Homosexual Conduct Law, which criminalizes private and consensual gay sex acts that are legal for heterosexuals.

Texas is one of only five states with such a discriminatory law. Only the Log Cabin Republicans, a gay GOP group, have made repeal of the Homosexual Conduct Law a top priority. "Repeal of any law that criminalizes gays just because we are different is our highest priority," Texas LCR President Steve Labinski says. Most reasonable people

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understand that homosexuals form emotional and sexual attachments to members of the same sex just as heterosexuals do with the opposite sex.

What earthly reason is there for the State to criminalize the private sexual activities of either group?

A criminal case currently on appeal — Lawrence and Garner v. State of Texas — may remedy our legislative failure and force a change. John Lawrence and Tyrone Garner were arraigned before a Houston judge November 20, 1998, for the crime of having sex in the privacy of Lawrence's home.

At about 11 p.m. on September 17, 1998, Harris County sheriff's deputies entered Lawrence's Houston-area apartment. The officers had received a false tip that an armed intruder had broken in. All they found was Lawrence and Garner having sex. So the deputies arrested the two men.

Garner and Lawrence were convicted, and the case is now before the 14th Texas Court of Appeals. No doubt it will be further appealed to the Texas Court of Criminal Appeals — the State's highest criminal court. Gay activists are cautiously optimistic that the Court of Criminal Appeals will find the Homosexual Conduct Law unconstitutional.

The State argues that this is a social policy and not a legal issue and that courts shouldn't force social change, but instead leave the matter to the Legislature.

Mitchell Katine, attorney for Lawrence and Garner, argues that "it is in fact a legal issue and the courts have a duty to protect minorities' rights of equality and not force

minorities to wait for social change in order to achieve equality." Katine has it exactly right.

Why should gays — or any minority, for that matter — have to wait for the Legislature to react to a change in public sentiment in order to achieve equality? Who knows whether the Legislature would ever act? It already had ample opportunity to resolve this issue. By refusing to address the inequity of the Homosexual Conduct Law, it yields its responsibility to the courts.

By not accepting equality for gays and repealing this law, Texas is aligning itself with repressive Third World countries where religious faith, provincialism, and fanaticism are more important than equality.

Few civilized nations retain sodomy laws. Does it make sense to have a state law that in essence says sex acts like sodomy are for heterosexual pleasure only? Does anyone actually believe the Homosexual Conduct Law reduces the incidence of sexual contact among homosexuals?

The law is in essence a reminder that Texas society regards gay sexuality as defective, inferior, and distasteful. It is a symbol that Texas society tolerates gay life and culture only marginally — reserving the theoretical power to prohibit sexual expression as a natural right for gays.

Why do we permit such a symbol?

Some may never accept gays. Repeal of this law won't force anyone to be privately tolerant, and it doesn't mean the State favors or promotes homosexuality. Repeal merely sends a clear message of public equality. ■

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