

Micah J. Child
Poly-Sci. 19
Tuesday & Thursday.

GoodRidge Vs. Massachusetts
By
Micah J. Child

On April 11 2002, GLAD filed suit in Suffolk County Superior Court on behalf of seven, same-sex couples seeking marriage licenses. The lawsuit names the Massachusetts Department of Public Health as defendant and seeks to invalidate Massachusetts's marriage laws, alleging that they violate numerous provisions of the Massachusetts Constitution's Declaration of Rights.

Denying the couples the fundamental protections secured by the Massachusetts Constitution because they fell in love with someone of the same sex violates the most basic principles and protections guaranteed to them. The state's objections to homosexual marriage are nothing more than rationalizations for a deeply-rooted legacy of anti-gay bias, stereotypes, and prejudice that has no place in our civic life.

Briefs filed in support of the couples said Defense of Marriage Act (DOMA) laws stand in the way of same-sex couples receiving equal treatment and subject them to exclusions from benefits of federal laws and programs, and are therefore unconstitutional.

It is only with 'marriage' that Massachusetts's citizens can challenge the constitutionality of the Defense of Marriage Act. With the grant of marriage under state law, however, such couples would have strong federal constitutional claims in favor of recognition,

This civil rights action alleges that seven responsible and committed gay and lesbian couples have been deprived of the freedom to join in civil marriage with the person they love in Violation of the Constitution and law of the Commonwealth.

The Plaintiff Couples: (photos by Gigi Kaeser & mainframe photography)



Julie and Hillary Goodridge

Julie, 45, and Hillary, 46, had been committed, partners for several years when, in anticipation of the birth of their daughter, they chose 'Goodridge' as their family name. The name was Hillary's grandmother's maiden name, which they took to recognize their growing family and responsibilities. Today, Annie is five-years-old, "completely adorable," as her moms readily proclaim... (www.glad.org)



David Wilson and Robert Compton

David and Robert had a commitment ceremony at the Arlington Street Church in October 2000 that prompted the couple to begin seeking the right to have their union recognized in the Commonwealth of

Massachusetts. They were struck by how many of their business associates, friends and family assumed that the occasion bestowed the same rights and benefits that each of them had received on their own wedding days. (www.glad.org)



Gloria Bailey and Linda Davies

Gloria, 62, and Linda, 57, recently celebrated 32 years together. Twenty-seven years ago, they opened a psychotherapy practice in Connecticut, which has thrived. In 1985, they purchased a home in Orleans on Cape Cod, where they have been members of the First Parish Brewster Unitarian Universalist Church for the last nine years... (www.glad.org)



Richard Linnell and Gary Chalmers

Rich and Gary of Northbridge, have been together for 14 years, and are parents of ten-year-old Paige whom Gary adopted when she was an infant. Having completed a second-parent adoption, both men are the legal parents of Paige who is active in dance class, softball and other school activities... (www.glad.org)



Maureen Brodoff and Ellen Wade

They met in law school, and over the course of their 20 plus years together, Maureen and Ellen have lived in three communities -- Mission Hill, Dorchester, and now Newton for the last eight years. While working part-time until recently to meet the needs of their now 14-year-old daughter Kate, their everyday lives have been filled with activities that resonate with any parent: karate classes that began in kindergarten, violin practice and recitals since the first grade, a current love for hip-hop, and lots and lots of sports (www.glad.org)



Gina Smith and Heidi Norton

Gina, 38, and Heidi, 38, and their sons, Avery and Quinn, make their home in Northampton and participate in a local Quaker Meeting. Both women are active in community life, volunteering on such projects as adult literacy, housing discrimination, and mentoring a Springfield High School student. (www.glad.org)



Ed Balmelli and Michael Horgan

Ed Balmelli grew up in Milford in a large family of six children. Mike comes from an Irish-Catholic family of nine children, most of whom still live in Ayer. Both are godparents to nieces and nephews, often host the

Balmelli family for Thanksgiving, and summer with the large, extended Horgan family.
(www.glad.org)

Defendants:



Commonwealth of Massachusetts DEPARTMENT OF PUBLIC HEALTH and DR. HOWARD KOH, in his official Capacity as Commissioner of the Department of Public Health (Photo Credits www.hsph.harvard.edu. & www.state.ma.us/dph/dphhome.htm)

History and time line of case (www.glad.org)

April 11, 2001 -- GLAD filed suit in Suffolk Superior Court, couples.

August 20, 2001 -- GLAD moved for summary.

December 19, 2001 -- The Commonwealth objected to GLAD's motion.

March 4, 2002 -- GLAD filed a reply to the State's objection.

March 12, 2002 -- The parties presented argument before Suffolk Superior Court Judge

May 8, 2002 -- The trial court ruled against the seven same-sex couples

May 21, 2002 -- GLAD filed an appeal in the Appeals Court

September 18, 2002 -- The Supreme Judicial Court of Massachusetts accepted direct

November 8, 2002 -- GLAD filed its brief with the Supreme Judicial

December 20, 2002 -- The State filed the Brief of Defendants-Appellees.

January 30, 2003 -- GLAD filed the Reply Brief of Plaintiffs-Appellants.

March 4, 2003 -- The parties presented argument before the Supreme Judicial Court of Massachusetts.

The Arguments of the Plaintiffs center around the belief that they have a right to marry whom ever they choose under the Massachusetts's Constitution. And that when they each separately, applied for a Marriage License, and were denied having them issued to them with out a recourse within the state of Massachusetts.

They all underwent the required medical tests and paid for the preliminary filling fees as well. They believe that being denied Marriage Licenses violated their rights under the Massachusetts Bill of Rights. Specifically those outlined in Articles 1, 6, 7, & 10. They also go on to argue that The Governments use of Marriage laws to discriminate against same sex couples, is no more legal or tolerable than marriage laws used to discriminate against mixed race marriages, and to oppress women, which have since been stuck down, repealed, or at the very least are no longer enforced.

Art. I.--All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. (www.press-pubs.uchicago.edu/founders)

VI.--No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural. (www.press-pubs.uchicago.edu/founders)

VII.--Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it. (www.press-pubs.uchicago.edu/founders)

X.--Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual, can, with justice, be taken from him, or applied to public uses without his own consent, or that of the representative body of the people: In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation there for. (www.press-pubs.uchicago.edu/founders)

Some 67 major organizations in Massachusetts - including the American Civil Liberties Union and medical and legal groups - and 88 professors from prestigious law schools around the country, have filed amicus briefs in support of the couples, according to information released by the Alliance for Marriage. Following is a brief list of the Groups who have filed Amicus Briefs on Behalf of the plaintiffs, and a brief summary of their arguments, which are found on Glad's website. (www.glad.org)

Amicus Briefs Filed On Behalf of the Plaintiffs

PLAINTIFFS' FILINGS (Filed November 8, 2002)

1. **Amici Curiae Brief of Professors of State Constitutional Law: The Massachusetts Constitution**
Filed by attorneys at Foley Hoag LLP in Boston on behalf of 9 top scholars in the field of state constitutional law, including Robert Williams of Rutgers, author of the leading casebook on the topic, Lawrence Friedman, of Harvard Law School, co-author of a forthcoming treatise on the Massachusetts Constitution, and Joseph R. Grodin, a former justice of the California Supreme Court. The brief analyzes the history and application of the Massachusetts Constitution's liberty and equality provisions and concludes that the exclusion of the plaintiffs from marriage violates the Massachusetts Constitution. (www.glad.org)
2. **Amici Curiae Brief of Charles Kindregan, Jr. and Monroe Inker: Procreation**
Filed by attorneys at Palmer & Dodge LLP in Boston on behalf of Monroe Inker and Charles

- Kindregan, authors of the most respected and widely-used treatise on Massachusetts family law, the brief explains why "procreation" cannot be the basis for excluding gay and lesbian couples from marriage. Ability or willingness to procreate has never been a condition for entering a marriage, nor has the inability to have children been a legal basis for ending a marriage. Settled constitutional doctrine establishes that decisions about having children are matters of important personal concern and the state supports the choice of couples to bring children into their lives by encouraging adoption and access to reproductive technology. (www.glad.org)
3. **Amici Curiae Brief of Boston Bar Ass'n, et al.: Legal Rights and Duties of Marriage**
Filed by attorneys at Bingham McCutchen LLP in Boston, on behalf of the Boston Bar Association and the Mass. Lesbian & Gay Bar Ass'n, the brief demonstrates that marriage is a gateway to hundreds of legal protections and responsibilities for married couples and their children. This enormous edifice of protections recognizes the emotional commitment of a couple (e.g., automatic rights to medical decision-making) as well as their economic interdependence (e.g. ability to buy family health insurance). The overwhelming majority of these legal protections are unavailable unless a couple is married. (www.glad.org)
 4. **Amici Curiae Brief of Child Welfare Experts: The Scientific Consensus Establishes That Gay and Lesbian Parents are as Good Parents, and It Would Benefit Children in Gay and Lesbian Families If Their Parents Could Marry**
Filed by attorneys at Hale & Dorr in Boston on behalf of 7 child welfare and mental health organizations, including the National Association of Social Workers, the American Psychoanalytic Association, and the heads of Pediatrics at several Boston area hospitals, the brief discusses the scientific consensus that gay and lesbian parents are as good parents as are non-gay parents, and that children can thrive raised in either setting. The brief explores the decades of research that has led organizations like the American Academy of Pediatrics to support the creation of a legal bond between a child and his or her lesbian or gay parents. (www.glad.org)
 5. **Amici Curiae Brief of Religious Coalition for the Freedom to Marry, et al.: The Differences Between Civil Marriage and the Religious Rite of Marriage**
Filed by attorneys at Peabody & Arnold, and Professor Emeritus Arthur Berney and Assistant Professor Josephine Ross of Boston College Law School, the brief explains the distinction between the institution of civil marriage at issue in this case, and the religious rite of marriage. Filed on behalf of religious denominations and organizations such as the Jewish Reconstructionist Federation and the Unitarian Universalist Association, along with over 100 clergy and other representatives of 13 different communities of faith, the brief also states that many religious faiths and people of faith support the right of gay and lesbian couples to marry under the civil laws. (www.glad.org)
 6. **Amici Curiae Brief of Historians: The Constant Evolution of Legal Marriage**
Filed by attorneys at Goodwin Procter in Boston on behalf of leading family and legal historians, the brief shows that change has been the one constant of marriage law. Tracing marriage from its earliest days in Massachusetts, the brief demonstrates that the judiciary has always had a key role in reshaping marriage -- whether by questioning the ban on interracial marriage, or ending the subordination of women in marriage, or by ensuring that marital partners share reciprocal rights and obligations. The brief argues that allowing same-sex couples to marry is no more controversial than other changes in marriage that we now accept as commonplace. Among the 26 historians on the brief are Nancy F. Cott of Harvard, author of *Public Vows*, a recently published book on marriage in the United States, Michael Grossberg, a lawyer and historian and editor of the *American Historical Review*, and Hendrik Hartog, author of a recent book chronicling the history of marriage. (www.glad.org)
 7. **Amici Curiae Brief of Civil Rights Organizations: The Parallel Between Discrimination Against Gay and Lesbian Couples and Past Discriminations Based on Race and Sex**
Filed by Krokidas & Bluestein in Boston on behalf of 25 local and national civil rights groups ranging from the Urban League of Eastern Massachusetts and the Massachusetts Association of Hispanic Attorneys to the Asian American Legal Defense and Education Fund and the NOW Legal Defense and Education Fund, the brief states that the discrimination faced by gay men and lesbians is just as wrong and just as legally indefensible as past uses of marriage law to forbid couples of different races from marrying or to deprive women of their legal rights. The brief also argues that government classifications on the basis of sexual orientation, like those based on race, national origin and sex, should receive careful scrutiny from the courts. (www.glad.org)
 8. **Amici Curiae Brief of International Human Rights Organizations: Evolving Trends Around the World Support Civil Marriage for Same-Sex Couples**
Filed by attorneys at Ropes & Gray in Boston and Professor Robert Wintemute of King's College, London, on behalf of 16 international human rights organizations, such as Human Rights Watch and the International Federation of Human Rights, and 19 professors of international law, the brief

shows that this Court's issuing marriage licenses to gay and lesbian couples would be consistent with trends in Europe, the Scandinavian countries, Canada, Israel and South Africa. In each of these places, the courts or legislatures or both understand that discrimination against same-sex couples is a human rights issue and have begun taking strong steps to rectify the ongoing harm caused by governmental discrimination. For example, the Netherlands allows gay and lesbian couples to marry. (www.glad.org)

9. **Amici Curiae Brief of Professors of Expression: The Government Cannot Restrict Gay and Lesbian Couples from the Intimate Association of Marriage**

Filed by attorneys at Hill & Barlow in Boston and Professor David Cruz of the University of Southern California Law School on behalf of 13 constitutional law professors, such as First Amendment experts David Cole of Georgetown University School of Law and William N. Eskridge, Jr. of Yale Law School, and 9 gay and lesbian groups, the brief argues that the act of entering into a marriage and living in marriage is a form of constitutionally protected association, and that marriage is uniquely powerful way of communicating the depth of commitment a couple shares. (www.glad.org)

10. **Amici Curiae Brief of Professors of Remedy and Constitutional Litigation: The Court Should Decide the Case and Order the Issuance of Marriage Licenses**

Filed by attorneys at Choate Hall & Stewart in Boston and at Kimball, Brousseau and Michon in Boston on behalf of 20 professors of remedies and constitutional litigation, the brief argues that the fact that some people find this case controversial is not an excuse for the court to decline to act or to refer this matter to the legislature. Courts have always been involved in controversial matters, and that is their role under our system of government. The brief also argues that if the court finds the Plaintiffs' rights have been violated, the only appropriate remedy is to order the Defendants to issue marriage licenses. (www.glad.org)

(Filed December 6, 2002)

Amici Curiae Brief of Massachusetts Bar Ass'n, et al.: Liberty and Equality Under the Massachusetts Constitution

Filed by the Massachusetts Bar Association, representing 18,000 lawyers from across Massachusetts, the brief argues that the exclusion of same-sex couples from marriage violates the liberty and equality guarantees of the Massachusetts Constitution (Articles 1, 6, 7 & 10). The brief urges the Court to find the exclusion unconstitutional and allow same-sex couples to marry. (www.glad.org)

On December 20, 2002, over 75 individuals and organizations joined to file 15 amicus curiae briefs in support of the Massachusetts marriage laws. Of the copies of the amicus briefs found (no one site found had a comprehensive list of groups or individuals for the con arguments as like the pro side which is found at Glad's website) all basically read similar in arguments.

The briefs tended to focus on the traditional definition of marriage, what constituted legal acts of "natural" intimacy and intercourse, and the believed fundamental purpose marriage plays in society. The often played to the fear of what allowing same gender marriage would bring to society, some times including the possibility that it may allow for polygamous marriages as well.

On April 7th 2003, The Associated press interviewed Senator Rick Santorum, and discussed the Texas sodomy case. In this interview he made a comment, which accurately reflects the opposition's views, and fears towards, same gender marriage and reflects the arguments given by the opposition in their Amicus Briefs in this case (Goodridge Vs. Mass.). "**SANTORUM**: Every society in the history of man has upheld the institution of marriage as a bond between a man and a woman. Why? Because society is based on one thing: that society is based on the future of the society. And that's what? Children. Monogamous relationships. In every society, the definition of marriage has not ever to my knowledge included homosexuality. That's not to pick on

homosexuality. It's not, you know, man on child, man on dog, or whatever the case may be. It is one thing. And when you destroy that you have a dramatic impact on the quality... **AP:** I'm sorry, I didn't think I was going to talk about "man on dog" with a United States senator, it's sort of freaking me out. **SANTORUM:** And that's sort of where we are in today's world, unfortunately. The idea is that the state doesn't have rights to limit individuals' wants and passions. I disagree with that. I think we absolutely have rights because there are consequences to letting people live out whatever wants or passions they desire. And we're seeing it in our society. (www.sfgate.com)

The Massachusetts Family Institute

The court accepted Amicus brief asserts that marriage has always been understood in our legal tradition and culture as the union of a man and a woman. Additionally the brief states, "The legislature has the power to supply the definition of marriage for legal purposes, and . . . this definition should be based on a fundamental, deeply embedded understanding of marriage in American culture." "We are pleased with the court's response," Crews stated. "We will continue to petition the courts and legislature to hold fast to the traditional definition of marriage." (www.mafamily.org)

THE CATHOLIC ACTION LEAGUE OF MASSACHUSETTS

Any legal redefinition that removes sexual intimacy from the heart of marriage altogether or that deems unnatural sexual intercourse to be as qualified for legal and social esteem as natural sexual intercourse raises substantial policy concerns that the judiciary is ill equipped to address... The Commonwealth has the authority to limit marriage certificates to couples consisting of one man and one woman by virtue of the theoretical capacity to engage in sexual intercourse. (www.macathconf.org)

A ruling in favor of the Defense would mean yet another defeat in the struggle of equality. Legally recognized Marriage in the State of Massachusetts would remain an institution reserved for heterosexual couples only. Nothing would have changed for either side of the argument. Heterosexuals may marry the ones they love and have all the legal protections, benefits, and privileges assigned to it, while committed Homosexual couples are continued to be denied full equality and protection under the law.

A Ruling in favor of the Plaintiffs could possibly mean That Massachusetts would be the first state in the Union to have full equality of marriage under the law. Barring a constitutional amendment in the Massachusetts Constitution deliberately banning Same Gender Marriages.

If other states decide to not recognize same gender Marriages performed in Massachusetts, and especially if Massachusetts residences are discriminated in situation where there would be no questions about spousal rights, such as in emergency care situations in hospitals. Massachusetts's citizens would be able to legally challenge the constitutionality of the Federal Defense of Marriage Act, in regards to the "Full Faith and Credit" clause of the constitution, in federal court. **Article IV Section 1.** *Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

(www.secure.law.cornell.edu)

And a ruling against DOMA federally could require all the states to recognize same gender Marriages performed in states that legally allow them to be performed, equally as "Traditional" Marriages performed in their states, and else where.

A ruling in favor of the Plaintiffs would not force private institutions such as Church's/Faiths who's beliefs, doctrines, and policies oppose homosexuality and/or same gender marriage, to perform same gender marriages. It will not force them to admit and welcome homosexuals into their "hallowed" institutions and leadership. It will not require governments to fine or punish those religions that refuse to perform or recognize same gender marriages. Nor will it force religions and church's to be expelled from the states or nation. Allowing same sex marriage will not prevent heterosexual couple from continuing to enter into the bond of marriage, as they have been doing for millennia's. Nor will it detract from their relationships with each other.

While in the process of writing and researching this paper, I discussed the case with various friends and relatives who are in committed same sex relationships; one couple who have been together for the last 21 years in central Texas. The reaction and opinions received, varied slightly with a general overall theme. Yes it would be nice to be able to legally be married and have all the rights and privileges accompanied along with it. But I'm not sure whether or not we would get married.

My Aunt Marjay stated that she and her partner (of 21 yrs) Scotti are very happy together. They work hard to enjoy the now, and cherish the time they have spent together to the fullest. She would not want to get legally married and have that entanglement on her Scotti. She would rather have Scottie stay with her because she wanted to stay, not because they were so financially, and legally entangled to stay together. She goes on to comment that over the years she has had over a dozen gay lesbian couples/friends have commitment ceremony in an effort to help save their relationships; and only one is still together. "Straight couples some times will have baby to save their marriage, and will stay together for the sake of the children. She and Scottie stay together for the sake of their Dogs" ;-)

So just like heterosexual couples, just because the option is there, doesn't mean that same sex couples will choose to exercise it. But it is important to have the right to be able to choose whom you wish to marry, and be able to legally do so in the first place.

Final arguments were given March 4, 2003 in Goodridge v. Massachusetts, the case that could impose gay marriage on Massachusetts, and eventually, to the entire country. Initial questioning by the justices indicated a uniform hostility to the state's case. Legal experts are privately predicting victory for the plaintiffs. Get ready for a massive national battle over gay marriage, beginning this spring or summer.