

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT FOR  
SUFFOLK COUNTY

C. JOSEPH DOYLE,

Petitioner,

v.

Chief Justice MARGARET H. MARSHALL;  
Justice ROBERT J. CORDY;  
Justice JUDITH A. COWIN;  
Justice JOHN M. GREANEY;  
Justice RODERICK L. IRELAND;  
Justice MARTHA B. SOSMAN;  
Justice FRANCIS X. SPINA,  
In their capacities as Justices of the Supreme  
Judicial Court of Massachusetts;  
The SUPREME JUDICIAL COURT OF  
MASSACHUSETTS;  
HILLARY GOODRIDGE; JULIE GOODRIDGE;  
DAVID WILSON; ROBERT COMPTON;  
MICHAEL HORGAN; EDWARD BALMELLI;  
MAUREEN BRODOFF; ELLEN WADE;  
GARY CHALMERS; RICHARD LINNELL;  
HEIDI NORTON; GINA SMITH;  
GLORIA BAILEY; LINDA DAVIES;  
DEPARTMENT OF PUBLIC HEALTH; and  
COMMISSIONER OF PUBLIC HEALTH,

Respondents.

**RECEIVED**

APR 23 2004

MAURA S. DOYLE  
CLERK OF THE  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

No. SJ-2004-0169

**OPPOSITION TO PETITION FOR STAY OF ENTRY OF JUDGMENT AND  
REQUEST FOR HEARING BEFORE SINGLE JUSTICE**

Respondents Hillary Goodridge, Julie Goodridge, David Wilson, Robert Compton,  
Michael Horgan, Edward Balmelli, Maureen Brodoff, Ellen Wade, Gary Chalmers, Richard  
Linnell, Heidi Norton, Gina Smith, Gloria Bailey, and Linda Davies ("Plaintiff-Respondents")

oppose the Petition for Stay of Entry of Judgment and Request for Hearing Before Single Justice (the "Petition") filed by Petitioner C. Joseph Doyle ("Petitioner").

The legal basis and procedural underpinnings of the Petition are difficult to decipher. Petitioner seeks a stay of entry of the judgment entered by the Supreme Judicial Court (the "SJC") in *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003). But Petitioner is not a party to that case and cannot force his way into this matter by filing a separate action. Moreover, Petitioner has no legal standing to seek a stay because he does not allege that he will suffer any particularized injury if the *Goodridge* judgment is entered on May 17, 2004, in compliance with the SJC's order in that case. Finally, even if Petitioner can overcome all the fatal jurisdictional and procedural flaws of his petition, he has asserted no grounds for prolonging the deprivation of Plaintiff-Respondents' constitutional right to marry.

## ARGUMENT

### I. **The Petition Must Be Denied Because It Contains Insurmountable Jurisdictional and Procedural Flaws**

While Petitioner asserts Rules 2:01 through 2:22 of the Supreme Judicial Court as the legal basis of his Petition, *Petition for Stay*, Intro., these rules simply regulate the procedure for practice before the single justice of the Supreme Judicial Court. They provide no basis for jurisdiction in this matter.

Moreover, the type of relief Petitioner seeks – a stay of judgment in *Goodridge* – cannot be obtained under Massachusetts rules by filing a separate action, but rather must be pursued within the bounds of the existing litigation. There is no procedural or jurisdictional basis for a non-party in *Goodridge* to seek a stay of the entry of judgment in that prior pending action. *See, e.g.*, Mass. R. Civ. P. 12(b)(9).

In *Goodridge*, the Attorney General of the Commonwealth vigorously represented the interests of the Commonwealth, implicitly including the similarly aligned interests of the Petitioner. Accordingly, only the Attorney General has the authority to seek a stay of entry of judgment in that case on the citizens' behalf. Mass. Gen. L. c. 12, § 3. Yet, he has declined to do so. See "Reilly gives governor a hurdle," *The Boston Globe*, March 30, 2004, at A1.

Nor can Petitioner claim relief by framing this action in equity. Equity is not appropriate where clear legal avenues are available. *Spaulding v. Backus*, 122 Mass. 553, 554 (1877) ("It may be stated, as a general rule, that a court of equity will not stay proceedings in an action at law, unless the plaintiff has some equitable ground of defence not available at law.").

Finally, the Petition must also be denied for failure to follow the rules for service of process. See Mass. R. Civ. P. 4, 12(b)(4).<sup>1</sup>

## II. PETITIONER LACKS STANDING TO ASK THIS COURT TO FURTHER STAY ENTRY OF JUDGMENT IN *GOODRIDGE*

Even if Petitioner were not deprived of authority to seek a stay by virtue of the Attorney General's exclusive powers to direct litigation in which the Commonwealth is a party, Petitioner still cannot bring the present action because he has no legal standing. Petitioner does not allege that he will suffer any particularized injury if the *Goodridge* judgment is entered on May 17, 2004, in compliance with the SJC's order in that case.<sup>2</sup>

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<sup>1</sup> Ostensibly, Petitioner has filed a new action petitioning for a stay of the entry of judgment in *Goodridge*. Although Petitioner has asked the Court to waive "any notice and timing provisions . . . in order to expedite this hearing," *Petition for Stay*, ¶ 12, the notice provision for single justice practice before the Supreme Judicial Court, as outlined in Rule 2:04 of the Supreme Judicial Court, specifically states that "[t]his rule shall not apply to original process or notice to bring a party before the court." Thus, Petitioner is still obligated to serve Respondents. Petitioner has not served any one of the Plaintiff-Respondents, and Plaintiff-Respondents have not authorized any agent to accept service on their behalf. Nor have Plaintiff-Respondents waived service of process. Therefore, the Petition cannot be granted.

<sup>2</sup> Petitioner's lack of standing provides an additional basis for this Court to find that it has no subject matter jurisdiction to entertain this petition. *Ginther v. Comm'r of Insurance*, 427 Mass. 319, 322 (1998) (holding that the question of standing is one of subject matter jurisdiction).

Petitioner asserts several reasons for granting a stay. He claims that a stay is necessary “to ensure that the process to amend the constitution continues unencumbered,” to avoid the harm of “[l]egal chaos,” and to uphold “the right of the *citizens of Massachusetts*, including the right of Petitioner, to decide constitutional matters through the amendment process.” *Petition for Stay*, ¶ 2 (emphasis added). But in order to have standing to bring an action, a party must show that he has suffered or will suffer an *individual*, particularized injury. *Tax Equity Alliance for Massachusetts v. Comm’r of Revenue*, 423 Mass. 708, 711 n.1 (1996). And in the words of Petitioner himself, the injuries he alleges would affect all “citizens of Massachusetts” equally. Because his allegations assert, at most, a generalized harm to the public as a whole, Petitioner has no standing to raise them.

Petitioner also asserts that “his right to vote and advocate for change” would be “diluted or debased” by the *Goodridge* judgment because it “will inhibit the full and robust public discourse the constitutional amendment process demands.” *Petition for Stay*, ¶ 10. Once again, Petitioner alleges only generalized injuries to the public as a whole. And to the extent Petitioner attempts to articulate any individualized injuries, the injuries he alleges are “[m]ere generalizations and fears” that “are not sufficient to establish aggrievement” for standing purposes. *Ginther v. Comm’r of Insurance*, 427 Mass. 319, 324 (1998).

Petitioner also lacks standing because there is no indication that entry of the judgment in *Goodridge* would actually *cause* the injury he asserts. *Id.* at 323 (“[T]he complained of injury must be a direct consequence of the complained of action.”). The harm the Petitioner alleges is the epitome of the “speculative, remote, and indirect” injury that is “insufficient to confer standing.” *Id.* at 157. Neither the Petitioner nor anyone else can reliably predict what effects – if any – entry of the *Goodridge* judgment will have on the political process surrounding the

proposed amendment to the Constitution. What is clear, however, is that entry of judgment in *Goodridge* will not affect Petitioner's ability to express his opposition to the issuance of marriage licenses to same-sex couples or to vote on any constitutional amendment that may reach the ballot.

Finally, Petitioner's claim is not ripe for resolution. See *Daddario v. Cape Cod Commission*, 425 Mass. 411, 414 (1997). Petitioner asserts that, because a "Proposal for a Legislative Amendment to the Constitution relative to the affirmation of marriage" was adopted on March 29, 2004,<sup>3</sup> "[t]he citizens of Massachusetts, including Petitioner, will have an opportunity to vote for a constitutional amendment to protect marriage in the 2006 election." *Petition for Stay*, ¶ 8. This statement is simply untrue: Under Article 48 of the Massachusetts Constitution, before the proposed constitutional amendment can be placed on the ballot, yet another joint session of the Legislature would have to vote in favor of the exact amendment already passed. Unless and until this happens in 2005 or 2006, there is no basis to conclude that Petitioner will ever have the opportunity to vote on the proposed amendment. Thus, Petitioner's

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<sup>3</sup> The text of the proposed amendment advanced on March 29, 2004, follows:

The unified purpose of this Article is both to define the institution of civil marriage and to establish civil unions to provide same-sex persons with entirely the same benefits, protections, rights, privileges and obligations as are afforded to married persons, while recognizing that under present federal law same-sex persons in civil unions will be denied federal benefits available to married persons.

It being the public policy of this commonwealth to protect the unique relationship of marriage, only the union of one man and one woman shall be valid or recognized as a marriage in the commonwealth. Two persons of the same sex shall have the right to form a civil union if they otherwise meet the requirements set forth by law for marriage. Civil unions for same sex persons are established by this Article and shall provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth. All laws applicable to marriage shall also apply to civil unions.

This Article is self-executing, but the general court may enact laws not

claim that entry of judgment in *Goodridge* will infringe upon his “constitutional right to participate in the amendment process and to vote in favor of a marriage amendment,” *Petition for Stay*, ¶ 10, is not ripe for consideration.

### III. No Extension Of The Stay Is Warranted

Even if the Petitioner could somehow surmount the fatal jurisdictional and procedural flaws of his petition, his request to extend the 180-day stay in *Goodridge* should still be denied. Given the innumerable reasons that his Petition is deficient on its merits, Plaintiff-Respondents only highlight the most salient points below.

First, any extension – even one shorter in duration than the two-and-a-half year extension sought here – would undermine the purpose of the SJC’s 180-day stay.<sup>4</sup> The SJC has made clear that “[t]he purpose of the stay was to afford the Legislature an opportunity to conform the existing statutes to the provisions of the *Goodridge* decision” – not to give the Legislature an opportunity to collaterally attack the decision or delay its implementation. *Opinion of the Justices to the Senate*, 440 Mass. 1201, 1204 (2004); *see also Michaud v. Sheriff of Middlesex County*, 390 Mass. 523 (1983) (explaining that time-limited stay entered to remedy identified constitutional violation did not invite officials to perpetuate the injury through alternative means). Notably, when it issued its order in *Goodridge*, the SJC was plainly aware of the possibility that a constitutional amendment might be proposed.<sup>5</sup> Nonetheless, the Court ordered

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inconsistent with anything herein contained to carry out the purpose of this Article.

<sup>4</sup> To remedy the constitutional violation identified in *Goodridge*, the Court construed civil marriage to include the voluntary union of two same-sex persons and stayed entry of judgment for 180-days “to permit the Legislature to take such action as it may deem appropriate in light of [its] opinion.” 440 Mass. at 344.

<sup>5</sup> The unofficial transcript (based upon the Court’s tape recording) of the March 4, 2003 oral argument before the SJC in *Goodridge* reveals that the SJC understood the timing and possibility of a constitutional amendment process. *See Tab A*.

that the deprivation of Plaintiff-Respondents' constitutional rights be remedied by May 17, 2004, two-and-a-half years before the amendment process could possibly be completed.

In essence, Petitioner is asking this Court to prolong the deprivation of Plaintiff-Respondents' constitutional rights. Yet, the "deprivation of constitutional rights calls for prompt rectification." *Watson v. Memphis*, 373 U.S. 526, 532 (1963). As recognized by the Supreme Court:

[A]ll [constitutional] rights [are] present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled.

*Id.* Likewise, the constitutional right of same-sex couples to marry is a "present right" that is to be "promptly fulfilled" absent an "overwhelmingly compelling reason." *Id.* Petitioner has offered no reason – let alone an overwhelmingly compelling reason – for this Court to deny Plaintiff-Respondents "benefits accessible only by way of marriage" and "touching nearly every aspect of life and death" for two-and-a-half more years. *Goodridge*, 440 Mass. at 323. Any extension of the stay would deny not only the right to marry, but also the safety net that would be afforded by the civil union provision of the constitutional amendment, should it ever pass.

In contrast, the implementation of *Goodridge* on May 17, 2004, as scheduled, presents absolutely no harm to the Commonwealth or its citizens, including the Petitioner. Implicit in *Goodridge* itself is the SJC's conclusion that no grievous wrong will befall the Commonwealth if same-sex couples are afforded their constitutional right to marry on May 17, 2004.<sup>6</sup> That a

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<sup>6</sup> Petitioner speculates that "[l]egal chaos" may arise from the issuance of marriage licenses to same-sex couples, but it is completely the opposite. Any confusion that may occur following the issuance of licenses would result – if at all – from efforts to roll back the constitutional rights extended to same-sex couples under *Goodridge*. If the marital ban were never reinstated, the Commonwealth would have no basis to question the legal status or rights of its citizens. To the extent any confusion may arise from the federal government's denial of federal benefits to legally married same-sex couples, that discrimination cannot prevent

proposed amendment has been advanced for further consideration by a subsequent session of the Legislature does not alter the law or the facts upon which the SJC based its decision. At present, the amendment is analogous to a pending bill which still faces many hurdles before enactment. An expression of an intent to change the law is not a change in the law and cannot justify a prolonged suspension of the SJC's constitutionally mandated remedy. Under these circumstances, implementation of the *Goodridge* remedy, on schedule, does not conflict with the respective powers granted to each branch of the government.

The implementation of *Goodridge* also will not impede Petitioner's inchoate right to vote on a constitutional amendment. His purported right to vote will not mature into an actionable right, if ever, until, at the earliest, the proposed amendment passes a joint session of the 2005-2006 Legislature.<sup>7</sup> Moreover, even if his claimed right to vote were presently actionable, the constitutional amendment process contemplated by Article 48 of the Massachusetts Constitution is the same whether marriage licenses do or do not issue to same-sex couples beginning on May 17, 2004, or whether this Court grants or denies Petitioner's requested extension. Therefore, it is utterly baseless to conclude that the issuance of licenses will somehow cause the "dilution" or "debasement" of Petitioner's Article 48 rights or his voice in the political process.

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Massachusetts citizens from enjoying all constitutional rights afforded by state law. *See Opinion of the Justices*, 440 Mass. at 571 ("That such prejudice exists is not a reason to insist on less than the Constitution requires."). Even if the amendment were ratified two-and-a-half years from now, committed same-sex couples would be entitled to more rights than they presently have; thus, Petitioner's request to deny all rights until November, 2006, at the earliest, underscores the constitutional deprivation at issue here. Importantly, even if the amendment were ratified, the Commonwealth would still be obligated to provide "entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth." *See Footnote 3, supra*. Simply put, hollow claims of chaos and confusion do not merit an extension of the stay. *Cooper v. Aaron*, 358 U.S. 1, 16 (1958) (rejecting delay of Little Rock school desegregation because "the constitutional rights of children not to be discriminated against ... can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously.")

<sup>7</sup> In any event, even if the proposed amendment were to reach the voters in November, 2006, there is no basis to conclude that the people will ratify it.

At most, Petitioner implicitly complains that the timely issuance of licenses will convince the public that the Court was correct to end the government's denial of marriage rights to same-sex couples – encouraging the public to conclude that helping committed and loving same-sex couples become more secure and happy is positive for the entire community. Petitioner's speculative prediction, however, does not transform his allegations into legally cognizable ones or his claimed harm into a legally cognizable injury.<sup>8</sup>

The continued deprivation of the Plaintiff-Respondents' constitutional rights clearly outweighs the speculative and remote "injuries" advanced by the Petitioner. Petitioner has simply not shown that he, or the citizens of Massachusetts, would be injured by the timely issuance of marriage licenses under *Goodridge*. Thus, further stay of the entry of judgment in *Goodridge* is unwarranted.

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<sup>8</sup> Taken to its logical conclusion, Petitioner's specious argument presents a mirror-image dilemma for this Court. If this Court were to accept Petitioner's "persuasive advocacy" argument and grant the requested relief, Plaintiff-Respondents, adopting the same line of reasoning, could then complain that their inability to get married and demonstrate to society their worthiness to marry, somehow squelches or debases their ability to influence voters to reject the amendment in November, 2006, if it ever were to come to that. His alleged "injury" – seemingly, any disadvantage in countering the effective public advocacy of others – has no logical end point and could be used by many third parties to argue that a judicial outcome with which they disagree hampers their ability to engage in robust public discourse. This amorphous argument presents no injury at all. Simply put, Petitioner's request that the Court adjust the playing field to ensure him a victory in November, 2006 presents no justification for trumping the presently cognizable constitutional rights of the Plaintiff-Respondents.

## CONCLUSION

For these reasons, the Plaintiff-Respondents respectfully request that this Court deny all relief sought by the Petitioner.

Hillary Goodridge, Julie Goodridge, David Wilson,  
Robert Compton, Michael Horgan, Edward Balmelli,  
Maureen Brodoff, Ellen Wade, Gary Chalmers,  
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**CERTIFICATE OF SERVICE**

I, Mary L. Bonauto, Esq., attorney for Hillary Goodridge, Julie Goodridge, David Wilson, Robert Compton, Michael Horgan, Edward Balmelli, Maureen Brodoff, Ellen Wade, Gary Chalmers, Richard Linnell, Heidi Norton, Gina Smith, Gloria Bailey, and Linda Davies, hereby certify that on April 23, 2004, a true copy of the foregoing Opposition to Petition for Stay of Entry of Judgment and Request for Hearing Before Single Justice was served by mail upon:

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