

**COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH**

**C. JOSEPH DOYLE,**

SJ-2004-0169

Petitioner,

v.

Chief Justice **MARGARET H. MARSHALL;**

CIVIL ACTION NO. \_\_\_\_\_

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.

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

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**INTRODUCTION**

This petition is brought pursuant to Rules 2:01 through 2:22 of the Supreme Judicial Court, seeking an extension of the stay of entry of judgment in *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003), pending the outcome of the

process to amend the Commonwealth's Constitution. Petitioner respectfully moves for a continued stay of the entry of the Court's judgment for the following reasons:

1. A further stay is proper and necessary so that Petitioner will have an opportunity to exercise his right to participate in the constitutional process that is presently underway to change the substantive law regarding marriage. The Legislature has voted in favor of a proposed constitutional amendment that will define marriage as the union of one man and one woman, contrary to the *Goodridge* decision. Petitioner requests an expedited hearing on this petition.

2. A stay of this Court's decision is necessary to ensure that the process to amend the constitution continues unencumbered. Presently, the *Goodridge* decision will go into full effect on May 17, 2004, prior to the completion of the process to amend the Commonwealth's Constitution. As a result, real and cognizable harm will ensue. Legal chaos will be created by the issuance of same-sex "marriage" licenses before the issue goes to the citizens for a vote in 2006. And the right of the citizens of Massachusetts, including the right of Petitioner, to decide constitutional matters through the amendment process will be undermined should the effect of *Goodridge* be fully realized prior to the vote. Indeed, this Court has a duty to avoid this inevitable conflict and confusion by simply staying the entry of its judgment pending the outcome of the amendment process.

#### STATEMENT OF FACTS

3. On November 18, 2003, this Court decided the *Goodridge* case, which held that the limitation of the protections, benefits, and obligations of civil marriage to individuals of the opposite sexes lacked a rational basis and violated state

constitutional equal protection principles, thereby conferring the right to marry to same-sex couples. *See id.* at 344.

4. At the start of its opinion, the Court candidly noted, “We are mindful that our decision marks a change in the history of our marriage law.” *Id.* at 312. The Court acknowledged that this change affected the historic, civil, and legal understanding in Massachusetts and elsewhere that marriage constituted the union of one man and one woman. *See id.* at 319 (“The everyday meaning of ‘marriage’ is ‘[t]he legal union of a man and a woman as husband and wife.’”) (quoting Black’s Law Dictionary 986 (7<sup>th</sup> ed. 1999)). Nevertheless, the Court “construc[d] civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others,” thereby redefining marriage to include same-sex partners.

5. In *Goodridge*, the Court found that the application of the Massachusetts’ marriage licensing statute to exclude same-sex partners from receiving a marriage license was unconstitutional. As such, the Court declared “that barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts constitution.” *Id.* at 344. However, the Court stayed judgment “for 180 days to permit the Legislature to take such action as it may deem appropriate in light of this opinion.” *Id.*

#### **PROPOSAL BY THE LEGISLATURE**

6. On December 11, 2003, the Legislature sought to establish through changes in the Massachusetts General Laws a compromise in the form of Senate Bill 2175, entitled “An Act relative to civil unions.” This bill would have prohibited

same-sex couples from entering into marriage, but would have allowed them to form civil unions with all the benefits, protections, rights, and responsibilities of marriage. On December 12, 2003, the Senate asked the Court for an opinion on the constitutionality of this bill.

#### **COURT REJECTS LEGISLATIVE PROPOSAL**

7. On February 3, 2004, the Court rejected the Senate's proposed statutory changes. *Opinions of the Justices to the Senate*, 440 Mass. 1201 (2004). The Court concluded, "We are of the opinion that Senate No. 2175 violates the equal protection and due process requirements of the Constitution of the Commonwealth and the Massachusetts Declaration of Rights. . . . The bill maintains an unconstitutional, inferior, and discriminatory status for same-sex couples, and the bill's remaining provisions are too entwined with this purpose to stand independently." *Id.* at 1209-10.

#### **CONSTITUTIONAL ACTION TAKEN BY THE LEGISLATURE IN RESPONSE TO COURT'S REJECTION OF STATUTORY COMPROMISE**

8. On January 4, 2004, a significant and profound action was taken by the Legislature. In direct response to this Court's rejection of the legislative compromise, the Legislature met in constitutional session to change the Commonwealth's Constitution. On March 29, 2004, a "Proposal for a Legislative Amendment to the Constitution relative to the affirmation of marriage" was adopted. The Article of Amendment states, in relevant part, "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 of Massachusetts." The citizens of Massachusetts, including Petitioner, will have an

opportunity to vote for a constitutional amendment to protect marriage in the 2006 election.

### INTEREST OF PETITIONER

9. Petitioner C. Joseph Doyle is a citizen of the Commonwealth of Massachusetts and a registered voter. His right to vote is a substantive right that cannot be denied by debasement or dilution of its weight. *See Bush v. Gore*, 531 U.S. 98, 105 (2000) (per curiam) (“It must be remembered that ‘the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’”) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). As this Court has long recognized, “The right to vote is a fundamental personal and political right.” *Attorney General v. Suffolk County Apportionment Comm’rs*, 224 Mass. 598, 601 (1916). And this right includes the protection of the efficacy of a voter’s ballot. *See generally id.* Thus, Petitioner has a substantive right that must be protected against interference, encroachment, disenfranchisement, dilution, or unfair advantage either directly or indirectly by the state, including this Court.

10. Petitioner Doyle is the Executive Director of the Catholic Action League of Massachusetts. Petitioner Doyle opposes so-called same-sex “marriages” and their equivalent and firmly believes that the unique relationship of marriage as the union of one man and one woman must be protected in order to promote, among other goals, the stability and welfare of society, the best interest of children, and the common good of this Commonwealth. Petitioner Doyle desires to exercise his constitutional right to participate in the amendment process and to vote in favor of a

marriage amendment that singularly defines marriage as the union of one man and one woman. Petitioner Doyle's beliefs regarding marriage are firmly held, and he is compelled by his conscience to exercise his right to vote to protect marriage. Moreover, Petitioner Doyle is entitled to the protection of this Court to ensure that his right to vote and advocate for change is not diluted or debased in any way nor adversely affected by any action of the state that gives advantage to one side or the other in affecting the outcome of the amendment process. Indeed, should the Court decline to further stay the entry of its judgment in *Goodridge*, the effects of that decision will inhibit the full and robust public discourse the constitutional amendment process demands, and it will impede the progress of the constitutional process by creating legal barriers, such as the issuance of "marriage" licenses to same-sex couples, prior to the full completion of the process.

#### RELIEF SOUGHT

11. Petitioner hereby moves this Court to further stay the entry of its judgment in *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003), pending the outcome of the constitutional amendment process. In its decision this Court directed the Legislature "to take such action as it may deem appropriate." This the Legislature has done by pursuing an amendment to the constitution. In order to allow the Legislature to fulfill this mandate and to permit the citizens of Massachusetts to exercise their right to participate in the amendment process pursuant to the Commonwealth's Constitution, this Court should further stay the entry of its judgment so as not to injure Petitioner's rights. Petitioner has no other legal remedy

to pursue a stay of the *Goodridge* decision than to seek the present relief with this Court.

12. Petitioner further requests a hearing before a single justice as soon as practicable and requests that any notice and timing provisions be waived in order to expedite this hearing. In the alternative, Petitioner seeks a hearing before the full Court.

### CONCLUSION

Petitioner respectfully moves this Court to further stay the entry of its judgment in the *Goodridge* case as set forth in this petition.

Respectfully submitted this ~~20<sup>th</sup>~~ day of April, 2004.



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