

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2004-0214

HILARY GOODREDGE, *ETAL.* vs.
DEPARTMENT OF PUBLIC HEALTH, *ETAL.*

MEMORANDUM OF DECISION

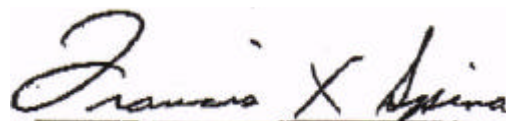
The petitioners, former Ambassador Raymond L. Flynn and Thomas A. Shields, seek relief under G. L. c. 2H, § 3, from the denial of their motion to intervene in, and their motion to dismiss, this action in the Superior Court. The petitioners claim that the Supreme Judicial Court lacked subject matter jurisdiction to decide *Goodridge v. Department of Pub. Health** 440 Mass. 309 (2003). because the term "marriage," as used in PL 2, c. 3, art. 5 of the Massachusetts Constitution, must be given the meaning it had when our Constitution was adopted in 1730, and that meaning cannot be changed, except by the people through a constitutional amendment.

Assuming, without deciding, that the petitioners have standing and have timely pursued this matter, they are not entitled to relief. Their understanding of Pt. 2, c. 3, art. 5, of the Massachusetts Constitution is flawed. The common understanding of the meaning of the term "marriage" in 1780 probably did not encompass same-sex unions, but the definition of marriage was not the concern of

that constitutional provision. The plain language of art. 5 identifies those persons having authority to decide cases involving annulment or dissolution of a marriage, and alimony, It does not purport to define marriage. See *Sparhawk v. Sparhawk* 116 Mass. 315> 317 (1874)- Marriage is a matter that has undergone changes throughout the history of 1tis Commonwealth. It has been regulated both before and since the adoption of our constitution in 1780. See, e.g., Colonial Laws, c. 102, § 5; St. 1695-6, c.2, § 1; SU785, c.69, § 1; Q.L. c.207, § 1, See *Commonwealth v. Stowell*, 389 Mass. 171,175(1983). Its origins lie in the common law, See *Commonwealth v>Knowlton*,2 Mass, 530, 535 (1807). Article 5 does not elevate the 1780 definition of marriage to a fixed principle of constitutional law,

One consequence of the petitioners' contention that marriage may be redefined only by constitutional amendment would be that any impediment to marriage, such as affinity, age, or mental incompetence, could not be determined by the Legislature, but would require a constitutional amendment. The framers of our Constitution could not have intended such a cumbersome method of regulating marriage, and surely they did not intend that the Constitution itself should be cluttered with that level of detail.

For these reasons, I conclude that the petitioners have not shown that they have a substantive right that cannot be protected adequately through the normal appellate process, and therefore they are



Francis X, Spina
Associate Justice

not entitled to extraordinary relief under G. L. c, 211, § 3. The petition is hereby DENIED,

ENTERED: May 14, 2004