

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

In reference to Massachusetts Senate Bill 2175
Request to the Supreme Judicial Court for Advisory Opinion

**BRIEF OF *AMICUS CURIAE* OF BILL WOOD and JOSEPH URENECK
ON THEIR OWN BEHALF**

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STATEMENT OF INTEREST

BILL WOOD has worked to found two 501(c)3 organizations, MOM (Marriage Our Mission) and POP (Preserve Our Posterity), for the purpose of seeing marriage stabilized, families restored, and a sense of community and order re-established. MOM's mission focuses on the strengthening of marriage and the prevention of marriage instability. POP's interest rests in preventing children from suffering many of the social ills caused by the breakdown of marriage and fatherless-ness.

In recent years, Bill Wood has offered Congressional testimony to the US House Ways and Means Committee, as well as legal training and Amicus briefs on family and family law issues numerous times.¹

¹ Amicus Brief for the Federal District Court, Northern District of Ohio on the unconstitutionality of Ohio's custody laws under the Fourteenth Amendment where fit parents' rights to Equal Custody are implicated (Galluzzo v. Champaign County Court)
(http://bellsouthpwp.net/w/o/woodb01/Amicus_brief.htm)

US House Testimony on Ways and Means Committee programs, Taxpayer Waste, Fraud, and Abuse, FC-8, July 17, 2003 - Exploring the roots and causes of the current culture war and the rise of the welfare state. (<http://waysandmeans.house.gov/hearings.asp?formmode=view&id=954>)

US House Testimony on Welfare Reform Reauthorization Proposals, H.R. 4090, April 11, 2002 - The consequences of marriage instability in society, review of the attacks on marriage by radical factions of society, and exploration of the 1996 welfare reform bill's requirements for strengthening families and marriage (<http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/4-11-02/records/billwood.htm>)

US House Testimony on Teen Pregnancy prevention PRWORA, Public Law 104-193, 107-48, November 15, 2001 - Effects of fatherlessness and divorce on teen pregnancy.
(<http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/11-15-01/Record/wmwood.htm>)

US House Testimony on Child support and Fatherhood proposals (Hearing 107-38), June 28, 2001 - Social consequences of failed divorce and child custody policies

Joseph Ureneck is an individual residing in the state of Massachusetts who seeks to protect his rights and responsibilities under the Commonwealth's marriage laws and the longstanding tradition in support of marriage defined as the union of one man and one woman. Joseph Ureneck jointly presents this Brief to the court with the hope that the argument herein will assist the Court in reaching a reasonable and just decision.

Joseph Ureneck has come to understand that the long held traditional view of marriage is now in Massachusetts and nationwide under critical scrutiny heretofore unknown to the general public and believes that such activity represents a step detrimental to society. Joseph Ureneck asserts that although the state may prohibit invidious discrimination against private individual behavior such protection should not lead to the diminishment of the institution of marriage as an institution the public is deeply interested in. To do so would undercut the rights of the majority of individuals in this state and nationwide who depend upon government institutions for support and guidance in their relationship with family, friends

(<http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/6-28-01/record/chillegalfound.htm>) – This testimony demonstrates that father absence, a byproduct of divorce, illegitimacy, and the erosion of the traditional family, is responsible for: filling our prisons, causing psychological problems, suicide, psychosis, gang activity, rape, physical and sexual child abuse, violence against women, general violence, alcohol and drug abuse, poverty, lower academic achievement, school drop-outs, relationship instability, gender identity confusion, runaways, homelessness, cigarette smoking, and other corrosive social disorders.

and society. Joseph Ureneck also asserts that the recent *Goodridge* decision did not resolve but rather exacerbated the problems individuals encounter in marriage today. The *Goodridge* decision is negative for society. The inherent and positive nature of biological differences within marriage relations has not changed despite *Goodridge*. So too, the detrimental impact of this 'slippery slope' decision in favor of same-sex marriage on society makes ever more urgent the need to sustain the foundation of opposite sex marriage for the purpose of procreation and child rearing.

INTRODUCTION

The reasoning behind *Goodridge v. Department of Public Health* (2003) opinion (hereinafter "*Goodridge*") is:

- 1) That the State's "rational basis" of the current practice of excluding homosexuals from marriage based on the possibility of procreation is not valid.
- 2) That the "Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution; it may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life." The *Goodridge* court it is under an obligation to be "more protective of individual liberty and equality" than the US Constitution. Therefore, the Massachusetts court must take

special care in defining and applying "individual liberty" and "equality" under the Due Process clause even more stringently than the US Supreme Court has interpreted the US Constitution to contain.

3) That expanding the definition of marriage or spouse to include homosexuals will allow them to gain greater "State and Federal" benefits.

4) Over 300 years of jurisprudence, common law, and history are being overturned to accommodate a previously unrecognized expansion of rights of homosexuals to marriage or spousal status.

ARGUMENT

This brief demonstrates that the Massachusetts legislature is under no lawful obligation to abide by the "Goodridge" opinion. The *Goodridge* decision is entirely void, not just voidable, but void *ab initio* as if it were never entered because of the numerous Constitutional problems and direct conflicts with Federal Laws and US Supreme Court holdings. *United States v. Peltier*, 422 U.S. 531, 537 (1975) (Under our Constitution no court, state or federal, may serve as an accomplice in the willful transgression of 'the Laws of the United States,' laws by which 'the Judges in every State [are] bound. Citing from

Lee v. Florida, 392 U.S. 378, 385-386 (1968) n. 10 citing the US Constitution, Article VI.)

The US Constitution, Ninth Amendment, "forbids the State from disrupting the traditional relation of the family." *Griswold v. Connecticut*, 381 U.S. 479, 495-496 (1965) (The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the **traditional relation of the family** - a relation as old and as fundamental as our civilization - surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are... rights such as this one, which are protected from abridgment by the Government...) If, however, the Massachusetts legislature proceeds, it will not be related to a legitimate lawful responsibility to do so as dictated by the *Goodridge* court, rather, it will be related to a desire the Massachusetts legislature has taken upon itself, of its own volition, and of its own free will.

Senate Bill 2175 contains several problems, such as Section 2 which offers a new marriage related definition of "spouses" which is invalid at law. The term "spouse" has been defined by Federal Law within the contents of 1 USC § 7, and the State of Massachusetts legislative language forces a Federal Law showdown by enacting benefits, payable by the U.S. taxpayers, at the behest of the Massachusetts legislature. The Massachusetts

legislature has no lawful authority to declare homosexual partners "spouses in a civil union" or (as proposed by 151B-4(19)(a)(9) *et. seq.*) "civilly joined spouses" for any purpose directly or indirectly implicating federal taxpayers. Granting any federal benefits, directly or indirectly, are willful and deliberate violations of Federal Law related to "spouse." As noted within this brief, the term "spouse" is an integral part of marriage, as there can be no marriage without a spouse. **Wherever "marriage" is referenced within this brief, it implies "spouse" as well.**

Senate Bill 2175 does not contain proposed code specifically exempting federal benefits for Massachusetts homosexual "spouses" as required under Federal Law. The Massachusetts code thus contains wide discretion to create State - Federal Law conflicts and legal challenges, all of which the *Goodridge* court majority must surely be aware, and in which the legislature should not become a willing participant.

Proposed Chapter 207A, Section 1, offers a definition of "law," which includes "common law." This is invalid as the *Goodridge* court has overthrown the common law in Massachusetts related to marriage, and has left the door open for itself to eradicate any remaining common law as the court pleases. "Spouse in a civil union" is an improper definition as it is in conflict with Federal Law. Section 2, (iv) allows for

homosexual MINORS to engage in "civil unions," possibly with adults. There can be no rational reason for this allowance from the existing code if procreation is not implicated. There is no reason for homosexual minors to enter into a "civil union."

"In his book, *The American Sex Revolution*, Harvard sociologist Pitirim Sorokin reviewed the history of societies through the ages, and found that none survived after they ceased honoring and upholding the institution of marriage between a man and a woman."² "If the family trends of recent decades are extended into the future, the result will be not only growing uncertainty within marriage, but the gradual elimination of marriage in favor of casual liaisons oriented to adult expressiveness and self-fulfillment. The problem... is that children will be harmed, adults will probably be no happier, and the social order could collapse."³

Notwithstanding the pronouncement of the *Goodridge* court, the possibility of procreation is the central tenet of the spousal union of marriage, and the central tenet of the "civil rights in marriage" cases. Survival of the race, civilization,

² *Statement of Bill Wood, US House Testimony on Welfare Reform Reauthorization Proposals*, H.R. 4090, endnote 35. April 11, 2002. 109 citations or references on the consequences of marriage instability in society, review of the attacks on marriage by radical factions of society, and exploration of the 1996 welfare reform bill's requirements for strengthening families and marriage (<http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/4-11-02/records/billwood.htm>)

³ *Ibid.*, *Statement of Bill Wood on H.R. 4090*. citing from David Popenoe, "Modern Marriage: Revisiting the Cultural Script," *Promises to Keep*, 1996, p. 248.

social order and structure are repeatedly mentioned in US Supreme Court decisions related to the family. Only within the confines of a man and woman joining as "spouses" in marriage with the possibility of procreation are these implicated. Even the recent *Lawrence v. Texas* decision by the US Supreme Court recognized, under the rubric of the "history and traditions" test that "Early American sodomy laws... sought to prohibit non-procreative sexual activity... whether between men and women or men and men... [P]rohibition of homosexual sodomy upon which *Bowers* placed such reliance is... consistent with a general condemnation of non-procreative sex as it is with an established tradition of prosecuting acts because of their homosexual character."

The *Goodridge* court intones that marriage has "survived" a number of dramatic changes as a justification to allow homosexual marriage. No rational individual can believe the assurances that "marriage will continue to be... vibrant and revered..." when overthrowing over 300 years of law and history to promote a homosexual agenda. The Court's assurance is entirely unsupported with the currently disastrous consequences of marriage dissolution rates of approximately 50%.⁴ This

⁴ *Ibid.*, Statement of Bill Wood on H.R. 4090

pronouncement does not advance the lawfully supported reasoning of a judge, but the biased viewpoints of individuals.

The homosexual agenda for marriage shows that the intent is to destroy marriage and family as historically and traditionally understood. Destroying marriage, family, and morality are central components of the homosexual and feminist agendas of "destroying hegemony" as envisioned by the Marxist communist Antonio Gramsci. Gramsci's philosophies were developed to destroy Western Civilization including America.⁵

"Gramsci hated marriage and the family, the very founding blocks of a civilized society. To him, marriage was a plot, a conspiracy... to perpetuate an evil system that oppressed women and children. It was a dangerous institution, characterized by violence and exploitation, the forerunner of fascism and tyranny. Patriarchy served as the main target of the cultural Marxists. They strove to feminize the family with legions of single and homosexual mothers and 'fathers' who would serve to weaken the structure of civilized society." Borst, William, Ph.D. American History. *A Nation of Frogs*, The Mindszenty Report Vol. XLV-No.1, January 2003, pg 2. (Online version at http://www.mindszenty.org/report/2003/mr_0103.pdf)

Removing procreation and morality under the "rational basis" implicates all other categories that the state of Massachusetts would use to regulate marriage. Age (minors), blood relations (incest), gender of the parties (prohibiting

⁵ For a more detailed review of Gramsci and the agenda to undermine America's culture see generally *US House Ways and Means Committee, Taxpayer Waste, Fraud, and Abuse*, FC-8, July 17, 2003. Explores the agenda through the legal system to undermine and destroy American culture, traditions, and family with the participation of lawyers, judges, and legislators <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=954> In particular, see the section entitled "INDOCTRINATING LAWYERS AND JUDGES TO DESTROY AMERICA"

homosexuality), species (preventing bestiality with pigs, goats, sheep, and cows, etc.), or the number of persons allowed in marriage (polygamy or "polyamory"). If Massachusetts finds that this rational basis does not apply to homosexuals, then it must also allow all of the other categories of the state's "rational basis" to be overthrown as well. Proclaiming otherwise is *prima facie* proof of a personal agenda, and not the equal application of the law the *Goodridge* court asserts.

Under the guise of racially motivated comparisons, the Massachusetts court abandons the "nation's history and traditions" test and overthrows the dictates of established law. The *Goodridge* court declares that "history must yield" to the court's decision to advance this new marriage agenda (even if it means "playing the race card"). Why must history yield? The *Goodridge* court has no lawful authority to overthrow both history and the law while its comparison of heterosexual marriage to racial discrimination is facetious.

The *Goodridge* court has not addressed the public's interest in marriage, morals, civilization, and its impact on marriage as the foundation of family and society. The *Goodridge* decision doesn't address the public's attempt to advance a Constitutional Amendment which the legislature procedurally thwarted.

Marriage and spouse have fixed definitions in Federal Law, common law, and jurisprudence. Massachusetts has no lawful

authority to change these definitions. What of the *Goodridge* decision if the legislature does not carry out its demand to redefine "spouse", after 180 days? Will the *Goodridge* court a) declare marriage itself unconstitutional and void all existing marriages (as "discriminatory") or b) abandon its current decision, or c) attempt to force the Massachusetts legislature to fund the redefinition of marriage and to rewrite the law to advance the homosexual agenda. The Court attempted to use its judicial force on the Legislature before ("*Clean Elections*" *Kelly Bates vs. Director of the Office of Campaign and Political Finance*, (SJC 2002)⁶. The court's decision resulted in a requirement for the legislature to publicly fund political candidates for office. Subsequent court-mandated auctions of state property galvanized public opposition causing the "Clean Elections" law to be repudiated and revoked by the electorate at the first opportunity. The court's reputation has been damaged and this decision further erodes public perception of the legal system.

The *Goodridge* opinion operates to set up a conflict between state and Federal Laws. This conflict serves the sole purpose of advancing a social agenda which the public does not support and which violates Federal Law. The State of Massachusetts,

⁶ Online version at <http://www.sociallaw.com/sjcslip/8677.html>

only through the Legislature, may determine if it wishes to end all participation and funding of "any Act of Congress... any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States..." since this is the link to 1 USC § 7 defining marriage and spouse. And even then, the State of Massachusetts is not free to disavow all federal funding contained in the provisions of Title 10, 25, 26, 42, and 50 along with other multitude of references to marriage and spouse in the US Code. Some of those code sections are related to federal retirement benefits for which Massachusetts has no lawful authority to redefine the terms. This Court created conflict exists for no other reason than to advance a political cause beyond the boundaries of the State of Massachusetts.

"[F]ederal principles" of Due Process or Equal Protection under the Fourteenth Amendment can not be invoked "to challenge the state administrative action" for "obtain[ing] a license" to marry without the state having a "strong interest in integrating [federal] sources of law" for "proper judicial control." Without this integration, "[f]ederal and state law 'together [would no longer] form one system of jurisprudence.'"

Violating the plain language of Federal Law, and intentionally creating the specter of a national Constitutional

crisis after being notified of the same is an act of malfeasance and misfeasance.

marriage, n. 1. The legal union of a man and woman as husband and wife.⁷ spouse. One's husband or wife by lawful marriage; a married person.⁸

As noted by Black's Law Dictionary, "spouse" is an integral part of the term marriage. They are inseparable as there can be no marriage without a spouse. The term "spouse" can not include "civil unions" without affecting the meaning of marriage itself. The US Congress has been clear in enacting Federal code sections, 42 USC § 416 (b) and (f) which define spouse as a husband and wife and as male and female. The US Congress, along with Executive branch approval under the Clinton administration, enacted the explicit interpretation of marriage and spouse in 1 USC § 7, applying to all Federal Law as follows:

In determining the meaning of any Act of Congress, or of **any ruling, regulation, or interpretation** of the various administrative bureaus and agencies of the United States, the word **'marriage'** means only a legal union between one man and one woman as husband and wife, and the word **'spouse'** refers only to a person of the opposite sex who is a husband or a wife.

The US Supreme Court has also offered a supporting definition of marriage (in relation to the family). *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885). ([T]he idea of the family, as

⁷ Black's Law Dictionary, Seventh Edition (Abridged), West Publishing (2000) pg. 789

⁸ *Ibid.* pg. 1134

consisting in... the union... of one man and one woman in... matrimony...) see also *Romer v. Evans*, 517 U.S. 620, 651 (1996) (Scalia, dissenting). Marriage has been defined as the "relation of husband and wife" in myriad US Supreme Court jurisprudence. It has been repeated so often in every Federal and state court throughout the history of the country that marriage consisting of spouses who are "husband and wife" is a legal truism. *Maynard v. Hill*, 125 U.S. 190, 212 (1888) (marriage "signifies the relation of husband and wife"),⁹ *Blackstone's Commentaries on the Laws of England*, Book I, chap. 15 ([M]arriage, which includes the reciprocal duties of husband and wife.)

The *Goodridge* court itself recognizes the long accepted definition of marriage noting "[t]he everyday meaning of 'marriage' is '[t]he legal union of a man and woman as husband and wife'... and the plaintiffs do not argue that the term 'marriage' has ever had a different meaning under Massachusetts law." Massachusetts has no legitimate or lawful authority to create a brand new meaning for the word "marriage" or "spouse." The *Goodridge* court has no lawful authority to redefine marriage

⁹ A spouse is a husband or wife. See also *Ankenbrandt v. Richards*, 504 U.S. 689, 696 (1992); *Michael H. v. Gerald D.*, 491 U.S. 110, 115 (1989); *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 154 (1980) (Stevens, J., concurring); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 591 (1979) (Stewart, J., dissenting); *Carey v. Population Services International*, 431 U.S. 678, 707-08 (1977); *Stanley v. Illinois*, 405 U.S. 645, 664 (1972); *United States v. Mitchell*, 403 U.S. 190, 198 (1971); *Labine v. Vincent*, 401 U.S. 532, 552-53 (1971); *Griswold v. Connecticut*, 381 U.S. 479, 481-82, 495 (1965); *Lutwak v. United States*, 344 U.S. 604, 614-15 (1953).

or spouse. The judicial authority consists only of declaring the law itself unconstitutional unless the *Goodridge* court now asserts that it is the Massachusetts legislature and the elected officials are to do the court's bidding.

POSSIBILITY OF PROCREATION IS PART OF THE MARRIAGE STATUS

With only one minority dissent as the exception,¹⁰ every US Supreme Court case including marriage and "civil right" has been directly or indirectly linked with the ability to procreate, conceive, or bear children. It is through the possibility of procreation in which marriage becomes a status which society and civilization is dependent upon.

The marital relationship has been repeatedly characterized as "a basic civil right of man" only so far as it specifically relates to the possibility of a husband and wife to procreate and have children between themselves. The *Skinner* holding, which is at the basis of the "civil rights" in marriage determination, is the controlling law noted in each of the following cases which makes this clear. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (We are dealing here with legislation which involves one of the basic civil rights of man. Marriage

¹⁰ *Cruzan v. Director, MDH.*, 497 U.S. 261 (1990) a case of personal choice related to the refusal of life-saving medical services where "basic civil rights." This reference was not part of the court's decision, but comes from the **dissent** of Brennan, Marshall, and Blackmun at 304

and *procreation* are fundamental to the very existence and survival of the race.)

Hodgson v. Minnesota, 497 U.S. 417, 447 (1990) (The Court has frequently emphasized the importance of the family. The rights to **conceive** and to raise one's children have been deemed 'essential,'... 'basic civil rights of man,' (citations omitted)); *Thornburgh v. American Coll. of Obst. & Gyn.*, 476 U.S. 747, 749, 773 (1986) (held) (intensely private, right... to end a **pregnancy**. *Id.* at 749) (Stevens, concurring) ('[T]he liberty... to direct the upbringing and education of children,'... are among 'the basic civil rights of man.' (citations omitted) *Id.* at 773); *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 463 (1985) ([O]ne of the "basic civil rights of man" - the right to marry and **procreate**. (citations omitted)); *Zablocki v. Redhail*, 434 U.S. 374, 379, 383, 384 (1978) ([A]ppellee and the woman he desired to marry were **expecting a child**... and wished to be lawfully married before that time... *Id.* at 379 Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival"... *Id.* at 383 "the foundation of the family and of society, without which there would be neither civilization nor progress"... (citations omitted) *Id.* at 384); *Weinberger v. Salfi*, 422 U.S. 749, 771 (1975) (This Court referred to the fact that the "rights to **conceive** and to raise one's children have

been deemed `essential,'... `basic civil rights of man,' (citation omitted)); *Cleveland Board of Education v. Laflour*, 414 U.S. 632, 639-640 (1974) ([T]here is a right "to be free from unwarranted... intrusion... affecting... the decision whether to **bear** or beget a child."... **[M]aternity leave** rules directly affect "one of the basic civil rights of man" (citations omitted)); *Vlandis v. Kline*, 412 U.S. 441, 461 (1973) (Dissent of Mr. Chief Justice Burger, and Mr. Justice Rehnquist) ([T]he rights of **fatherhood** and family were regarded as "`essential'" and "`basic civil rights of man'"); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (The rights to **conceive** and to raise one's children have been deemed "essential,"... "basic civil rights of man,"... (citations omitted)); *Loving v. Virginia*, 388 U.S. 1, 7 (1967) (State's... purposes were "to **preserve the racial integrity** of its citizens," and to prevent "the **corruption of blood**"); *Griswold v. Connecticut*, 381 U.S. 479, 503 (1965) Right to determine conception within marriage. ("[F]orbidden use of **contraceptives**" at 479) (White, concurring) ([T]he right "to marry, establish a home and bring up children,"... and "the liberty . . . to direct the upbringing and education of children,"... and that these are among "the basic civil rights of man.")

EXCLUDING "PROCREATION" AND MORALITY IN DEFINING MARRIAGE.

The *Goodridge* court has asserted dicta from *Lawrence v. Texas* that "[o]ur obligation is to define the liberty of all, not to mandate our own moral code." (at 123 S. Ct. 2472, 2480 (2003)). Having asserted this as a matter of Massachusetts jurisprudence (now "law"), the court must next strike down the prohibitions against incestuous marriages and consensual marriage to minors as well. In *Goodridge*, the Court opines that "[t]he 'marriage is procreation' argument singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage." "Age" is one "unbridgeable difference" that must then be abandoned under the *Goodridge* holding. A 12 year old female, having started menstruating is capable of procreation making age alone the "one unbridgeable difference." The *Goodridge* court must anticipate and welcome a suit striking down the bar preventing 12 year-old girls from marrying 40 year-old male adults. There is historical precedent for such marriages with young females of 13, 14, 15, and 16 years of age. The *Goodridge* court must anticipate that marriage as an unrestrained "right" (unlinked from the possibility of procreation) opens the door to a lawsuit where a virile 9 year-old boy professes love and a desire to marry a 55 to 60 year-old woman. The *Goodridge* court's establishment, as a matter of law,

that procreation is no longer an essential component of understanding marriage, opens the door for little boys being allowed to satisfy the North American Man Boy Love Association (hereinafter as NAMBLA, a pedophile organization who's beliefs include "sex by eight or it's too late"). If a 50 year-old man wishes to "marry" and have sex with an 8 year old boy under the *Goodridge* opinion, no one has the right to exercise their "personal morals" and question this. If marriage is simply an unrestrained "civil right," with no foundational requirement of the possibility to procreate, as the Massachusetts court asserts, then why not marry and have sex with dogs, cats, pigs, cows, goats, or young children? And certainly the dogs, cats, pigs, goats, cows and of course the children, are deserving of Massachusetts taxpayer support related to "spousal" benefits.

The *Goodridge* court notes that "[m]arriage has survived anti-miscegenation laws, the expansion of the rights of married women, and the introduction of 'no-fault' divorce," almost as if to say that the right formula to destroy marriage hasn't yet emerged. Notwithstanding the *Goodridge* court's profession to the contrary ("we have no doubt that marriage will continue to be... vibrant and revered..."), there is no lawful or "rational" reason for the *Goodridge* court to overthrow over 300 years of law and abandon the common law as well (where the *Goodridge* court notes "surveying marriage statutes from 1639 through 1834"

and then throws out numerous State Supreme Court cases and the common law that does not "line up" with the *Goodridge* court's agenda to promote homosexuality).

HOMOSEXUAL MARRIAGE DOES NOT RETAIN MARRIAGE AS "VIBRANT AND REVERED"

An Internet search quickly reveals some of the agenda promoted by homosexual marriage to further the destruction of marriage. This is the agenda that the *Goodridge* court disingenuously proclaims will help marriage to stay "vibrant and revered."

- "[F]ight for same-sex marriage and its benefits and then, once granted, redefine the institution of marriage completely, to demand the right to marry not as a way of adhering to society's moral codes but rather to... radically alter an archaic institution." -- *Michelangelo Signorile, "Bridal Wave," OUT magazine, December/January 1994, p. 161.*
- "[E]nlarging the [marriage] concept to embrace same-sex couples would necessarily transform it into something new... Extending the right to marry to gay people -- that is, abolishing the traditional gender requirements of marriage -- can be one of the means, perhaps the principal one, through which the institution divests itself of the sexist trappings of the past." - *Tom Stoddard, quoted in Roberta Achtenberg, et al., "Approaching 2000: Meeting the Challenges to San Francisco's Families," The Final Report of the Mayor's Task Force on Family Policy, City and County of San Francisco, June 13, 1990, p.1.*
- "[Marriage is] a chance to wholly transform the definition of family in American culture. It is the final tool with which to dismantle all sodomy statutes, get education about homosexuality and AIDS into public schools, and, in short, usher in a sea change in how society views and treats us." -- *Michelangelo Signorile, "I Do, I Do, I Do, I Do, I Do," OUT magazine, May 1996, p. 30.*

- "Being queer is more than setting up house, sleeping with a person of the same gender, and seeking state approval for doing so... Being queer means pushing the parameters of sex, sexuality, and family, and in the process, transforming the very fabric of society... In arguing for the right to legal marriage, lesbians and gay men would be forced to claim that we are just like heterosexual couples, have the same goals and purposes, and vow to structure our lives similarly... We must keep our eyes on the goals of providing true alternatives to marriage and of radically reordering society's view of reality." -- Paula Ettelbrick, *"Since When Is Marriage a Path to Liberation?"*, in William Rubenstein, ed., *Lesbians, Gay Men and the Law* (New York: The New Press, 1993), pp. 401-405.
- "...American marriage is inextricable from Christianity... In 1972 the National Coalition of Gay Organizations demanded the 'repeal of all legislative provisions that restrict the sex or number of persons entering into a marriage unit; and the extension of legal benefits to all persons who cohabit regardless of sex or numbers.'" -- Judith Levine, *"Stop the Wedding!: Why Gay Marriage Isn't Radical Enough,"* The Village Voice, July 23-29, 2003. Levine declines to mention that the 1972 Gay Rights Platform also called for abolishing age of consent laws. Levine herself has written in favor of lowering the age of consent to 12 for sex between children and adults in her book *Harmful to Minors: The Perils of Protecting Children from Sex* (p. 88).
- "In one sense the right is right... to accuse the gay and lesbian rights movement of threatening homogenization... if gay and lesbian liberationists ever achieve full equality, they will do away with the social need for the hetero/homo division. The secret of the most moderate, mainstream gay and lesbian civil rights movement is its radically transformative promise (or threat, depending on your values)." -- Gay historian Jonathan Katz, *The Invention of Heterosexuality*, 1995, p.188.
- "Heterosexual hegemony ... is being simultaneously eroded and reconstructed. ...The forms of sexuality considered natural have been socially created and can therefore be socially transformed." (pg. 219) "New social policies would focus on *transforming social relations* and would be based on empowering of lesbians, gay men, sex-trade workers, women and people of colour." (pg. 229) -- Gary Kinsman,

"The Regulation of Desire: Sexuality in Canada," Black Rose Books, 1987.

- "[A]ny leader of any gay rights organization who is not prepared to throw the bulk of their efforts right now into the fight for marriage is squandering resources and doesn't deserve the position." -- *Chris Crain, Washington Blade, August, 2003.*

REDEFINING "RATIONAL" TO ADVANCE HOMOSEXUALITY

The decision in *Goodridge* begins its evaluation of a "rational basis" without addressing the required "history and traditions" test. Even addressing the "rational basis" for creating a brand new, never before recognized "civil right," not based race, but on controversial behavior, the Court ignores other holdings which define the rational basis test. The rational basis method used by the *Goodridge* court was borrowed from a Massachusetts case referencing the 18 year-old decision of *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 452 (1985). More recent holdings have substantially altered the *Goodridge* court's chosen "rational basis" test. The rational basis presented must be shown to be *irrational* to be overruled. *Kimel v. Florida Board of Regents*, 528 U.S. 62, 83 (2000) (Dealing with age discrimination) (States may discriminate... without offending the Fourteenth Amendment if the... classification in question is rationally related to a legitimate state interest. The rationality commanded by the Equal Protection Clause does not require States to match... interests

they serve with razorlike precision... [W]hen conducting rational basis review "we will not overturn [government action] unless the varying treatment of different groups or persons is so **unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational.**" citing from *Vance v. Bradley*, 440 US 93, 97 (1979)).

When dealing with Colorado's Amendment 2 which removed laws and ordinances related to homosexuals, the US Supreme Court noted that Fourteenth Amendment Equal protection analysis required a rational relation that will be upheld "even if the law seems unwise," disadvantages a particular group, or its rationale is tenuous. *Romer v. Evans*, 517 U.S. 620 (1996) (page cites unavailable ¹¹) (In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, **even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous.**) (Scalia, Rhenquist, and Thomas, dissenting) (A State "does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect" citing from *Dandridge v. Williams*, 397 U.S. 471, 485 (1970)).

¹¹ Electronic reference at <http://laws.findlaw.com/us/517/620.html>

IGNORING FOURTEENTH AMENDMENT HOLDINGS TO PROMOTE HOMOSEXUAL MARRIAGE

Massachusetts holdings establish that the *Goodridge* court is under an obligation to interpret the Declaration of Rights due process and equal protection in essentially the same as US Supreme Court interpretations. *Commonwealth v. Strauss*, 191 Mass. 545, 550 (1906) (The rights relied upon under the Fourteenth Amendment to the Constitution of the United States, and under the Declaration of Rights in the Constitution of Massachusetts, are substantially the same..."); *Commonwealth v. Ellis*, 429 Mass. 362, 371 (1999) (Although there are situations in which this court has interpreted art. 12 of our Declaration of Rights as extending greater protection than parallel provisions in the United States Constitution..., our treatment of due process challenges to legislation has adhered to the same standards as those applied in Federal due process analysis. (citations and quote marks omitted.))

Massachusetts is under an obligation to demonstrate that its marriage laws demonstrate a "bare desire to harm a politically unpopular group." *Romer v. Evans*, 517 U.S. 620, 634 (1996) ("[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.").

EXPANDING MARRIAGE AND SPOUSAL PROTECTIONS TO HOMOSEXUALS

State Determinations of marriage and family can not be made based on "state law" but must be understood in America's history and tradition. Massachusetts is not free to evaluate marriage (or the redefinition of "spouse" which is an integral part of marriage) without viewing all marriage actions through the "Nation's History and Traditions." In creating a brand new, never before recognized "equal right," based upon a controversial behavior, the "Nation's history and tradition's" test must be applied. The marriage relationship by its very nature includes "spouses" as husband and wife. *Smith v. Organization of Foster Families*, 431 U.S. 816, 844-845 (1977) (*nemine contradicente*) (The basic foundation of the family in our society, the marriage relationship, is of course not a matter of blood relation. Yet its importance has been strongly emphasized in our cases... [T]he liberty interest in family privacy... and its contours are ordinarily to be sought, **not in state law... [but] as they have been understood in "this Nation's history and tradition"**). For example, the 1st Circuit and the US Supreme Court have also found:

Chavez v. Martinez, No. 01-1444, (2003) ¹² (Only fundamental rights and liberties which are " 'deeply rooted in this Nation's history and tradition' " and " 'implicit in the concept of ordered liberty' " qualify for [Due Process]

¹² Electronic reference at <http://laws.findlaw.com/us/000/01-1444.html>

protection... **[W]e have expressed our reluctance to expand the doctrine of substantive due process**, see *County of Sacramento v. Lewis*, 523 U. S. 833, 842 (1998); *Washington v. Glucksberg*, 521 U. S. 702, 720 (1997); *Albright v. Oliver*, 510 U. S. 266, 271 (1994); *Reno v. Flores*, 507 U. S. 292, 302 (1993); **in large part "because guideposts for responsible decision making in this unchartered area are scarce and open-ended,"** *Collins v. Harker Heights*, 503 U. S. 115, 125 (1992). See also *Regents of Univ. of Mich. v. Ewing*, 474 U. S. 214, 225-226 (1985)).

Herrera-Inirio v. INS, No. 99-1852 (1st Cir. 2000) ¹³ There is simply no purchase in the Supreme Court's precedents for elevating so narrowly focused a "right" to the status of one of "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted). Indeed, we agree with the Fourth Circuit that **when... "narrow compass and special circumstances" attend a claimed right, the odds are very great that the right is not fundamental.** *Hawkins v. Freeman*, 195 F.3d 732, 747 (4th Cir. 1999) (en banc). Here, moreover, two other factors -- the Court's announced **reluctance to expand the boundaries of substantive due process**, see *Glucksberg*, 521 U.S. at 720; *Vega-Rodriguez v. Puerto Rico Tel. Co.*, 110 F.3d 174, 183 (1st Cir. 1997))

The US Supreme Court defined a specific two-part test for expanding Due Process to new categories or classes. Creating a new marriage category that abandons morality and includes homosexuals would require this test. *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (Our **established method** of substantive due process analysis has two primary features: First... the Due Process Clause specially protects those

¹³ Electronic reference at <http://laws.findlaw.com/1st/991852.html>

fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition... and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed... Second, we have required... a careful description of the asserted fundamental liberty interest... Our **Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decision making... that direct and restrain our exposition of the Due Process Clause.** (quotes and citations omitted)).

The *Goodridge* court has thrown out history, legal traditions, and practices to find a never before recognized right. In the opening of its decision, the *Goodridge* court notes they "are mindful that our decision marks a **change in the history of our marriage law.**" This type of legal interpretation is what the US Supreme Court intended to prohibit for any form of substantive due process (equal rights are the essence of substantive due process). *Moore v. City of East Cleveland*, 431 U.S. 494, 495 (1977) (Appropriate limits on substantive due process come not from drawing arbitrary lines but from careful "respect for the teachings of history [and] solid recognition of the basic values that underlie our society.)

The *Goodridge* court makes a racial comparison linking homosexuality (a controversial behavior) to skin color. Attempting to connect homosexual marriage to that which black

Americans have endured could itself be considered racist. The opinion rests upon an insinuation that the controversial behavior of homosexuality and skin color are "similar" or "equal" as the *Goodridge* decision conjectures.

In this case, as in *Perez* and *Loving*, a statute deprives individuals of access to an institution of fundamental legal, personal, and social significance -- the institution of marriage -- because of a single trait: skin color in *Perez* and *Loving*, sexual orientation here.

The *Goodridge* court notes "history must yield to a more fully developed understanding" of some never before understood "invidious discrimination," essentially saying that not allowing homosexuals to marry is somehow related to a racial discrimination. Has the black American civil rights movement for freedom and equality been reduced to race-bating comparisons between the color of one's skin with which black Americans are born with and have no choice, to a behavior over which homosexuals do have a choice?

The *Lawrence* court, has made several references which appear to be directed at retaining some stability and sanctity of marriage as it has been understood throughout America's "history and traditions." In first addressing the "Nation's history and traditions," the *Lawrence* court notes, "[i]t must be acknowledged... that the Court in *Bowers* was making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has

been shaped by religious beliefs, conceptions of right and acceptable behavior, and **respect for the traditional family.**"

In concluding the *Lawrence* decision, the court noted for what would appear to be obvious reasons:

The present case does not involve minors, [it] does not involve persons who might be injured or coerced..., [it] does not involve public conduct or prostitution, [it] does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.

The Ninth Amendment has been invoked to "forbid the State from disrupting the traditional relation of the family..." not a non-traditional, court-created notion of how to advance homosexuality by overthrowing 300-plus years of legal stability to redefine family and marriage. *Griswold v. Connecticut*, 381 U.S. 479, 495-496 (1965) (The fact that no particular provision of the Constitution explicitly **forbids the State from disrupting the traditional relation of the family...** does not show that the Government was meant to have the power to do so... [A]s the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government...)

Expanding Due Process protections has been repeatedly deemed an area of caution by the US Supreme Court.¹⁴ The US

¹⁴ *Reno v. Flores*, 507 U.S. 292, 318 (1993) (O'Connor and Souter, concurring opinion) In sum, this case does not concern the scope of the Due Process Clause. We are not deciding whether the constitutional concept of "liberty" extends to some hitherto unprotected aspect of personal wellbeing, see, e.g., *Collins v. Harker Heights*, 503 U.S. 115 (1992); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Bowers v.*

Supreme Court noted in *Michael H. v. Gerald D.*, 491 U.S. 110, 122-124 (1989) that "[t]he need for [Due Process] restraint has been cogently expressed..."

That the Court has ample precedent for the creation of new constitutional rights should not lead it to repeat the process at will. ***The Judiciary... comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or even the design of the Constitution...*** [T]he Court should be extremely reluctant to breathe still further substantive content into the Due Process Clause so as to strike down legislation adopted by a State or city to promote its welfare. ***Whenever the Judiciary does so, it unavoidably pre-empts for itself another part of the governance of the country without express constitutional authority.***

In an attempt to limit and guide interpretation... we have insisted not merely that the interest denominated as a "liberty" be "fundamental"... but also that it be an interest traditionally protected by our society... [T]he Due Process Clause affords only those protections "so rooted in the traditions and conscience of our people as to be ranked as fundamental." ***Our cases reflect "continual insistence upon respect for the teachings of history [and] solid recognition of the basic values that underlie our society..."***

This insistence that the asserted liberty interest be rooted in history and tradition is evident... "Our decisions establish that ***the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition.***" (citations, footnotes and references omitted)

The *Goodridge* court clearly recognized its obligation to evaluate its "history and traditions" by embarking on a review of over 300 years of Massachusetts law ("surveying marriage

Hardwick, 478 U.S. 186 (1986) – PORTIONS of the *Bowers* decision were overruled by *Lawrence* only after a careful review of the "history and traditions" test required under the Fourteenth Amendment.

statutes from 1639 through 1834") and legal holdings along with the common law. After this review, the court then overthrows all of its history and traditions to pronounce a new, controversial and behaviorally based "substantive" Due Process finding of a homosexual "civil right" to marriage, or to a redefined classification as "spouse."

The *Goodridge* decision disingenuously notes a reference from *Lawrence* stating "[o]ur obligation is to define the liberty of all, not to mandate our own moral code." Notwithstanding its pronouncement to the contrary, and after having overthrown a few hundred years of stable legal foundation, the court then proceeds to pronounce its own moral code that in fact homosexual marriage is equal to heterosexual marriage.

PUBLIC INTERESTS MUST BE CONSIDERED REGARDING "MARRIAGE" OR "SPOUSE"

In *Zablocki v. Redhail*, 434 U.S. 374, 399 (1978), the court noted that the "State, representing the collective expression of moral aspirations, has an undeniable interest in ensuring that its rules of domestic relations reflect the widely-held values of its people." Massachusetts can not lawfully trump this interest by ignoring it.

The decision of the *Goodridge* court seeks to fundamentally change the nature and character of marriage and spouse by removing marriage as "an institution, in the maintenance of which in its purity the public is deeply interested." *Andrews v.*

Andrews, 188 U.S. 14, 31 (1903) citing from *Maynard v. Hill*, 125 U.S. 210, 31 L. ed. 658, 8 Sup. Ct. Rep. 728 . Massachusetts is under a duty to consider the public's interest as a party to marriage, the public's interest in the preservation of community, civilization, society and its morals. See *Baker's v. Kilgore*, 145 U.S. 487, 491 (1891) citing from *Bishop on Marriage, Divorce and Separation*, § 5. (In Marriage, "public interests overshadow private -- one which public policy holds specially in the hands of the law for the public good..."); *Andrews v. Andrews*, 188 U.S. 14, 27 (1903) citing from *Bishop, Marriage and Divorce*, 6th ed. secs. 229b, 230. ([S]ociety has an interest in the maintenance of marriage ties, which the collusion or negligence of the parties cannot impair;' [so that] a divorce suit, while on its face a mere controversy between private parties... is... a triangular proceeding *sui generis*, wherein the public, or government, occupies... the position of a third party...); *Zablocki v. Redhail*, 434 U.S. 374, 399 (1978) citing *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (Marriage [creates] the most important relation in life, [has] more to do with the morals and civilization of a people than any other institution.); *Maynard* notes again at, 211-212 ([Marriage] is an institution... which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor

progress... *Id.* at 211. "[Marriage is the most important social relation]... the first step from barbarism to incipient civilization, the purest tie of social life and the true basis of human progress." *Id.* at 211-212.); *Meltzer v. Lecraw*, 402 U.S. 936, 957 (1971) (Cert. Denied, opinion of Mr. Justice Black) (Marriage is one of the cornerstones of our civilized society. Society generally places a high value on marriage and a low value on the right to divorce.); *Sherrer v. Sherrer*, 334 U.S. 343, 360 (1948) (The parties to a marriage do not comprehend... all the interests that the relation contains. Society sanctions the institution and creates and enforces its benefits and duties.); *Williams v. State of North Carolina*, 325 U.S. 226, 230 (1945) ([M]arriage, is of concern not merely to the immediate parties... [i]t also touches basic interests of society.)

THE MASSACHUSETTS LEGISLATURE AND THE COURT MUST UPHOLD FEDERAL LAW

The *Goodridge* ruling is in open conflict with applicable Federal Law which can not be ignored by the Massachusetts legislature. In the *Goodridge* opinion, substantial time, effort, and attention was intermittently paid to benefits of marriage. Including one comment in the opinion that appears calculated to cause a controversy between Massachusetts law and Federal Law where no previous controversy existed. The court majority made the federal-state law conflict clear by stating

"[other benefits] are material, such as the greater ease of access to family-based State and Federal benefits that attend the presumptions of one's parentage."

Massachusetts has recognized that it is bound by the US Constitution, Article VI to uphold and abide by Federal Law. *Archambault v. Archambault*, 407 Mass. 559, 564 (1990) (The Supremacy Clause of Art. VI of the [Federal] Constitution provides Congress with the power to preempt state law.", quoting *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986)). Massachusetts does not have legal authority to ignore Federal Law, and has a mandatory duty to uphold Federal Law, even if they do not agree with its contents. *Howlett v. Rose*, 496 U.S. 356, 357 (1990) (Held) (Under the Supremacy Clause, state courts have a concurrent duty to enforce Federal Law according to their regular modes of procedure. See, e. g., *Claflin v. Houseman*, 93 U.S. 130, 136 -137 (1876)... The Supremacy Clause forbids state courts to dissociate themselves from Federal Law because of disagreement with its content or a refusal to recognize the superior authority of its source. See, e. g., *Mondou v. New York, N. H. & H. R. Co.*, 223 U.S. 1, 57 (1912)). Massachusetts is not free to evaluate state law, the state constitution, or other legal enactments by rendering decisions that are in

conflict with Federal Law, or by ignoring Federal Law.¹⁵ As determined by *Idaho v. Coeur D'Alene Tribe of Idaho*, 521 US 261 (1997),¹⁶ even licensing and Administrative procedures must integrate and conform to Federal Law:

In *Stone v. Powell*, 428 U.S. 465 (1976), we expressed our "emphatic reaffirmation . . . of the constitutional obligation of the state courts to uphold Federal Law, and [our] expression of confidence in their ability to do so." *Allen v. McCurry*, 449 U.S. 90, 105 (1980).

Interpretation of Federal Law is the proprietary concern of state... courts. It is the right and duty of the States, within their own judiciaries, to interpret and to follow the Constitution and all laws enacted pursuant to it... The Constitution and laws of the United States are not a body of law external to the States, acknowledged and enforced simply as a matter of comity... **Federal and state law "together form one system of jurisprudence."** *Claflin v. Houseman*, 93 U.S. 130, 137 (1876)...

..."Everywhere a citizen turns -- to apply for a life sustaining public benefit, **to obtain a license**, to respond to a complaint -- it is [administrative law] that governs the way in which their contact with state government will be carried out."... [This case] has features which instruct and enrich the elaboration of administrative law that is one of the primary responsibilities of the state judiciary. Where, as here, the parties invoke **federal principles to challenge state administrative action, the courts of the State have a strong interest in integrating those sources of law within their own system for the proper judicial control of state officials.**

The obligation of judges to follow the law has a long pedigree and the *Goodridge* court is no exception to this requirement. *U.S. v. Lee*, 106 U.S. 196, 220 (1882) (No man in

¹⁵ Along with the excerpt and its internal citations, see also *California v. Grace Brethren Church* 457 U.S. 393, 417 n. 37 (1982) and *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982)

¹⁶ No. 94-1474 page cites omitted, electronic citation available at <http://laws.findlaw.com/us/521/261.html>

this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.)

A "CONFLICT OF LAWS" HAS BEEN CREATED WHERE NONE PREVIOUSLY EXISTED

The *Goodridge* court has no legal authority, and certainly by its own admission in invoking a quote from *Lawrence* abandoning morals--, no moral authority, to create a State - Federal Law conflict. The Massachusetts Supreme Judicial Court finds itself in the interesting parallel to the Virginia Court in *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816) (Where a state supreme court refused to adhere to the supremacy of the law decided by the US Supreme Court). Massachusetts redefinition of marriage or spouse challenges the United States Congress, the President, decisions of the US Supreme Court, and of the Federal 1st Circuit court. In relation to 1 USC § 7 both the Legislative and Executive branches worked together to enact this section for the express purpose of preventing what the Massachusetts court now asserts. The Massachusetts courts have no lawful jurisdiction to decide that under some previously unknown interpretation of the Massachusetts Constitution, based upon controversial behavior, legal provisions within federal law may be overridden. Desiring access to "State and Federal benefits" for homosexual couples, the Massachusetts court may not confer

an "equal" marital or spousal status upon homosexuals without addressing first the Federal Law implicated by 1 USC § 7.

As part of the central holding in *Lawrence*, "private conduct without government intervention" does not include marriage, or marriage dissolution unless the US Supreme Court itself wishes to address 1 USC § 7, the substantial common law, and the history and traditions of the United States. While *Lawrence* may leave some ambiguity, the conclusion of the court's decision demonstrates the consideration of the various forms of marriages that might be legally challenged, and the court makes it clear that its decision does not encompass these areas. In this respect, the *Lawrence* decision does not touch on 1 USC § 7, and therefore leaves this Federal Law standing.

THE PUBLICLY ENACTED ERA AMENDMENT NEVER INTENDED HOMOSEXUAL SPOUSES

The ratification history of the Massachusetts Equal Rights constitutional amendment is explored detailing the exclusion of homosexual marriage. This finding demonstrates the Massachusetts court is attempting to pressure the legislature to advance a personal agenda that is not supported by law, history, or the State's Constitution. It is a manufactured creation as noted in the ratification history of the Equal Rights Amendment to the Massachusetts Constitution. Evidence available to the legislature, such as that listed below, must be considered as "rational" in relation to prohibiting homosexual marriage.

United States v. Carolene Prods. Co., 304 U.S. 144, 154 (1938)

(Although persons challenging the constitutionality of legislation may introduce evidence in support of their claim that the legislation is irrational . . . they will not prevail if 'the question is at least debatable' in view of the evidence which may have been available to the Legislature). From the *Goodridge* dissent of Justice Cordy (with whom Spina and Sossman joined);

[T]he legislative history of the ERA, ...adopted by the voters on November 2, 1976, after... constitutional conventions of the Legislature on August 15, 1973, (by a vote of 261-0) and May 14, 1975 (by a vote of 217-55).

[Anticipating adoption, a resolution was approved on June 21, 1975 as] a "Resolve providing for an investigation and study by a special commission relative to the effect of the ratification of the proposed amendments to the Constitution of the Commonwealth of Massachusetts and the Constitution of the United States prohibiting discrimination on account of sex upon the laws, business communities and public in the Commonwealth." ...[T]he commission was to catalog the aspects of the General Laws that would have to be amended... to comply with the mandate of the proposed amendment that equality not be abridged on the basis of sex.

On October 19, 1976, just before... the amendment was to be considered, the commission filed its Interim Report, which focused on the effect of the Massachusetts ERA on the laws of the Commonwealth... A section of the report, entitled "Areas Unaffected by the Equal Rights Amendment," addressed some of the legal regimes that would not be affected by the adoption of the ERA. One... area was "Homosexual Marriage," about which the commission stated: "An equal rights amendment will have no effect upon the allowance or denial of homosexual marriages. The equal rights amendment is not concerned with the relationship of two persons of the same sex; it only addresses those laws or public-related actions which treat persons of opposite sexes differently. The Washington Court of Appeals has already

stated that the equal rights amendment to its state constitution did not afford a basis for validating homosexual marriages. In Colorado, the attorney general has likewise issued an opinion that the state equal rights amendment did not validate homosexual marriage. There are no cases which have used a state equal rights amendment to either validate or require the allowance of homosexual marriages."

The views of the commission were reflected in the public debate... that focused on gender equality... Claims that the ERA might be the basis for validating marriages between same-sex couples were labeled as "exaggerated" and "unfounded." For example, before the vote, the Boston Globe published an editorial discussing and urging favorable action on the ERA. In making its case, it noted that "[t]hose urging a no vote... argue that the amendment would... legitimize marriage between people of the same sex... In reality, the proposed amendment would require none of these things... [After] the vote, the Boston Globe heralded the electorate's acceptance of "the arguments of proponents that the proposal would not result in many far-reaching or threatening changes." (references and notes omitted)

This history, coupled with the attempted passage of the recent Marriage Amendment to the Massachusetts Constitution demonstrates the public's interest in marriage. The public's interests have been repeatedly affirmed by the US Supreme Court as part of any marriage determination.

MASSACHUSETTS IS CREATING A CONSTITUTIONAL CRISIS

The *Brief of Amici Curiae of the States of Utah, Nebraska and South Dakota*, demonstrates that the *Goodridge* court has been clearly, and constructively notified that "a same-sex marriage policy would prompt a constitutional crisis... [Massachusetts] should be exceptionally hesitant before taking any action that

could have such dramatic impact upon millions of essentially un-represented citizens." This Amicus goes on to note:

Advocates of same-sex marriage have openly declared their intention to force other states to recognize same-sex marriage... For example, Evan Wolfson, has written that "full faith and credit recognition [of same-sex marriages] is mandated by the plain meaning of the Full Faith and Credit Clause, and by basic federalist imperatives," and argued that "if you're married, you're married; this is one country, and you don't get a marriage visa when you cross a state border." Deborah M. Henson argues that Article IV, § 1 of the Constitution should and can be interpreted to compel other states to recognize same-sex marriage if Massachusetts or some other state legalizes same-sex marriage. Many other legal scholars writers in law review and other publications have made similar arguments calling for "invigorating" the Full Faith and Credit Clause to require states to recognize same-sex marriages, asserting compulsory recognition and enforcement in all states of "marital decrees" recognizing same-sex marriages, or asserting that "[i]f Massachusetts legalizes same-sex marriages, the effects will be felt across the country since other states must recognize gay marriages performed in Massachusetts under the Full Faith and Credit Clause of the U.S. Constitution." Schemes suggesting judicial declarations of marital status to increase the prospects for interstate recognition have been promoted.

[S]ame-sex couples from other states who married in Massachusetts would return to their own states and demand that those states recognize their Massachusetts same-sex marriages... [T]he experience of Vermont is instructive. In less than two years after the Vermont civil union law took effect, intermediate appellate courts in at least two other states had been forced to confront the divisive issue whether or to what extent to recognize same-sex civil unions registered in Vermont.

The experience of Vermont clearly shows that advocates of Same-Sex Marriage intend to force all states to recognize same-sex marriage if Massachusetts legalizes the same. The exportation of Vermont civil unions is just a preview of the aggressive effort that will be made using Massachusetts to manipulate and coerce other states to recognize same-sex marriage despite their own strong public policies...

[T]he point is that a *serious* constitutional confrontation involving Congress, which overwhelmingly passed the Defense of Marriage Act, and the American judiciary is inevitable if Massachusetts legalizes same-sex marriage. In the confrontation, the judiciary will be asked to force states to recognize same-sex marriage over their own objections, and over the emphatic opposition of Congress. (all footnotes presented in bibliography form below) ¹⁷

CONCLUSION

APPROPRIATE REMEDIES AVAILABLE TO MASSACHUSETTS

The legislature is under no lawful obligation to follow the *Goodridge* court decision which would violate Federal Law and set

¹⁷ *Evan Wolfson, Director of the Marriage Project (Lambda Legal Defense and Education Fund, Inc., Winning and Keeping Equal Marriage Rights: What Will Follow Victory in Baehr v. Lewin? A Summary of Legal Issues at 2 (April 19, 1996), and again at 4 (March 20, 1996).*

Deborah M. Henson, *Will Same Sex Marriages be Recognized in Sister States?: Full Faith and Credit and Due Process Limitation on States' Choice of Law regarding the Status and Incidents of Homosexual Marriage Following Massachusetts's Baehr v. Levin*, 32 U. LOUISVILLE J. FAM. L. 551, 584-590 (1993-1994)

Nancy Klingeman & Kenneth May, *For Better or For Worse, In Sickness and in Health, Until Death do Us Part: A Look at Same-Sex marriage in Massachusetts*, 16 U. HAW. L. REV. 447.

Habib A. Balian, Note, *Til Death Do Us Part: Granting Full Faith & Credit to Marital Status*, 68 S. CAL. L. REV. 397, 401, 406-408 (1995).

Lewis A. Silverman, *Vermont Civil Unions, Full Faith and Credit, and Marital Status*, 89 Ky. L.J. 1075, 1077 (2000); see generally Arthur S. Leonard, *Ten Propositions About Legal Recognition of Same-Sex Partners*, 70 Cap. U. L. Rev. 343, 350-355 (2002).

Andrew Koppelman, *Same-Sex Marriage, Choice of Law, and Public Policy*, 76 Tex. L. Rev. 921 (1998); Anne M. Burton, Note, *Gay Marriage -- A Modern Proposal: Applying Baehr v. Lewin to the International Covenant on Civil & Political Rights*, 3 IND. J. GLOBAL LEGAL STUD. 177, 195 (1995); but see *id.* n.22. See further Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Debate*, 21 N.Y.U. Rev. L. & Soc. Change 567, 612 n. 196 (1994-95) (referring to another forthcoming article arguing that Full Faith and Credit mandates interstate recognition of same-sex marriage). Barbara J. Cox, *Same Sex Marriage and Choice of Law: If We Marry in Hawaii are We Still Married When We Return Home?*, 1994 WIS. L. REV. 1033, 1041 n. 23 (1994); Mark Strasser, *The Challenge of Same-Sex Marriage, Federalist Principles, and Constitutional Protections* (1999).

up a constitutional crisis. The legislature should not act on behalf of the *Goodridge* court but instead request the court to reverse its ruling. If the legislature chooses to abide by the *Goodridge* decision it will do so without any legitimate basis and will be effectively acquiescing legislative control over the people's elected officials to the courts.

The fact that the legislature feels compelled by the present crisis to submit Senate Bill 2175 to the court for review indicates that the *Goodridge* court is continuing to proceed, similar to the result of its "Clean Elections" (*Kelly Bates decision*), in the manner of a "super-legislature." This violates the separation of powers in the Massachusetts Declaration of Rights, Article XXX. Striking down Massachusetts marriage laws, rather than allowing the Legislature to write legislation (as the *Goodridge* court does in violation of Article XXX) will cause a backlash that will damage the court's already low credibility.

This may result in the following:

Promotion of hearings to remove the judges from office for creating a constitutional crisis. Judge Roy Moore was removed from office because he refused to abide by Federal mandates. Further encouragement of successful passage of S1065 at the State Constitutional Convention on Feb. 11. This Convention, in addition to the question of a constitutional amendment banning

same sex marriage, will also address whether judges, under S1065, should be up for re-election every 6 years.

Presentation of a Writ of Mandamus to the Federal District court demanding that the *Goodridge* court abide by Federal Law and by Supreme Court dictates.

The remedy is clear. The legislature and the *Goodridge* court must remove all references to the word "spouse" or "marriage" in any proposed civil union language. Once it has made clear that it has no intent to redefine marriage the Legislature can then shape appropriate legislation to respond to *Goodridge*. Otherwise, Massachusetts must disavow all Federal Funding contained in the provisions of US Code Titles 10, 25, 26, 42, and 50 along with other miscellaneous references to marriage or spouse in other section of the US Code.

An interesting piece from the New York Times shows that public opinion against any form of gay marriage is rapidly escalating. Even with its open promotion of the homosexual agenda and leftist leanings, the New York Times can no longer ignore the public controversy that is brewing around Gay marriage. As this December 21, 2003 pressdemocrat.com (New York Times) piece notes:

The latest New York Times/CBS News poll has found widespread support for an amendment to the United States Constitution to ban gay marriage. It also found unease about homosexual relations in general, making the issue a

potentially divisive one for the Democrats and an opportunity for the Republicans in the 2004 election.

Support for a constitutional amendment extends across a wide swath of the public and includes a majority of people traditionally viewed as supportive of gay rights, including Democrats, women and people who live on the East Coast.¹⁸

If this becomes an election issue, public sentiment will certainly grow stronger against homosexual marriage and will bring the State of Massachusetts right into the center of the controversy. Public opinion must be part of any determination of "spousal," or "marital," or "family" status.

The strong local and international reaction against approval of gay marriage and related issues is evident in both the political and religious spheres. The Russian Orthodox Church for example stopped contacts with the Episcopalian Church of the USA following that church's election of a gay bishop.¹⁹ While the Catholic Bishops of Massachusetts called the *Goodridge* decision a national tragedy²⁰, the U.S. Conference of Bishops overwhelmingly called for states to withhold recognition of same

¹⁸ "*Strong Support Is Found for Ban on Gay Marriage*", pressdemocrat.com (A New York Times piece), Kathleen Q. Seelye and Janet Elder, December 21, 2003.

¹⁹ "*The Church Cannot Approve of the Perversion of Human Nature Created by the Creator Himself*" The Statement of the Department for External Church Relations of the Moscow Patriarchate. Church News, 2003 (Online version at <http://www.russian-orthodox-church.org.ru/ne311176.htm>).

²⁰ "*State's Catholic Bishops Call Gay Marriage Ruling A National Tragedy*" ABC 6 News, Rhode Island and Southeastern Massachusetts, Nov 29, 2003. (Online version at <http://www.abc6.com/article.php?ID=4084>)

sex marriage.²¹ The Former Attorney General of Massachusetts Robert Quinn noted that the *Goodridge* decision “has made a sow's ear out of a silk purse in the minds of many” and called for the Legislature to have the final say on gay marriage²². *Goodridge*, rather than enhance, weakens the Massachusetts Constitution declaration:

“The body politic is formed by a voluntary association of individuals; it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by the common good.’

Indeed, in today's global society *Goodridge*, is likely to cause increasing conflict and discord with much of the worlds population which, far from accepting same-sex marriage, still views homosexuality as a crime.^{23 24 25}

The *Goodridge* court notes that “no one argues that striking down the marriage laws is an appropriate form of relief”, an acknowledgement thereby that the marriage laws are

²¹ *Catholic bishops decry gay marriage*, Salt Lake Tribune, by Rachel Zoll - Associated Press, November 13, 2003. (Online version at http://www.sltrib.com/2003/Nov/11132003/nation_w/110586.asp)

²² *Legislature, Not Bench, Should Have Final Say on Gay Marriage*, Robert H. Quinn, Dorchester Reporter, December 4, 2003. (At <http://www.dotnews.com/comment%2012.18.03.html>)

²³ “*Courts Overstepped Bounds in Gay Marriage Decision*”, Joseph Ureneck, Dorchester Reporter, December 11, 2003.

²⁴ “*Keep homosexuality in crime list: Centre*” The Hindu, Staff Reporter, September 10, 2003. (Online version at <http://www.hindu.com/2003/09/10/stories/2003091007930400.htm>)

²⁵ “*Homosexuality is a Crime Worse Than Murder*”, Time Asia, Mageswary Ramakrishnan, September 26, 2000. (<http://www.time.com/time/asia/features/interviews/2000/09/26/int.malay.gay2.html>)

constitutional as written. Otherwise, if they were

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The Goodridge court, by acting as a "super legislature", defies the will of the people of Massachusetts and forces the creation

legislature's request for an advisory opinion should be a

Goodridge decision.

This the _____ Day of January, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the _____ day of January, 2004, two true and exact copies of the BRIEF OF *AMICUS CURIAE* OF BILL WOOD AND JOSEPH URENECK have been delivered by US mail first class to SENATE PRESIDENT ROBERT E. TRAVAGLINI, State House, Room 330, Boston, MA 02133

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