
COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-08860

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,

PLAINTIFFS-APPELLANTS,

v.

DEPARTMENT OF PUBLIC HEALTH AND DR. HOWARD KOH,
in his official capacity as
COMMISSIONER OF DEPARTMENT OF PUBLIC HEALTH,

DEFENDANTS-APPELLEES.

**BRIEF OF AMICI CURIAE OF THE RELIGIOUS COALITION FOR
THE FREEDOM TO MARRY, AND OTHERS (HEREIN LISTED ON THE
INSIDE FRONT COVER) IN SUPPORT OF PLAINTIFF-APPELLANTS**

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Dated: November 8, 2002

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DIGNITY BOSTON

THE JEWISH RECONSTRUCTIONIST FEDERATION

KESHET

UNITARIAN UNIVERSALIST ASSOCIATION

UNITARIAN UNIVERSALIST MINISTERS ASSOCIATION
MASSACHUSETTS BAY DISTRICT CHAPTER

UNITED CHURCH OF CHRIST COALITION FOR LGBT
CONCERNS

UNITED FELLOWSHIP OF METROPOLITAN COMMUNITY
CHURCHES

COVENANT OF THE GODDESS

CHURCH OF THE SACRED EARTH; A UNION OF PAGAN
CONGREGATIONS

INDIVIDUAL REPRESENTATIVES OF FAITH COMMUNITIES

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STATEMENT OF THE CASE

The appellants are seven same-sex couples who applied for, and were denied, marriage certificates from their respective towns and municipalities. On May 7, 2002, the Suffolk Superior Court denied the plaintiffs' motion for summary judgment and dismissed the case by granting the defendants' cross-motion for summary judgment. The appellants have filed their timely appeal to this Court.

**STATEMENT OF THE INTEREST OF THE AMICUS
CURIAE**

In its Memorandum of Decision and Order on Parties' Cross-Motion for Summary Judgment, the Trial Court invoked "English ecclesiastical law" in support of its conclusion that the Massachusetts marriage statutes cannot support marriage by persons of the same sex (R.A. 114).¹

As representatives of a wide variety of religious faiths, traditions, and other religious organizations in the Commonwealth of Massachusetts, and as supporters of the right of persons to enter into

¹ The Trial Court concludes that the marriage statutes, enacted during the American colonial period, derived from ecclesiastical law.

marriage with a person of the same sex, the *amici*² believe that the Trial Court's invocation of ecclesiastical law to support its position in this case raises grave concerns, for the reasons set out below.

SUMMARY OF ARGUMENT

Our society typically uses the same word, "marriage," to describe both the common religious rite and the state-supported process for the legal union of two people. The term "marriage" applies both to wedding ceremonies performed within the confines of a religious community ("religious marriage"), as well as to the certification process set forth in G.L. c. 207 for entering into a legal relationship certified by the Commonwealth ("civil marriage"). Despite identical nomenclature, civil and religious marriages are different concepts with separate meanings. (pp.4-8).

Civil marriage is a legal institution regulated by a statutory process used by the Commonwealth to

² See Appendix 1 for a list of organizational *amici* with individual statements of interest and See Appendix 2 for a list of individual representatives of various faith communities.

confer a legal status, accompanied by a panoply of rights, protections and obligations, on a pair of individuals who have met the state's marriage criteria. In contrast, religious communities may perform weddings, but they are purely ceremonial, and the unions created are spiritual and sacred, but unaccompanied by any legal significance. The parameters of religious ceremonies are subject only to regulations by individual religious faiths, clergy or houses of worship, and therefore may be wholly inconsistent with the parameters of marriage set forth by the state. (pp. 4-8)

These separate understandings of marriage co-exist and may intersect, as a religious ceremony may fulfill the Commonwealth's solemnization process for civil marriage if the couple meets the state's criteria.³ Yet despite this potential interaction,

³ See G.L. c. 207, § 38. The Commonwealth permits resident leaders of religious faiths and organizations to solemnize marriages (e.g., duly ordained ministers of the gospel, ordained deacons of the United Methodist or Roman Catholic Church, commissioned cantors or rabbis of the Jewish faith, Buddhists priests and ministers, authorized representatives of the Spiritual Assembly of the Baha'is, ordained ministers of the Unitarian Universalist Association, duly appointed leaders of Ethical Culture Societies recognized by the American Ethical Union, Imams of

civil and religious marriage remain essentially separate. The historical evolution of civil marriage and the careful efforts of the founders of the Commonwealth to distance themselves from the influence of the ecclesiastical courts of England further demonstrate that civil marriage was intended to operate independently of religious edict. Only civil marriage is at issue in this case.(pp. 8-15)

The injection of religion -- indeed any religious view -- into civil marriage by the Trial Court is particularly inappropriate in light of the great diversity of opinion among voices of faith with regard to marriage. Several mainstream religious denominations fully support marriage for same-sex couples. *Amici* urge this Court to end the exclusion of same-sex couples from marriage.(pp. 15-25)

ARGUMENT

I. CIVIL MARRIAGE IS A LEGAL RELATIONSHIP COMPLETELY SEPARABLE FROM THE RELIGIOUS RITE OF MARRIAGE

A. Civil Marriage Is A Legal Status Created By The State

Orthodox Islam, regular or special meetings of Friends or Quaker Meeting).

Massachusetts statutes establish marriage as a legal status, created through the issuance of a certificate by the Commonwealth, in connection with solemnization by a presiding civil or religious official.⁴ In order to obtain a marriage certificate, a couple must meet certain conditions precedent such as age,⁵ lack of degree of consanguinity or affinity,⁶ absence of evidence of certain diseases,⁷ non-existence of another marriage),⁸ timely filing of written notice of intention to marry,⁹ and performance of an oath or affirmation of the absence of any legal impediment to marriage¹⁰. A certificate of marriage serves as evidence that the Commonwealth officially recognizes, for the purpose of imposing obligations and granting benefits, the union of two people (e.g., that a couple

⁴ See G.L. c. 207, §§ 19, 20, 28, 28A, 30, and 37 (pertaining to notice of intention of marriage), §§ 38-43 (solemnization of marriage), and § 45 (evidence of marriage).

⁵ G.L. c. 207, § 7.

⁶ G.L. c. 207, §§ 1&2.

⁷ G.L. c. 207, § 28A.

⁸ G.L. c. 207, §§ 4&6.

⁹ G.L. c. 207, § 19.

¹⁰ G.L. c. 207, § 20.

has registered, solemnized, and otherwise complied with all regulatory matters and payment of fees that are conditions precedent to Massachusetts recognition of a legal or civil marriage).

Once solemnized, civil marriage is a status that is recognized legally, socially, and politically, regardless of religious background. Civil marriage binds the committed couple in a legal relationship affirmatively encouraged by the Commonwealth through the bundling of the legal status with a myriad of rights, protections and obligations.¹¹ These protections and obligations arise regardless of whether any religious tradition has sanctioned the union.

**B. Religious Weddings Are Rites
Created By Communities Of Faith**

Unlike civil marriage, faith-based weddings are regulated entirely by and within each religious community's organizational system of beliefs. While many religious faiths, traditions and communities

¹¹ Civil marriage is "a legal status from which certain rights and obligations arise." DeMatteo v. DeMatteo, 436 Mass. 18, 31 (2002). See Brief of Amici Curiae Boston Bar Association, et al. (detailing comprehensive legal protections afforded to married couples).

conduct ceremonial celebrations, services and worship meetings for same-sex couples, the unions they create are solely spiritual and religious, and exist independent of legal recognition. When officials of these religious faiths or organizations within the Commonwealth marry or join couples in a union, it is a religious rite conferring neither legal status nor any rights or obligations apart from those dictated by faith or religious and cultural tradition.

Consistent with the traditions of their faith, religious leaders pass judgment upon the suitability of potential couples and choose those whom they will join in religious unions. They are not compelled to accept the Commonwealth's definition of civil marriage, and indeed, many religious institutions do not accept it. In fact, many religious definitions of marriage are more restrictive than that of the Commonwealth, for example, rejecting interfaith marriages¹² or re-marriages after divorce.¹³ Still others are more inclusive than the Commonwealth,

¹² See, e.g., Leadership Council of Conservative Judaism, Statement on Intermarriage (Mar. 7, 1995) at <http://www.rabassembly.org/info/intermar/> (last visited November 6, 2002) ("Rabbis and cantors affiliated with the Conservative Movement may not

blessing the unions of committed same-sex couples.¹⁴

The Commonwealth's system of civil marriage has no impact on the religious autonomy of any faith, church or religious tradition with respect to its guidelines for performing religious weddings.

C. The History Of Marriage In The Colonies And The Commonwealth Of Massachusetts Support The Independent And Separate Nature Of Civil Marriage And Religious Ceremonies

The law of marriage within the Commonwealth developed over a period of centuries. During the time colonists were liberating themselves from English ecclesiastical investigation and harassment because of

officiate at the marriage of a Jew to a non-Jew, may not co-officiate with any other clergy, and may not officiate or be present at a purely civil ceremony.")

¹³ See, e.g., Catechism of the Catholic Church - The Sacrament of Matrimony, at <http://www.vatican.va/archive/catechism/p2s2c3a7.htm> (last visited November 4, 2002) ("In fidelity to the words of Jesus Christ - 'Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery' the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law.")

¹⁴ See Part II, infra.

their beliefs and settling here in North America,¹⁵ English marriage law was the exclusive concern of ecclesiastical courts and tenets of canon law. The legacy of such ecclesiastic rule, including its conceptions about marriage, undoubtedly influenced early American government.¹⁶ Yet, while English ecclesiastical law may have influenced many principles of the law, civil statutes rather than religious doctrine have always determined the requirements for a valid legal marriage in Massachusetts. In Massachusetts and throughout New England, civil ceremonies and civil registration for marriage were the methods chosen by the colonists to address the

¹⁵ To escape ecclesiastical investigation as well as mockery, criticism, and disfavor from citizens in England, the Pilgrims voluntarily immigrated to Holland, where other groups had found religious liberty. In 1620, based upon objections to the presence of other religious groups they considered radical, Dutch influence on their English ways, and threats of war between the Netherlands and Spain, the Pilgrims immigrated to America. See generally G. F. Willison, The Pilgrim Reader (1953).

¹⁶ E.g., the principle of mutual consent between the parties to a marriage; public notice to a community that a couple wanted to be married, by posting banns (later this became a system of licensing); use of public witnesses for a marriage to be official. See George Elliott Howard, A History Of Matrimonial Institutions 143-46 (1904)

incongruous and uncertain state of English marriage law.¹⁷ Despite the continuing interest of religious denominations in encouraging their members to seek legal marital status, those religiously-based interests are and have always been separate from and subordinate to the law with respect to civil marriage.¹⁸

In fact, the Puritan colonists who established the Massachusetts Bay and Plymouth Colonies were opposed to the ecclesiastical courts of the Church of England.¹⁹ Ecclesiastical courts were never established in the Massachusetts colonies, and regulations within Massachusetts continued to suggest a legislative policy of maintaining marriage as a civil institution rather than a religious institution. Our legal tradition departed, at a very early stage,

¹⁷ Id. at 126-27.

¹⁸ Homer H. Clark, Jr. The Law of Domestic Relations in the United States 31 (2d ed. 1988)

¹⁹ See William Epstein, Issues of Principle and Expediency in the Controversy over Prohibitions to Ecclesiastical Courts in England, 1 J. Legal Hist. 211, 228-30(1980). In 1572, in An admonition to Parliament, the Puritans pressured Parliament to reform by criticizing "bishops, ignorant clergy, ecclesiastical courts, and 'popish' sacraments and ceremonies." Id. at 229.

from canon law.²⁰ Ministers were not permitted to solemnize marriages in the towns in which they were settled until 1692 under the Provincial Charter of the Massachusetts Bay Colony.²¹

The Pilgrims who founded the Plymouth Colony viewed marriage as a civil institution embodying important principles of property ownership, rather than as a religious rite. In 1646, in his written history of the colony, Governor William Bradford noted the custom of magistrates performing marriages in Plymouth Plantation as a civil matter.²² Governor Bradford referred to 1590 Dutch law as the source of a procedural law for magistrates to perform civil marriages of persons of any religion who appeared

²⁰ Gould v. Gould, 78 Conn. 242 (1905) (contrasting early English and American common law with the canon law).

²¹ Charters and General Laws of the Colony and Province of Massachusetts Bay 242 (1814); Prov.Laws A.D. 1692, c. 12, §1.

²² "May 12 was the first marriage in this place which, according to the laudable custom of the Low Countries [the Dutch], in which they had lived, was thought most requisite to be performed by the magistrate, as being a civil thing, upon which many questions about inheritances do depend . . ." William Bradford, Of Plymouth Plantation, 1620-1647, 86 (Samuel Eliot Morison ed.) (1953) (emphasis added).

before them after open publication of their intent to be married.²³ In 1647, the Plymouth Colony legislature adopted this view that marriage is a civil status requiring solemnization in the presence of a magistrate.²⁴

Throughout the ensuing centuries, marriage as a legal status in Massachusetts has remained unquestionably a civil institution controlled by secular government.²⁵ Settlers in Massachusetts invested no civil authority in leaders and representatives of faith traditions or religious organizations, although later ministers and other religiously affiliated officials were authorized to

²³ "This decree or law about marriage was published by the States of the Low Countries Anno 1590. That those of any religion (after lawful and open publication) coming before the magistrates in the Town, or State house, were to be orderly (by them) married one to another." Id. (quoting Petit's History, fol. 1029).

²⁴ See Appendix 3 for a copy of the order by the General Court regarding the solemnization of marriages before a magistrate. The General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts, reprinted in 1 The Laws and Liberties of Massachusetts 1641-1691 44 (John D. Cushing ed. 1976).

²⁵ Inhab. of Milford v. Inhab. of Worcester, 7 Mass. (1 Tyng) 48, 51 (1810).

solemnize marriages on behalf of the sanctioning jurisdiction.²⁶

D. Although The Commonwealth's Marriage Scheme Allows Some Religious Officials To Play A Role In Solemnization, Religious Rites And Civil Marriage Remain Separate, Autonomous Realms

The one area in which religious and civil marriage interact is the Commonwealth's permitting solemnization of marriage by religious officials pursuant to G.L. c. 207, § 38. In effect, the presiding religious official acts as an agent of the Commonwealth for the purpose of satisfying the law's solemnization requirement. The Commonwealth may recognize a religious rite as fulfilling the separate ministerial act necessary for completing the procedures for registering, recording and reporting marriages within Massachusetts.

Beyond the ability of certain clergy to perform as both spiritual leader and sworn solemnization official under G.L. c. 207 § 38, there is no significant regulation, either affirmative or negative, imposed by the Commonwealth on any religious

²⁶ Id. at 52.

guidelines for performing marriages. No representative of a religious organization or faith tradition can be forced to perform any civil marriage. Moreover, the decision of a religious organization or faith tradition to perform or recognize a marriage has no impact on the ability of a civilly married couple to enjoy the legal rights and status conferred by the Commonwealth. The Commonwealth's recognition of a civil marriage between partners of the same sex (or an interfaith marriage, or a re-marriage) therefore, does not impair religious belief, practice or observance in any way because the autonomy of religious institutions to determine guidelines for marriage would remain unaltered.

In fact, religious belief and practice in Massachusetts have been protected deliberately and consistently from government interference. The Declaration of Rights²⁷ sought "to secure and

²⁷ Article 2 of the Massachusetts Declaration Of Rights provides "It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or

establish the most perfect and entire freedom of opinion, as to tenets of religion, and as to choice of the mode of worship.'"²⁸ The fear that interpreting the Commonwealth's marriage statutes to include same-sex couples and afford them equal rights under those laws would somehow jeopardize freedom of exercise of religion is wholly unfounded.

II. MANY RELIGIOUS TRADITIONS CELEBRATE THE UNIONS OF SAME-SEX COUPLES IN THEIR RELIGIOUS COMMUNITIES AND SUPPORT CIVIL MARRIAGE RIGHTS FOR SAME-SEX COUPLES

Many faiths and religious communities in Massachusetts and around the world already accept and perform religious wedding ceremonies for same-sex couples. Many also fully support the recognition of marriage for same-sex couples under the law.

sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship."

²⁸ See Society of Jesus of New England v. Boston Landmarks Comm'n, 409 Mass. 38, 41-43 (1990) (quoting Adams v. Howe, 14 Mass. 340, 346 (1817)). See also Attorney General v. Desilets, 418 Mass. 316, 322-23 (1994) (when government requirements conflict with sincerely held religious beliefs, Art. 2 requires that religious beliefs prevail unless the government pursues an unusually important goal and exempting the believer would substantially hinder fulfillment of that goal).

In Massachusetts, the Religious Coalition for the Freedom to Marry ("RCFM") represents a diverse spectrum of religious communities, houses of worship and individual clergy who support civil marriage for same-sex couples, perform same-sex unions in their congregations, or both. RCFM as a coalition strives to support civil marriage rights for same-sex couples and seeks to promote dialogue within faith communities about religious rites for gay and lesbian couples.²⁹ RCFM has published a "Declaration of Religious Support For the Freedom of Same-Gender Couples to Marry" (the "Declaration") that has been signed by over four hundred religious leaders representing congregations of various faiths throughout the Commonwealth³⁰. In pertinent part, this Declaration reads:

As religious people, clergy, and leaders, we are mandated to stand for justice in our common civic life. We oppose appeals to sacred texts and religious traditions for the purpose of denying legal equity to same-gender couples. As concerned citizens, we affirm the liberty of adults of the same gender to love and marry. We insist that no one, especially the state, may either coerce

²⁹ Religious Coalition for the Freedom to Marry at <http://www.rcfm.org> (last visited August 21, 2002).

³⁰ See Appendix 4; Religious Coalition for the Freedom to Marry, Declaration of Religious Support For the Freedom of Same-Gender Couples to Marry.

people into marriage, or bar two consenting adults of the same gender from forming the family unit that lets them be more fully loving, thus more fully human. We respect the fact that debate and discussion continue in many of our religious communities as to the theological and liturgical issues involved. However, we draw on our many faith traditions to arrive at a common conviction: we are resolved that the State should not interfere with same-gender couples who choose to marry and share fully and equally in the rights, responsibilities, and commitments of civil marriage.³¹

The faiths represented on the Declaration thus far include faiths of Judeo-Christian origin as well as Buddhist and Pagan traditions, and religious communities and clergy continually add their names to this list.

Apart from the support coalesced by RCFM, religious communities around the Commonwealth have taken their own actions to accept same-sex religious marriage and support the right of same-sex couples to obtain civil marriages. For example, in two other important religious traditions, the Unitarian Universalists ("UU") and United Church of Christ ("UCC"), clergy and congregations may celebrate

³¹ Id.

religious unions of same-sex couples and notably each trace their history directly back to the Puritans.³²

As a result of a fundamental theological disagreement, Puritan congregations split into the Congregationalists and the Unitarians in the late 1700s and early 1800s³³. In 1961 the Unitarians merged with the Universalists to create the current denomination, while the Congregationalists evolved into the modern-day United Church of Christ.³⁴ Thus, both the United Church of Christ and the Unitarian Universalists of today are deeply rooted in the fabric of Massachusetts religious thought, and growing numbers of congregations in each denomination perform wedding ceremonies for same-sex couples and support civil marriage for such couples as well.

In particular, the Unitarian Universalist Association has a strong history of support for the

³² Harris, Mark W., Unitarian Universalist Origins: Our Historic Faith (October 2002), available at www.uua.org/info/origins.html; Massachusetts Conference, United Church of Christ, Our History: The Massachusetts Conference (October 2002), available at www.macucc.org/aboutus/history.htm.

³³ Id.

³⁴ Id.

rights of gay and lesbian people since at least 1970 when it passed its General Assembly Resolution to end Discrimination against Homosexuals and Bisexuals, through its 1996 adoption by the Board of Trustees of a resolution in Support of Same-Gender Marriage.³⁵ The Unitarian Universalist Association and its Welcoming Congregations³⁶ in Massachusetts perform weddings for same-sex couples and support the right of same-sex couples to obtain a civil marriage in Massachusetts.

Other faith traditions similarly support the right of same sex couples to marry. For example, the American Friends Service Committee ("AFSC") and other Quaker institutions have long supported civil marriage rights for same-sex couples "as a matter of civil rights, growing out of our testimony of equality."³⁷

³⁵ See Appendix 5; History of Unitarian Universalist Involvement in and Support of Bisexual, Gay, Lesbian and Transgender Issues at www.uua.org/obgltc/resource/history.html (last visited on August 29, 2002), and General Assembly Resolutions.

³⁶ Id.

³⁷ See Appendix 6; American Friends Service Committee, Statement of the Board of the American Friends Service Committee Upon Filing and Amicus Brief in the State of Hawaii's in the Same Gender Marriage Case of Baehr v. Miike (Nov. 17, 1996), available at <http://www.afsc.org/news/1998/stbdhi.htm>.

Recognizing the distinction between civil marriage and religious rites, the Board of AFSC has made clear that decisions about religious ceremonies must be made "based on Spirit-led discernment within Friends meetings and churches," but has also issued a charge to Friends to "'help in the elimination of ... discrimination and prejudice'" with regard to civil marriage.³⁸ The AFSC now supports the legal recognition of committed same-sex couples through civil marriage in Massachusetts.

The Reform Jewish movement also supports the right of same-sex couples to obtain civil marriages and perform wedding ceremonies within their faith traditions. In 1987 the Union of American Hebrew Congregations ("UAHC") affirmed its commitment to welcoming gay and lesbian couples in its congregations, and in 1993 expanded its support with a resolution supporting full equality under the law for gay and lesbian people, including legal recognition of gay and lesbian relationships.³⁹ In 1997 UAHC

³⁸ Id.

³⁹ See Appendix 7; Union of American Hebrew Congregations General Assembly Resolution adopted October 29-November 2, 1997.

specifically resolved to support secular efforts to promote legislation that would recognize civil marriage of same-sex couples.⁴⁰

In addition, the Central Conference of American Rabbis ("CCAR") has fully integrated Jews of any sexual orientation into its ranks for over a decade, including the creation of special wedding ceremonies for same-sex couples. In 1996 CCAR passed a resolution which unequivocally supported the right of same-sex couples to share fully and equally in the rights of civil marriage, and which specifically pointed out that civil marriage was a question of civil law, completely distinct from rabbinic officiation at such marriages.⁴¹

Another of the *amici*, the Universal Fellowship of Metropolitan Community Churches ("UFMCC"), has specifically ministered to the needs of the gay, lesbian, bisexual and transgender Christian communities since its inception in 1968. UFMCC allows its members to obtain, and authorized clergy to

⁴⁰ Id.

⁴¹ See Appendix 8; Central Conference of American Rabbis, Resolution On Gay and Lesbian Marriage adopted by the 107th Annual Convention of CCAR, March 1996.

perform, Holy Unions or the Rite of Holy Matrimony for same-sex couples.⁴² UFMCC acknowledges the separation of the religious rite of marriage from civil marriage and supports the ability of same-sex couples to obtain civil marriage licenses in Massachusetts.

In light of this diversity of religious opinion, the allusions to ecclesiastical law to justify the exclusion of same-sex couples from marriage by the Trial Court raise some important constitutional questions (R.A. 114).⁴³ Reliance on any particular religious view as a reason for state action would provoke concerns under the Declaration of Rights.⁴⁴ In

⁴² See Appendix 9; Bylaws of The Universal Fellowship of Metropolitan Community Churches, Article III, Section C pertaining to Rites of the Church, Effective July 2001 through December 2002, and Bylaws of The Universal Fellowship of Metropolitan Community Churches, Article III, Section C pertaining to Rites of the Church Bylaws effective January 2003

⁴³ Massachusetts marriage statutes were first enacted in colonial times, and "were derived from English common law, which, in turn, incorporated English ecclesiastical law. . . . Accordingly, the statutes that derived from the common-law understanding of marriage as the union of a man and a woman should be interpreted consistent with that standard."

⁴⁴ In addition to Art. 2, Art. 3 of the Declaration of Rights addresses religious freedom, stating: "all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of

Opinion of the Justices, 214 Mass. 599, 601 (1913), this Court held that the religion clauses of the Declaration of Rights "absolutely prohibit the enactment of any law establishing any particular religion" Thus, any reliance on church canons to further the exclusion of same-sex couples from marriage would elevate one religious view over all others.⁴⁵ Given the widespread support for marriage

the law; and no subordination of any one sect or denomination to another shall ever be established by law." Whether founded in personal religious belief or not, there is little doubt that the prohibition on marriage for same-sex couples correlates with the tenets of many of the dominant religions in the state. As clearly demonstrated supra, however, religious groups are by no means unanimous in their opposition to marriage for same-sex couples. Thus, construing the marriage statutes to incorporate a prohibition identical to that of the dominant faiths would raise serious constitutional questions, as it would appear to be an endorsement of the views of those dominant faiths. Comm. v. Joyce, 382 Mass. 222, 223 (1981) (statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also "grave doubts upon that score"). Such real or perceived endorsement by this Court would result in an understanding of the statute that would violate the ban on establishment of religion, which prohibits not only the creation of a state church, but also the incorporation of church doctrine in state law.

⁴⁵ Pielech v. Massasoit Greyhound, Inc., 423 Mass. 534, 540 (1996) ("A statute that prefers one or more religions over another violates the establishment clause."

for same-sex couples from communities of faith, enshrining one religious view as the basis for the state's interpretation of the civil marriage laws would be constitutionally impermissible.⁴⁶

CONCLUSION

This case seeks to end the discriminatory exclusion of gay and lesbian couples from civil marriage. Recognizing the distinction between religious wedding ceremonies and civil marriage, *amici* seek to clarify that this Court's actions in ending the discrimination would be a positive, just change with regard to civil marriage, but would not in any way impact the autonomy of every faith tradition to set their own guidelines for performing religious marriage rites.

Religious organizations would certainly oppose any attempt by the Commonwealth to regulate their internal ritual practices or to interpret the laws of

⁴⁶ Further, the fact that the ecclesiastical understanding of marriage has persisted unchallenged does not mean that it may continue to stand. See Colo v. Treasurer and Receiver General, 378 Mass. 550, 557 (1979) ("[T]he mere fact that a certain practice has gone unchallenged for a long period of time cannot alone immunize it from constitutional invalidity, 'even when that span of time covers our entire

the Commonwealth through the lens of any one particular religious tradition, whether that lens is the English ecclesiastic tradition, or some other single brand of religious belief, however widely held. The undersigned believe that the Commonwealth would do no harm to religious tradition or practice by recognizing civil marriage for same-sex couples and would support the Commonwealth's legal recognition of same-sex relationships through civil marriage.

national existence and indeed predates it.'")(citation omitted).

Respectfully Submitted,

THE RELIGIOUS COALITION FOR THE
FREEDOM TO MARRY, DIGNITYUSA,
DIGNITY BOSTON, THE JEWISH
RECONSTRUCTIONIST FEDERATION,
KESHET, UNITARIAN UNIVERSALIST
ASSOCIATION, UNITARIAN
UNIVERSALIST MINISTERS ASSOCIATION
MASSACHUSETTS BAY DISTRICT
CHAPTER, UNITED CHURCH OF CHRIST
COALITION FOR LGBT CONCERNS,
UNITED FELLOWSHIP OF METROPOLITAN
COMMUNITY CHURCHES, COVENANT OF
THE GODDESS, CHURCH OF THE SACRED
EARTH; A UNION OF PAGAN
CONGREGATIONS, OTHER
REPRESENTATIVES OF FAITH
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Dated this 8th day of November, 2002

APPENDIX

Number

1. List of Organizational *Amici Curiae* with Statements of Interest
2. List of Individual Clergy and Congregational *Amici Curiae* with Statements of Interest
3. The General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts, reprinted in 1 The Laws and Liberties of Massachusetts 1641-1691 (John D. Cushing ed. 1976)
4. Religious Coalition for the Freedom to Marry Declaration of Religious Support For the Freedom of Same-Gender Couples to Marry
5. History of Unitarian Universalist Involvement in and Support of Bisexual, Gay, Lesbian and Transgender Issues as published at www.uua.org/obgltc/resource/history.html on August 29, 2002, and General Assembly Resolutions
6. American Friends Service Committee, Statement of the Board of the American Friends Service Committee Upon Filing and Amicus Brief in the State of Hawai'i in the Same Gender Marriage Case of Baehr v. Miike (Nov. 17, 1996)
7. Union of American Hebrew Congregations General Assembly Resolution adopted October 29-November 2, 1997
8. Central Conference of American Rabbis, Resolution On Gay and Lesbian Marriage adopted by the 107th Annual Convention of CCAR, March 1996
9. Bylaws of The Universal Fellowship of Metropolitan Community Churches, Article III, Section C, effective July 2001-December 2002, and Bylaws of The Universal Fellowship of Metropolitan Community Churches, Article III, Section C, effective January 2003