COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-09163

REQUEST FOR AN ADVISORY OPINION A-107.

BRIEF OF CIVIL RIGHTS AMICI CURIAE, UNITED STATES REPRESENTATIVE JOHN LEWIS; THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION; THE AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS; THE ASIAN-AMERICAN LAWYERS ASSOCIATION OF MASSACHUSETTS; THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND; THE BOSTON BAR ASSOCIATION; COMMUNITY CHANGE, INC.; THE FAIR HOUSING CENTER OF GREATER BOSTON; THE GREATER BOSTON CIVIL RIGHTS COALITION; THE JEWISH ALLIANCE FOR LAW AND SOCIAL ACTION; JUSTICE RESOURCE INSTITUTE, INC.; JRI HEALTH; LAMBDA LEGAL DEFENSE AND EDUCATION FUND; LA RAZA CENTRO LEGAL; THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION; LLEGÓ, THE NATIONAL LATINA/O LESBIAN, GAY, BISEXUAL AND TRANSGENDER ORGANIZATION; THE MASSACHUSETTS ASSOCIATION OF HISPANIC ATTORNEYS; THE MASSACHUSETTS BLACK WOMEN ATTORNEYS; THE NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM; THE NATIONAL ASSOCIATION OF WOMEN LAWYERS; THE NATIONAL ASSOCIATION OF SOCIAL WORKERS; THE NATIONAL ASSOCIATION OF SOCIAL WORKERS MASSACHUSETTS CHAPTER; THE NATIONAL CENTER FOR LESBIAN RIGHTS; THE NATIONAL COUNCIL OF JEWISH WOMEN, INC.; THE NATIONAL LAWYERS GUILD LESBIAN, GAY, BISEXUAL AND TRANSGENDER COMMITTEE; THE NATIONAL LAWYERS GUILD MASSACHUSETTS CHAPTER; THE NATIONAL ORGANIZATION FOR WOMEN; THE NORTHWEST WOMEN'S LAW CENTER; NOW LEGAL DEFENSE AND EDUCATION FUND; PEOPLE FOR THE AMERICAN WAY FOUNDATION; SOULFORCE, INC.; THE SOUTHERN POVERTY LAW CENTER; THE URBAN LEAGUE OF EASTERN MASSACHUSETTS; and THE WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS.

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Brief of Civil Rights Amici Curiae

Statement of the Interests of Amici Curiae.

Amici curiae are United States Representative John Lewis and a coalition of our Nation's leading civil rights groups devoted to seeking equality and protecting the rights of all people, regardless of race, national origin, sex, disability, religion or sexual orientation.[1]

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[1] Many of these organizations previously participated in Goodridge v. Department of Pub. Health, 440 Mass. 309 (2003), as Amici in support of plaintiffs, urging the Court to rule, as it did, that marriage discrimination violates the Massachusetts Constitution. See the Addendum to this brief for individual statements of interest of each Amicus.

Introduction.

The Massachusetts Senate has asked the Court whether a proposed civil unions bill that specifically "prohibits same-sex couples from entering into marriage" but purportedly provides "all the benefits, protections, rights and responsibilities" of marriage complies with the equal protection and due process requirements of the Constitution of the Commonwealth. Senate, No. 2176. Amici agree with amicus curiae Gay & Lesbian Advocates & Defenders (GLAD) that the Court's Goodridge decision already answered the question presented and that the civil unions bill does not and cannot provide same-sex couples with "the same benefits, protections, rights and responsibilities of marriage."[2] Rather, that result only can be accomplished by permitting same-sex couples to marry on an equal basis with others.

[2] In Goodridge, this Court recognized that marriage provides innumerable tangible benefits and "enormous private and social advantages," 440 Mass. at 322, and that without the right to marry, same-sex couples are "excluded from the full range of human experience and denied full protection of the laws . . . ." Id. at 326. The many tangible and intangible differences between marriages and civil unions are being addressed by other amici in this case.

Amici write to make the independent point that creating a separate status for a group of people when there is no legitimate reason for doing so is inherently unequal, and therefore unconstitutional. In its Goodridge decision, this Court stated plainly that the Massachusetts Constitution "forbids the creation of second-class citizens." Goodridge, 440 Mass. at 312. As the United States Supreme Court has recognized in other contexts, constitutional guarantees of equal protection prohibit arbitrary discrimination by government because such treatment is destructive in and of itself, branding those in the disfavored group as inferior and less worthy members of society. The very fact that some in the Senate seek to create a separate status for same-sex relationships, when this Court already has concluded that there is no rational basis for excluding same-sex couples from marriage, shows why civil unions would not achieve equality for gay people, for a separate status would not be necessary except for the very purpose of setting one group apart as unworthy of inclusion in one of our most respected institutions. The proposed civil unions bill would institutionalize a discriminatory, second-class status for same-sex

couples in plain violation of the Massachusetts Constitution.

Argument.

The bedrock principle of the Massachusetts Constitution that the right to equality "forbids the creation of second-class citizens," Goodridge, 440 Mass. at 312, has been elaborated by federal courts construing the similar equality guarantee in the United States Constitution.[3] The United States Supreme Court has long recognized that the constitutional guarantee of equality is not only about equal opportunity to secure tangible things such as goods and services, education and employment.[4] Rather, equality is intrinsically important and is protected for its own sake. "[T]he right to equal treatment

[3] This Court has looked to the federal courts' interpretation of federal constitutional principles as a guide to its interpretation of Massachusetts' own robust constitutional protections. See, e.g., Wynn & Wynn, P.C. v. Massachusetts Comm'n Against Discrimination, 431 Mass. 655, 699 n.29 (2000); Longval v. Superior Court Dep't of the Trial Court, 434 Mass. 718, 721-31 (2001).

[4] Before even discussing the tangible rights and obligations of civil marriage, this Court in Goodridge first described the intangible benefits of marriage that fulfill "yearnings for security, safe haven, and connection that express our common humanity." Goodridge, 440 Mass. at 322.

guaranteed by the Constitution is not coextensive with any substantive rights to the benefits denied the party discriminated against." Heckler v. Mathews, 465 U.S. 728, 739 (1984). Thus, "discrimination itself" is a harm the Constitution does not tolerate without justification because it "stigmatiz[es] members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community." Id.

Unjustified government discrimination is inherently injurious, damaging the dignity and societal standing of members of the disfavored groups. See, e.g., id.; Allen v. Wright, 468 U.S. 737, 755 (1984) (the "stigmatizing injury often caused by . . . discrimination . . . is one of the most serious consequences of discriminatory . . . action"); Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724-25 (1982); Brown v. Board of Educ., 347 U.S. 483, 493-94 (1954). State discrimination diminishes the sense of self-worth of those discriminated against and invites and justifies private discrimination, denying them full participation in civic life. See, e.g., Lawrence v. Texas, 123 S. Ct. 2472, 2482 (2003) (holding sodomy laws unconstitutional because the

continued existence of any laws criminalizing private, consensual same-sex sexual relationships would be "an invitation to subject homosexual persons to discrimination both in the public and in the private spheres"); Strauder v. West Virginia, 100 U.S. 303, 308 (1879) (excluding black men from juries "is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to . . . race prejudice"). Unequal treatment that marks a group with a badge of inferiority betrays the constitutional promise of equality no less than more tangible forms of discrimination.

The starkest example of this betrayal and of the profound effects of a government stamp of inequality is this country's history of racial segregation. The cases that ultimately abolished this form of discrimination recognized the detrimental effects of segregation that has the "sanction of the law." Brown v. Board of Educ., 347 U.S. at 493-94 (noting that "the policy of separating the races is usually interpreted as denoting the inferiority of [African Americans]"). In Brown v. Board of Education, the Supreme Court recognized that establishing separate schools for black students "generates a feeling of

inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Id. The recognition of this psychological harm is what led the Court to hold that "[s]eparate educational facilities are inherently unequal" – and thus unconstitutional – even when those schools had the same facilities and resources. Id. at 495; see also Watson v. Memphis, 373 U.S. 526, 538 (1963) (the sufficiency of separate recreational facilities for African Americans "is beside the point; it is the segregation by race that is unconstitutional").

It was this same concern about the stigmatizing effects of discrimination that led Justice Harlan to dissent passionately from the Court's endorsement of "separate but equal" in the context of public accommodations in Plessy v. Ferguson, 163 U.S. 537 (1896) (Harlan, J., dissenting). Legislating "separate but equal" railroad coaches for blacks and whites, Justice Harlan recognized, "proceed[ed] on the ground that [African Americans] are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens." Id. at 560. As the Court later acknowledged in Brown v. Board of

Education and subsequent cases, the guarantee of equal protection does not permit a State to justify discrimination against a particular group simply by claiming to provide "'equal' accommodations." Id. at 552.

The principle that the Constitution demands equality for its own sake in order to prevent the psychological and social consequences of invidious discrimination was first articulated in response to racial segregation, but the United States Supreme Court also has rejected other forms of government discrimination that send the same message that some members of our community are not as worthy as others. For example, the Court now recognizes that rules and policies that relegate women to a separate sphere are discriminatory and serve to reinforce stereotypes that women are "innately inferior." Hogan, 458 U.S. at 725; Frontiero v. Richardson, 411 U.S. 677, 684-85 (1973); see also Heckler, 465 U.S. at 739 (discussing in context of gender discrimination how "discrimination itself" stigmatizes the disfavored group as innately inferior); Roberts v. United States Jaycees, 468 U.S. 609, 625 (1984) (gender

discrimination "deprives persons of their individual dignity").

Similarly, in United States v. Virginia, 518 U.S. 515 (1996), the Supreme Court rejected the State of Virginia's attempt to justify its categorical exclusion of women from the Virginia Military Institute on the ground that the State had provided a separate and allegedly "equal" facility for women. The Court stressed the implausibility of the State's claim that a separate facility could provide true equality given the long history of discrimination against women in public education, id. at 535-40, and the fact that the "parallel" institution did not replicate the numerous benefits provided by the established institution, including intangible benefits such as its "standing in the community, traditions and prestige." Id. at 547-48; 551-55. More fundamentally, the Supreme Court held that the discriminatory policy was inconsistent with the core principle that a state may not exclude women from "full citizenship stature." Id. at 532.

Concern about the stigma of government discrimination also figured prominently in the Court's decision in Lawrence last term striking down a law

that criminalized private, consensual same-sex sexual intimacy. The Court emphasized the "stigma" imposed by the law, and the fact that it "demean[ed] the lives of homosexual persons" and denied them "dignity." Id. at 2478, 2482. As the Court recognized, this kind of stigmatization is an affront to our constitutional system. Id. at 2484; see also id. at 2486 (O'Connor, J., concurring) (holding that equal protection prevents a state from creating "a classification of persons undertaken for its own sake") (quoting Romer v. Evans, 517 U.S. 620, 634-35 (1996)).

The principle that government must not take action that brands any group of citizens as less valued is so embedded in our constitutional tradition that it also pervades the Supreme Court's interpretation of the Establishment Clause's protection of religious minorities:

> [T]he Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community. Direct government action endorsing religion or a particular religious practice is invalid under this approach because it sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.

Lee v. Weisman, 505 U.S. 577, 607 n.9 (1992) (quoting Wallace v. Jaffree, 472 U.S. 38, 69 (1985) (O'Connor, J., concurring in judgment) (internal quotation marks omitted)).

What the Supreme Court has made unmistakably clear is that, independent of the harm caused by the deprivation of specific rights and benefits, the Constitution is offended whenever the government arbitrarily discriminates against a group of citizens. Such government-sponsored discrimination marks that group with a badge of inferiority and impairs their ability to be full participants in civic life.

This Court has long recognized that the Legislature is forbidden by constitutional equality guarantees from establishing arbitrary or irrational classifications and from enacting invidious discrimination. See, e.g., Pinnick v. Cleary, 360 Mass. 1, 28 (1971). In Goodridge, this Court held that excluding same-sex couples from the right to marry violates the Massachusetts Constitution because "[i]n so doing, the State's action confers an official stamp of approval on the destructive stereotype that same-sex relationships are . . . inferior to opposite-sex relationships and are not worthy of respect." 440

Mass. at 333. The proposed civil unions bill would continue to exclude lesbians and gay men from marriage and, thus, would continue to work a "deep and scarring hardship . . . for no rational reason." Id. at 341. The proposed separate system for recognizing the relationships of same-sex couples would create precisely the kind of "second-class citizenship" that the Massachusetts Constitution forbids. Id. at 312.

Even if a separate status for same-sex couples could replicate all of the tangible and intangible benefits provided by marriage, which it cannot, such a system would still make second-class citizens of the couples who had no choice but to enter into this separate institution because marriage was forbidden to them. As the United States Supreme Court recognized fifty years ago, "separate but equal" is not equal. Excluding same-sex couples from joining the cherished institution of marriage is intrinsically harmful because it would mark them as inferior to their heterosexual counterparts and diminish their status in the community. Because the exclusion would send the official message that same-sex relationships are not as worthy of respect as heterosexual relationships, those relationships would not be treated with the same

respect by others. Giving same-sex couples a separate but purportedly equal system for gaining recognition of their relationships would not change this, and would not constitute equality, because their relationships still would not be recognized by the rest of society as being as valued as heterosexual relationships.

Recognizing this very point, the Court of Appeal for British Columbia, in mandating equal marriage for same-sex couples, held that "[a]ny other form of recognition for same-sex relationships, including the parallel institution of [registered domestic partnerships] falls short of true equality. This Court should not be asked to grant a remedy which makes same-sex couples 'almost equal', or to leave it to governments to choose amongst less-than-equal solutions." Barbeau v. Attorney Gen. of Canada, 2003 B.C.C.A. 251, para. 156 (2003). The Court of Appeal for Ontario agreed that an alternative system for recognizing same-sex relationships was insufficient, explaining that the right to equality ensures not only equal access to economic benefits, but also equal access to "fundamental societal institutions." Halpern v. Toronto, 172 O.A.C. 276, paras. 102-07

(2003). Excluding same-sex couples from marriage, the court held, "perpetuates the view that same-sex relationships are less worthy of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships." Id. at para. 107.

The very fact that the proposed civil unions bill would establish a separate status for same-sex couples, rather than implement this Court's mandate in Goodridge, demonstrates that the civil unions it proposes are not equal to marriage. The only proffered rationale for continuing to deny same-sex couples entry into the institution of marriage, notwithstanding this Court's ruling, is to "preserv[e] the traditional, historic nature and meaning of the institution of marriage." Senate, No. 2175, Sec. 1. This Court, however, was "mindful" that its decision marks a change in the history of marriage law, Goodridge, 440 Mass. at 312, and that "history must yield to a more fully developed understanding of the invidious quality of the discrimination." Id. at 328. Invoking history and tradition to justify discrimination is nothing more than arguing that the law should be what it is because it has always been

that way, which turns constitutional adjudication on its head. See, e.g., Lawrence, 123 S. Ct. at 2483 ("neither history nor tradition could save a law prohibiting miscegenation from constitutional attack"); Halpern, 172 O.A.C. 276 at para. 117 ("[s]tating that marriage is heterosexual because it always has been heterosexual is merely an explanation for the opposite-sex requirement of marriage; it is not an objective that is capable of justifying" infringement on the guarantee of equality); Perez v. Sharp, 198 P.2d 17, 27 (Cal. 1948) ("[c]ertainly the fact alone that the discrimination has been sanctioned by the state for many years does not supply . . . justification"). If history and tradition were considered to be legitimate factors under the Constitution to justify government-sanctioned discrimination, our country would be a very different and far less hospitable nation indeed. See, e.g., Plessy, 163 U.S. at 550 (upholding law mandating separate but equal train accommodations because the legislature was "at liberty to act with reference to the established usages, customs and traditions of the people").

That some people may disapprove of same-sex couples marrying is no justification for arbitrary discrimination by the government. The United States Supreme Court has long recognized that government discrimination is particularly destructive when it is designed to accommodate societal prejudice. See, e.g., Palmore v. Sidoti, 466 U.S. 429, 433 (1984) ("[t]he Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect"); City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 448 (1985) (rejecting ordinance enacted in response to "negative attitudes" and "fears" about the mentally retarded because government "may not avoid the strictures of [the equal protection clause] by deferring to the wishes or objections of some fraction of the body politic"); Watson, 373 U.S. at 535 ("constitutional rights may not be denied simply because of hostility to their assertion or exercise").

To decide whether the proposed civil unions bill achieves equality, the Court need only consider whether married heterosexuals in Massachusetts would accept for themselves the status of civil unions and

give up the right to be married. As Justice Jackson recognized:

> The framers of the [United States] Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.

Railway Express Agency v. New York, 336 U.S. 106, 112-13 (1949) (Jackson, J., concurring). The guarantee of equality "requires the democratic majority to accept for themselves and their loved ones what they impose on you and me." Cruzan v. Director, Missouri Dep't of Health, 497 U.S. 261, 300 (1990) (Scalia, J., concurring). The Senate's civil unions bill limits this new status to same-sex couples exclusively because married heterosexuals would never accept for themselves a status of mere civil union. This simple fact alone underscores the inequality of marriage and civil unions.

Conclusion.

For the reasons discussed above, Amici respectfully urge this Court to advise that the Senate's proposed civil unions bill, Senate, No. 2175, if enacted, would violate the Massachusetts Constitution.

Respectfully submitted,

UNITED STATES REPRESENTATIVE JOHN LEWIS; THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION; THE AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS; THE ASIAN-AMERICAN LAWYERS ASSOCIATION OF MASSACHUSETTS; THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND; THE BOSTON BAR ASSOCIATION; COMMUNITY CHANGE, INC.; THE FAIR HOUSING CENTER OF GREATER BOSTON; THE GREATER BOSTON CIVIL RIGHTS COALITION; THE JEWISH ALLIANCE FOR LAW AND SOCIAL ACTION; JUSTICE RESOURCE INSTITUTE, INC.; JRI HEALTH; LAMBDA LEGAL DEFENSE AND EDUCATION FUND; LA RAZA CENTRO LEGAL; THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION; LLEGÓ, THE NATIONAL LATINA/O LESBIAN, GAY, BISEXUAL AND TRANSGENDER ORGANIZATION; THE MASSACHUSETTS ASSOCIATION OF HISPANIC ATTORNEYS; THE MASSACHUSETTS BLACK WOMEN ATTORNEYS; THE NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM; THE NATIONAL

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Addendum.

John Lewis is currently a United State Congressman from Georgia, a position he has held since 1986. He risked his life in the 1961 Freedom Rides in the South, was Chairman of the Student Nonviolent Coordinating Committee (SNCC) from 1963 to 1966, was a keynote speaker at the 1963 March On Washington, led the Bloody Sunday March that contributed to passage of the Voting Rights Act of 1965, and was a pivotal figure in the voter registration drives that followed. Throughout his lifetime of civil rights work he has fought against the so-called "separate but equal" doctrine, and sees it as a terrible threat wherever it arises, because it erodes liberty and ultimately harms the community as a whole. He has also taken a strong stand in the United States Congress against efforts to deny same-sex couples the freedom to marry.

The **American Civil Liberties Union Foundation** (ACLU) is a non-profit, non-partisan corporation founded in 1920 for the purpose of maintaining and advancing civil liberties in the United States. It has over 300,000 members nationwide. The ACLU has a long history of legal advocacy to protect the rights of all citizens to equal protection under the law. In 1986, the ACLU created a Lesbian and Gay Rights Project (Project) to direct litigation to combat sexual orientation discrimination. The Project has participated in numerous state cases involving the protection of relationships formed by lesbians and gay men. The ACLU participated as amicus in Goodridge v. Dep't of Public Health in support of the plaintiffs.

The **American Civil Liberties Union of Massachusetts** (ACLUM) is a non-profit organization of over 12,000 members, whose purpose is to defend and protect fundamental civil rights and civil liberties guaranteed by state and federal constitutions and laws. ACLUM has long been involved in litigation challenging discriminatory practices against protected classes and interference with the exercise of

fundamental rights. These have included Pers. Adm'r v. Feeney, 442 U.S. 256 (1979) (sex discrimination); Adoption of Susan, 416 Mass. 1003 (1993) (permitting joint adoption petition by two adults of same sex); Mass. Elec. Co. v. MCAD, 375 Mass. 160 (1978) (pregnancy discrimination), Sch. Comm. of Springfield v. Bd. of Educ., 366 Mass. 315 (1974) (race discrimination); and Jones v. Roe, 33 Mass. App. Ct. 660 (1992) (rejecting tradition of gender-based presumption in favor of father for surname of child).

The **Asian-American Lawyers Association of Massachusetts** (AALAM) is a non-partisan, non-profit association of over one hundred lawyers, judges, and law professors and law students. Since its incorporation in 1984, AALAM's mission has been to promote and enhance the Asian-American legal profession by furthering and encouraging professional interaction and exchange of ideas among its members and other individuals, groups, and organizations, and to improve and facilitate the administration of law and justice through various means. As a minority bar association, AALAM has an interest in taking a position that may affect, directly or indirectly, the rights or interests of not only the Asian-American community but also of members of any protected class of people. AALAM joins with Amici in the arguments presented in this brief.

The **Asian American Legal Defense and Education Fund** (AALDEF), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through the prosecution of lawsuits, legal advocacy and dissemination of public information. AALDEF has throughout its long history supported equal rights for all people, including the rights of gay and lesbian couples.

The mission of the **Boston Bar Association** (BBA), founded by John Adams in 1761, is to "to advance the highest standards of excellence for the legal profession, to facilitate access to justice, and to serve the community at large." The BBA, calling on the vast pool of legal expertise of its members, serves as a resource for the judiciary, as well as the

legislative and executive branches of government. The interests of the BBA in this case relate most strongly to its goal of ensuring justice for all.

Community Change, Inc. (CCI), a non-profit, Boston-based organization founded in 1968, is dedicated to promoting racial justice and equity by challenging systemic racism and acting as a catalyst for anti-racist action and learning. CCI serves as a voice in the community to challenge policies and actions that result in discrimination. CCI is a catalyst for action through its educational work and its organizing of coalitions and change campaigns. CCI is an active resource center in support of those who are addressing institutional issues related to employment, economic justice, the justice system, equitable education and public policy as the concerns of racism intersect with the concerns of gender, class, age and sexual orientation.

The **Fair Housing Center of Greater Boston** is a non-profit organization whose mission is to promote equal housing opportunities for all people throughout the greater Boston area. While our goal of an open housing market may be elusive, we believe it is achievable. Yet it will ring hollow if, within those homes, only some Massachusetts residents are allowed to create families recognized and protected by marriage laws while others remain second-class citizens.

The **Greater Boston Civil Rights Coalition** (GBCRC) is a coalition of approximately 40 organizations and agencies representing various public, private, religious, ethnic and racial groups and neighborhoods in the greater Boston area. Founded in 1979, the mission of the GBCRC is to work for equitable, humanitarian and non-discriminatory treatment of all persons. We believe that the current application of Massachusetts marriage law relegates gay and lesbian residents of the Commonwealth to second class status, preventing them from joining together and raising their families in marriage for no reason other than the perpetuation of historical bias and persecution.

The **Jewish Alliance for Law and Social Action** (JALSA) is a Boston-based human rights organization inspired by Jewish teachings and values and committed to social justice, civil rights, and civil liberties. Inheriting an 80 year old tradition of advocacy and pursuit of progressive public policy in the United States, the members of JALSA have written legislation and participated in litigation to end discrimination on the basis of race, gender, age, religion, national origin, and sexual orientation in employment, education, housing, and civil rights. JALSA is committed to removing all discrimination on the basis of sexual orientation.

Justice Resource Institute, Inc. (JRI) is a not-for-profit organization founded in Massachusetts in 1973 to provide health and social services to disenfranchised populations. In 1991, JRI established **JRI Health**, a multi-service agency that provides housing, case management, primary medical and mental health treatment, legal services, training and education, outreach and other social services. Among its diverse clients are large numbers of lesbian and gay people, many of whom are youth. JRI views first hand the impact discrimination and stigma can have on lesbian and gay youth. JRI supports the protections the right to marry will provide to homes with same-sex parents, and is committed to ending the stigma and damage to self-image that excluding same-sex couples from marriage imposes.

Lambda Legal Defense and Education Fund (Lambda Legal) is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, the transgendered, and people with HIV or AIDS, through impact litigation, education and public policy work. Founded in 1973, Lambda Legal now has five offices across the country, and is the largest and oldest legal organization of its kind. Lambda Legal was an amicus in the action that prompted the instant proceeding, Goodridge v. Department of Public Health. Further, Lambda Legal was counsel in Baehr v. Miike and currently is counsel in Lewis v. Harris, lawsuits brought in Hawaii and New Jersey on behalf of same-sex couples seeking the right to marry. Winning

this right has been one of the organization's top priorities for more than a decade.

Founded in 1973, **La Raza Centro Legal** (Centro Legal) provides direct legal services, education, leadership development, and opportunities to organize around community issues. As a bilingual and multicultural staff, Centro Legal seeks to create a more just and inclusive society in the interest of the Latino, indigenous, immigrant and low income communities of San Francisco and the greater Bay Area. Centro Legal's programs in employment, housing, immigration, naturalization, senior and youth law enable people to exercise their legal rights, confront injustice, increase self-sufficiency, and advocate for themselves. With a passion for justice, Centro Legal works with clients to build and support a societal commitment to respect the dignity and rights of all communities.

The **Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association** (LCCR) is a non-profit law office that was founded in 1963 to provide free legal services to the victims of discrimination based on race or national origin. LCCR has been successful in some of the state's most important civil rights cases involving the desegregation of fire and police departments, school desegregation, housing discrimination and voting rights. LCCR has participated as amicus curiae in numerous cases before the Supreme Judicial Court. The LCCR's clients are all too familiar with the destructive effects of discriminatory policies and the often decades long struggle to achieve equality through legislation. LCCR strongly believes the courts have a duty to protect all segments of American society in their quest for full social and civil rights.

LLEGÓ, the National Latina/o Lesbian, Gay, Bisexual and Transgender Organization, is the only national nonprofit organization devoted to representing Latina/o lesbian, gay, bisexual and transgender (LGBT) communities and advocating for their growing needs regarding an array of social issues ranging from civil rights and social justice to health and human services. Since 1987, LLEGÓ has been afforded the

opportunity to develop solutions to social, health and political disparities that exist due to discrimination based on ethnicity, sexual orientation and gender identity and which affect the lives and well-being of Latino LGBT people and their families.

The **Massachusetts Association of Hispanic Attorneys** is a membership organization of over 100 attorneys whose goals are to assist the interests of the Hispanic community, to further equality under law for all and to promote equal access to justice.

The **Massachusetts Black Women Attorneys** was founded 21 years ago to promote and enhance the professional and community interests of black women in the legal profession. Among our goals are to promote and enhance the economic and political interests of black women; to improve and facilitate the fair and even-handed overall administration of law and justice, particularly as it applies to black women; and to advocate for the reform of the laws, ordinances, rules and regulations promulgated within or without the Commonwealth of Massachusetts to promote the interests of black women.

The **National Asian Pacific American Legal Consortium** (NAPALC) is a national non-profit, non-partisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans. Collectively, NAPALC and its Affiliates, the Asian Law Caucus and the Asian Pacific American Legal Center of Southern California, have over 50 years of experience in providing legal public policy advocacy and community education on discrimination issues. NAPALC was an amicus in support of plaintiffs in Goodridge v. Dep't of Public Health, 440 Mass. 309 (2003) and likewise the question presented by this case is of great interest to NAPALC because it implicates the availability of civil rights protections for Asian Pacific Americans in this country.

Established in 1955, the **National Association of Social Workers** (NASW) is the largest social work association in the world, with more than 150,000 members, and chapters in every state and internationally. The **Massachusetts Chapter** has over

8,200 members. NASW has formally opposed discrimination against lesbians and gay men and works to combat the detrimental effects that flow from the stigmatization and marginalization of their committed relationships.

The **National Association of Women Lawyers** (NAWL), headquartered in Chicago, is over 100 years old. It was the first and is the oldest women's bar association in the United States. Its members consist of individuals as well as professional associations. Part of NAWL's mission is to promote the welfare of women, children and families in all aspects of society. Among the areas of interest to the organization are economic justice, reproductive rights and equal protection. NAWL supports equality in marriage for all who wish to commit to the marriage relationship. Given its interest in issues affecting women and families as a class, NAWL has participated as *Amicus* in many courts of the United States, including the United States Supreme Court.

The **National Center for Lesbian Rights** (NCLR) is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbians and gay men and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education. Since its founding in 1977, NCLR has played a leading role in protecting and securing fair and equal treatment of lesbian and gay parents and their children.

The **National Council of Jewish Women, Inc.** (NCJW) is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy and community service to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all. Founded in 1893, the NCJW has 90,000 members in over 500 communities nationwide. Given NCJW's National Principle, which states that "Discrimination on the basis of race, gender, national origin, ethnicity, religion, age, disability, marital status or sexual orientation must be eliminated," as well as NCJW's National Resolution supporting "The enactment and enforcement of laws and regulations which protect

civil rights and individual liberties for all," we join this brief.

The **National Lawyers Guild Lesbian, Gay, Bisexual and Transgender Committee** is a nation-wide association of attorneys, law students, legal workers, and jailhouse lawyers that actively seeks to eliminate discrimination, works to maintain and protect our civil rights and liberties in the face of persistent attacks upon them, and looks upon the law as an instrument for the protection of the people, rather than for their repression.

The **National Lawyers Guild, Massachusetts Chapter** (NLGMC) was founded in 1937 as an alternative to the then conservative and racially segregated American Bar Association. It is a membership organization that brings together law students, lawyers, legal secretaries, paralegals, judges, and community activists to collaborate in the process of using the law for political, economic, and social justice. Over the last 60 years, the NLGMC has worked to advance human and civil rights and anti-war movements. We believe that this case presents a key issue of human rights for gay and lesbian residents of Massachusetts.

The **National Organization for Women Foundation** is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with over 500,000 contributing members in more than 450 chapters in all 50 states and the District of Columbia. Since its inception, NOW Foundation's goals have included ending all forms of discrimination based on sexual orientation, such as denying same-sex couples the fundamental right to marry.

The **Northwest Women's Law Center** (NWLC) is a non-profit public interest organization that works to advance the legal rights of women through litigation, legislation, education and the provision of legal information and referral services. Since its founding in 1978, the NWLC has been dedicated to protecting and securing equal rights for lesbians and their families,

and has long focused on the threats to equality based solely on sexual orientation. Toward that end, the NWLC has participated as counsel and as amicus curiae in cases throughout the country and is currently involved in numerous legislative and litigation efforts. The NWLC continues to serve as a regional expert and leading advocate in lesbian and gay issues.

NOW Legal Defense and Education Fund (NOW Legal Defense) is a leading national non-profit civil rights organization that for over thirty years has used the power of the law to define and defend women's rights. NOW Legal Defense has consistently supported the right of lesbians and gay men to be free from discrimination on the basis of sexual orientation, and of all women and men to live and work free from government-enforced gender stereotypes. NOW Legal Defense has a particular interest in securing the rights of women under state constitutions, including the right of lesbians to marry on the same basis as heterosexual women. NOW Legal Defense was an amicus curiae in Baker v. Vermont, 744 A.2d 864 (Vt. 2000) and Baehr v. Miike, 994 P.2d 566 (Haw. 1999), as well as in Goodridge. Because withholding the status of marriage on the basis of the gender of one's intended marriage partner impermissibly imposes gender stereotypes about men's and women's proper roles in relation to each other, it is a harmful affront to gender equality.

People For the American Way Foundation (People For) is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has more than 600,000 members and supporters across the country, including Massachusetts. People For has been actively involved in efforts nationwide to combat discrimination and promote equal rights, including efforts to protect and advance the civil rights of gay men and lesbians. People For regularly supports the enactment of civil rights legislation, participates in civil rights litigation, and conducts programs and studies directed at reducing problems of bias, injustice and discrimination. People For joined an amicus curiae brief submitted to this Court in

Goodridge v. Department of Public Health in support of the plaintiffs and urged the Court to strike down marriage discrimination in the Commonwealth. People For now joins this brief because the proposed civil unions legislation would unconstitutionally condemn gay men and lesbians in Massachusetts to the status of second-class citizens.

Soulforce, Inc. is a national interfaith movement committed to working for equality for gay, lesbian, bisexual, and transgender (GLBT) people, employing the nonviolent principles of M.K. Gandhi and Martin Luther King, Jr., to the liberation of sexual and gender minorities. Since 1999, Soulforce has been teaching these principles and working with GLBT people, church leaders, government officials, and allies, to end spiritual violence, discrimination, and injustice in religion and society against GLBT people, their children, and their families.

Founded in 1971, **the Southern Poverty Law Center** ("The Center") is a nationally recognized leader in the area of civil rights litigation. The Center has litigated numerous pioneering civil rights cases on behalf of women, minorities, factory workers, poor people in need of health care, mentally ill persons, children in foster care, prisoners facing barbaric conditions of confinement and many other victims of injustice.

The **Urban League of Eastern Massachusetts** (ULEM) is an interracial, non-profit, community-based organization that provides programs of service and advocacy in the areas of education, career/personal development and employment for African Americans, other people of color and lower-income communities. Central to the mission of the ULEM is the removal of all barriers to full economic, political and social participation in society for the communities we serve. In working toward this goal, the ULEM, like the National Urban League, collaborates in civil rights-related coalitions and expresses its support for other groups that also advocate for civil rights. For that reason, the ULEM joins the other *Amici curiae* in this brief.

The **Women's Bar Association of Massachusetts** (WBA) is a non-profit association of lawyers, judges, law

professors and students, and other legal professionals, with over 1,200 members throughout Massachusetts. The WBA is committed to the full and equal participation of women in the legal profession and in a just society, and to that end supports the elimination of discrimination based on sex, sexual orientation, and marital status. The WBA joins with Amici in the arguments presented in this brief.