COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk County

No. SJC-08860

HILARY 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
HOWARD KOH, COMMISSIONER
OF THE DEPARTMENT OF PUBLIC HEALTH,

Defendants-Appellees.

On Appeal from a Judgment
from the Superior Court, Suffolk County

BRIEF OF AMICI CURIAE PROFESSORS OF STATE CONSTITUTIONAL LAW: ROBERT F. WILLIAMS, LAWRENCE FRIEDMAN, VINCENT M. BONVENTRE, CHRISTIAN G. FRITZ, DANIEL GORDON, JOSEPH R. GRODIN, ANN LOUSIN, NEIL COLMAN MCCABE, and JAMES G. POPE

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Statement of Interest

We are professors at law schools throughout the United States.[1] Our expertise lies in constitutional law, with an emphasis on state constitutional law. In our professional capacities, we have researched, studied and written about public law issues of the kind this Court now faces. We hope that the body of knowledge we have helped to develop on the history, formation, interpretation, and application of state constitutions, including the Massachusetts Constitution of 1780, may be of value to the Court in resolving the questions presented in this appeal. Unique considerations attend the interpretation of state constitutions that litigants often cannot fully explore. We hope to present these important arguments in greater detail.

Statement of Issues, Case, and Facts Presented For Review

The amici adopt the plaintiffs-appellants' statement of the issues presented for review, as well as their statement of the case and the facts.

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[1] The amici are listed and described in the Addendum attached hereto. We speak as individual amici in this case, not as representatives of the law schools we serve.

Summary of Argument

The Massachusetts Constitution of 1780 established equality and liberty as enduring values. This Court has long embraced its responsibility to interpret the Constitution, by examining the history, text, structure and purpose of the provisions at issue, as well as the insights of other courts confronting similar questions. (pp. 4-13)

The commitment to equality in the Declaration of Rights encompasses not just the right to participate equally in the political process, but a commitment to both the inherent equality of individuals and their right to equal treatment by the agencies of government. The complementary protection of liberty recognizes that individuals should be free to determine for themselves the most important personal decisions in their lives. (pp. 13-35)

These values have long informed the articulation of the doctrinal standards used to evaluate individual rights claims under the Massachusetts Constitution, and they continue to inform this Court's application of the doctrine in practice. (pp. 35-42)

Application of those doctrinal standards in this case demonstrates that the Commonwealth's use of the

marriage statutes to bar individuals from marrying a person of the same sex is at odds with the constitutional commitments to equality and liberty. This prohibition discriminates against those individuals, denying them the rights and responsibilities of marriage, as well as the intangible privileges that arise from the status of marriage and the freedom to choose one's own spouse. Because the discrimination it perpetuates possesses no real or substantial connection to a legitimate governmental interest, much less a compelling interest, the Commonwealth's application of the marriage laws should not stand. (pp. 42-48)

Though discrimination against individuals based upon their sex or sexual orientation has a long history, that history is no reason to allow it to persist. Such discrimination offends the constitutional values of equality and liberty in much the same way as the now-discredited prohibition of marriages between persons of different races. In this case, the Court has an opportunity to reaffirm that the Declaration of Rights continues to guarantee all citizens full membership in the community created by the Massachusetts Constitution of 1780. (pp. 48-50)

ARGUMENT

I. This Court has Long Embraced Its Responsibility to Interpret the Massachusetts Constitution

This Court has the ultimate authority and responsibility for interpreting the Massachusetts Constitution. See Commonwealth v. Sheehy, 412 Mass. 235, 240 (1992); Opinion of the Justices, 226 Mass. 613, 617 (1917). Indeed, when a party presents a case or controversy concerning the meaning and application of a provision of the Massachusetts Constitution, this Court has an obligation to say what the Constitution means: as Chief Justice Lemuel Shaw recognized more than a century and a half ago, if governmental action "can be shown to be plainly inconsistent with the provisions of the constitution," this Court has "the duty" to address the issue. Commonwealth v. Blackington, 41 Mass. (24 Pick.) 352, 356 (1837). The Court may not shirk this obligation even when faced with socially contentious issues; it is "the very essence of judicial duty" to "adjudicate a claim that a law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution." Colo v. Treasurer & Receiver General, 378 Mass. 550,

553 (1979) (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) (Marshall, C.J.)).

Marriage "has long been regarded as a virtually exclusive province of the States." Sosna v. Iowa, 419 U.S. 393, 404 (1975). It accordingly makes sense that the responsibility for confronting constitutional questions in this area properly rests with state courts interpreting state constitutions. Cf. San Antonio Indep. Sch. Dist. V. Rodriguez, 411 U.S. 1, 44 (1973) (questions of equality in public school funding should be resolved by state courts under state constitutions given that education is a state responsibility). Our federalist system relies on the states to respond to issues within their particular competence. Because both the federal constitution and the government it created are "incomplete," we must "look at the state constitutions to see what of liberty they are committed to fostering and protecting." Daniel J. Elazar, The American Constitutional Tradition 169 (1988). Such matters as the constitutionality of a restriction on marriage properly are resolved by this Court, under the Massachusetts Constitution.

This Court traditionally has addressed state constitutional interpretation with the respectful flexibility the enterprise warrants. The Court has been guided by aspects of federal and other states' constitutional jurisprudence, while remaining cognizant that the Massachusetts Constitution is a source of unique guarantees in respect to individual rights and liberties. See Batchelder v. Allied Stores Int'l, Inc., 388 Mass. 83, 88-89 (1983) (observing that "a State may 'adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution'" and concluding that the Massachusetts Constitution does provide more expansive liberties than the federal counterpart) (quoting PruneYard Shopping Center v. Robins, 447 U.S. 74, 81 (1980)).[2] The Court has often interpreted

[2] Even to the extent this Court relies upon federal precedent for guidance, it "is no more persuasive than the authority of any other extra-jurisdictional court." Lawrence Friedman & Charles H. Baron, Baker v. State and the Promise of the New Judicial Federalism, 43 B.C. L. Rev. 125, 153-55 (2001). See also Commonwealth v. Gonsalves, 429 Mass. 658, 668 (1999) (observing that to argue that this Court must follow federal precedents in lockstep "posits a serious misunderstanding of the authority of this court"); Robert F. Williams, In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result, 35 S.C. L. Rev. 353, 359-

provisions of the Declaration of Rights to provide Massachusetts citizens greater rights than would be available under the U.S. Constitution. See, e.g., Moe v. Sec'y of Admin. & Fin., 382 Mass. 629, 648-49 (1981) (acknowledging that the "private realm of family life" is "an area in which our constitutional guarantee of due process has sometimes impelled [the Court] to go further than the United States Supreme Court."); Coffee-Rich, Inc. v. Comm'r of Pub. Health, 348 Mass. 414, 421 (1965) ("The Constitution of a State may guard more jealously against the exercise of the State's police power.").

The Court has employed a variety of interpretive precepts in construing the state constitution. In particular, the Court has looked to the history as well as the text of the constitutional provision at issue; the structural and institutional concerns implicated by the provision; and the interpretation of similar provisions in the federal constitution or other state constitutions. These interpretive approaches often have been deployed in combination to best articulate the meaning of a specific provision.

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61 (1984) (discussing why federal precedent need only be regarded as persuasive authority).

The historical context in which a constitutional provision was framed is important because the interpretation of a constitution cannot be divorced entirely from the circumstances that obtained at the time of its creation. A constitutional provision must be construed "in the light of the conditions under which it and its several parts were framed, the ends which it was designed to accomplish, the benefits which it was expected to confer, and the evils which it was hoped to remedy." Cohen v. Attorney General, 357 Mass. 564, 571 (1970). This is not to say that historical context must dictate the modern understanding of a state constitutional provision; rather, a sense of the historical context in which a provision was framed may serve to elucidate the meaning of the text.

An examination of the text itself is central to the Court's interpretive effort. "In determining the meaning of a constitutional provision, [the Court looks] to the language and structure of [a] provision, so that it is construed so as to accomplish a reasonable result and to achieve its dominating purpose." McDuffy v. Sec'y of the Exec. Office of Educ., 415 Mass. 545, 558 (1993) (quotation omitted).

In examining constitutional language, the Court seeks to ascertain its meaning "in the sense most obvious to the common understanding." Loring v. Young, 239 Mass. 349, 384 (1921) (quotation omitted).

In addition to considering the historical context and text of a constitutional provision, this Court has sought to situate its understanding of the provision within the fabric of the Constitution as a whole - that is, as an aspect of a cohesive framework intended to establish an enduring system of government in which the agencies of the state respect the importance of individual rights and liberties.[3] A constitutional provision cannot be viewed in isolation. See Lincoln v. Sec'y of the Commonwealth, 326 Mass. 313, 317 (1950). In the McDuffy case, for example, this Court sought to determine the constitutional status of public education, observing that "[t]he framers' decision to dedicate an entire chapter [of the Constitution] to the topic of education signals that it was to them a central concern." 415 Mass. at 563.

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[3] As former Chief Justice Edward Hennessey has observed, "[o]urs is not merely a democracy; it is a constitutional democracy, with a special purpose of protecting individuals and minority groups." Edward F. Hennessey, Judges Making Law 58 (1994).

Attention to constitutional structure also reflects an appreciation of institutional concerns, such as allocations of power and authority, and checks and balances, within the governmental framework itself. See, e.g., Charles L. Black, Jr., Structure and Relationship in Constitutional Law (1968) (discussing structural analysis of federal constitution).

Finally, this Court has turned to the decisions of other courts interpreting similar constitutional provisions. The Court has, for example, relied upon federal equal protection decisions for guidance when interpreting the correlative equality guarantees of the Declaration of Rights. See, e.g., Dickerson v. Attorney General, 396 Mass. 740, 742 (1986) ("For the purpose of equal protection analysis, our standard of review under the cognate provisions of the Massachusetts Declaration of Rights is the same as under the Fourteenth Amendment to the Federal Constitution."). The insights of other courts into recurring constitutional issues may well contribute to a sound interpretive analysis in a particular instance. See Friedman & Baron, Baker v. State, supra, 153-58 (discussing the importance of constitutional discourse between and among courts);

Paul W. Kahn, Interpretation and Authority in State Constitutionalism, 106 Harv. L. Rev. 1147, 1147-48 (1993) (discussing state constitutionalism as part of "an ongoing debate about the meaning of the rule of law in a democratic political order").

As this Court has remarked, it is bound to interpret the Massachusetts Constitution to effect its central purpose: to establish an enduring system of government. See Trefry v. Putnam, 227 Mass. 522, 523 (1917) (stating that the Constitution "was designed by its framers and accepted by the people as an enduring instrument, so comprehensive and general in its terms that a free, intelligent and moral body of citizens might govern themselves under its beneficent provisions through radical changes in social, economic and industrial conditions"). To do so, this Court has faithfully interpreted the Constitution "in accordance with the demands of modern society," lest it become "atrophied and ... lose its original meaning." McDuffy, 415 Mass. at 620.

Particularly in respect to the "great ordinances" of a constitution - those provisions that protect such values as due process, equality, and freedom of expression - the task of interpretation should be

understood as part of "an evolving and on-going process" that responds "to the felt needs of the times." Vreeland v. Byrne, 370 A.2d 825, 831 (N.J. 1977); see also Robert F. Williams, Old Constitutions and New Issues: National Lessons From Vermont's State Constitutional Case on Marriage of Same-Sex Couples, 43 B.C. L. Rev. 73, 117-19 (2001) (discussing the "great ordinances" of state constitutions, such as those respecting equality and liberty). The interpretation of the "great ordinances" necessarily must evolve as the Court confronts circumstances beyond the framers' imagining, and it is only through such evolutionary interpretation that the values comprising the great ordinances will continue to have meaning. Indeed, as this Court has observed, the Constitution is, in the end, a "statement of general principles and not a specification of details." Trefry, 227 Mass. at 524.

In choosing among and applying the different interpretive approaches in various cases, this Court has confidently interpreted the Massachusetts Constitution to reflect the Constitution's continuing importance to multiple aspects of our private and public lives. See Charles H. Baron, The Supreme

Judicial Court in Its Fourth Century: Meeting the Challenge of the "New Constitutional Revolution", 77 Mass. L. Rev. 35 (1992). In this way, the Court preserves the framers' intention that the Massachusetts Constitution of 1780 would establish commitments to individual rights and liberties of enduring worth and value to future generations.[4]

II. The Massachusetts Constitution Establishes Equality and Liberty As Enduring Values

The commitments to equality and individual liberty under the Massachusetts Constitution are embodied, in particular, in several provisions of the Declaration of Rights. The interpretation and application of these provisions in the context of this case flow from a baseline understanding of equality and liberty as values of uniquely constitutional dimension. This understanding derives from an examination of the historical context and language of

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[4] See Bernard Bailyn, The Ideological Origins of the American Revolution 319 (1967) ("The details of this new world were not as yet clearly depicted; but faith ran high that a better world than any that had ever been known could be built where authority was distrusted and held in constant security; where the status of men flowed from their achievements and from their personal qualities, not from distinctions ascribed to them at birth; and where the use of power over the lives of men was jealously guarded and severely restricted.").

the provisions, as well as the structural and institutional concerns they implicate and the efforts of other courts to interpret their state constitutional analogs. Such an examination reveals a commitment to equality that embraces not only political equality among citizens but, significantly, both the inherent equality of citizens and the value of equality to the larger community; and it reveals a commitment to liberty that embraces the freedom of individuals to make decisions involving their personal lives and intimate family relationships.

A. Equality and Liberty in Historical Context

To appreciate fully the provisions of the Massachusetts Constitution addressing equality and liberty - Part I, Articles I, VI, VII, and X, as well as the Preamble - they must be viewed in the wider context of the Revolutionary state constitution-making processes that took place throughout the newly-independent states following the American Revolution. State constitution-making, after all, was the domestic political language of the Revolution.

1. Equality in Historical Context

The Massachusetts Constitution reflects the ideas of Revolutionary thinkers such as John Adams, its

principal drafter, and Thomas Paine. See Bailyn, supra, at 45. Paine published Common Sense, arguably the most influential political pamphlet in American history, in Philadelphia in February 1776. Philip Foner, 1 The Complete Writings of Thomas Paine 4 (1969). Paine urged a "new political language," to represent a "utopian image of an egalitarian republican society." Eric Foner, Tom Paine and Revolutionary America xvi (1976). He, therefore, made a strong case for establishing simple, republican governments, operated by unicameral legislatures with a wide elective franchise. Id. at 75.

Almost immediately after Common Sense appeared, John Adams published his influential Thoughts on Government, 1 American Political Writing During the Founding Era, 1760-1805 401 (C. Hyneman & D. Lutz eds. 1983), as, among other things, a response to Paine. A. Owen Aldridge, Thomas Paine's American Ideology 200 (1984). Adams, believing unicameral legislatures presented grave dangers to minority rights, proposed a model for new state governments based on "balanced government," or checks and balances, in which bicameralism and executive power counterbalanced the

lower house. 1 American Political Writing, supra, at 403.

Both Paine in Common Sense and Adams in Thoughts on Government revealed the sense of liberation and exhilaration felt by constitution-makers and citizens at the beginning of the founding decade. Both the more radical Paine - arguing that Americans had the opportunity to "begin the world over again," Philip Foner, The Life and Major Writings of Thomas Paine 45 (1974) - and the more conservative Adams - proclaiming "an opportunity of making an election of government," 1 American Political Writing, supra, at 408 - were united in their rejection of British hierarchical society, with its arbitrary, sometimes hereditary, social distinctions and privileges. See Gordon S. Wood, The Radicalism of the American Revolution 239-40 (1992) [hereinafter American Revolution]. The Revolutionaries' view of equality, for the most part, was not one of "social leveling." Gordon S. Wood, The Creation of the American Republic, 1776-1787 70 (1969). Rather, they supported equality of opportunity, accepting and accommodating social differences. Id. at 72. They also rejected a government based on the arbitrary prerogative of one

or more persons. Gordon S. Wood, Foreword, State Constitution-Making In The American Revolution, 24 Rutgers L.J. 911, 915-16 (1993). Underlying both Paine's and Adams' proposals was a belief in, and a commitment to equality - a very complex notion, but central to the new political language of the Revolution.

This shared commitment to equality deeply influenced the formation of the Massachusetts Constitution. Both radicals and conservatives rejected the proposed Constitution of 1778 for its failure to include a bill of rights, and, in particular, provisions guaranteeing the equality of citizens. See The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780 22 (Handlin & Handlin eds. 1966) [hereinafter Popular Sources]. Theophilus Parsons, a future delegate to the 1779 constitutional convention, voiced the view of many in the Essex Result, in which he argued that

> All men are born equally free. The rights they possess at their births are equal, and of the same kind. Some of these rights are alienable, and may be parted with for an equivalent. Others are unalienable and inherent, and of that importance, that no equivalent can be received in exchange ....

> The alienation of some rights, in themselves alienable, may be also void, if the bargain is of that nature, that no equivalent can be received .... Each individual also surrenders the power of controuling his natural alienable right, ONLY WHEN THE GOOD OF THE WHOLE REQUIRES IT. The supreme power therefore can do nothing but what is for the good of the whole; and when it goes beyond this line, it is a power usurped.

Id. at 330-31 (emphasis original). Ultimately, John Adams and the other framers included in the Constitution of 1780 numerous provisions expressing a commitment to equality.

Indeed, the very system of checks and balances that Adams designed for Massachusetts was driven by the need to protect the equal rights and liberties of individuals. See John Adams, Defence of the Constitutions of Government of the United States 1 (1787). State constitution-makers, like Adams, addressed these concerns not only in the design of government structures, with a special emphasis on equal participation in government, but also in the specific equality provisions in state constitutions.

The equality provisions of the Declaration of Rights may appear to be somewhat archaic when compared with more modern language of contemporary constitutions. When they are read in light of the

egalitarian revolution of the founding era, however, they elucidate the animating underpinnings of the Revolution itself. Viewed in this wider historical context, the commitment to equality expressed in the Declaration of Rights has a forceful logic and consistency. This commitment establishes not just the right of all individuals to equal participation in the political process, but also its logical corollary, the revolutionary notion of inherent equality: that all individuals possess the same unalienable rights and, as to the exercise of those rights and the pursuit of their personal interests, none shall be favored above others.

2. Liberty in Historical Context

Just as with the equality provisions in the Declaration of Rights, the liberty provisions come into sharper relief when examined in historical context. Liberty in the Revolutionary era grew to encompass a body of rights necessary to safeguard the preservation of individual autonomy, dignity and choice against governmental interference.

The original Revolutionary claims to liberty had to do with the right to participate in self-government. But, after independence the states were

self-governing, and so the state constitution-makers turned their attention to ensuring that citizens would, within that self-governing framework, have the personal liberty to lead autonomous lives. See Wood, Creation of the American Republic, supra, at 609. The framers sought to emphasize "[a] liberty that was ... personal or private, the protection of individual rights against all governmental encroachments, particularly by the legislature." Id.

The aim of government had become two-fold: to provide "for the security of every individual, as well as a fluctuating majority of the people," for "[u]nless individuals and minorities were protected against the power of majorities no government could be truly free." Id. at 609. Thus, the framers aimed to establish a system of government through which individual liberty in all its dimensions "might be preserved." Bailyn, supra, at 197.

This concern for personal autonomy was at the heart of the rejection of the 1778 constitution, which provided no liberty guarantees. The pervasive fear that the "fluctuating majority" would subvert the liberty of minorities was expressed in the Essex Result:

> The idea of liberty has been held up in so dazzling colours, that some of us may not be willing to submit to that subordination necessary in the freest States. Perhaps we may say further, that we do not consider ourselves united as brothers, with an united interest, but have fancied a clashing of interests amongst the various classes of men, and have acquired a thirst of power, and a wish of domination, over some of the community. We are contending for freedom - Let us all be equally free - It is possible, and it is just.

Popular Sources, at 329.

In essence, the Revolutionary ideal of liberty was a more mature expression of the early colonists' desire to be "let alone" to determine the most essential and intimate directions of their lives for themselves. See Clinton Rossiter, Seedtime of the Republic 9-10 (1953). The framers recognized that only in protecting personal choices from governmental interference would the common good be advanced. The framers sought nothing less than to preserve the ability of each individual to determine his or her own social, economic and political identity.

This discussion of the historical context of the framing of the Declaration of Rights is not an argument about original intent. An understanding of the historical circumstances that motivated the framers aids in understanding the principles that

should continue to animate the equality and liberty provisions of the Massachusetts Constitution. See Baker v. State, 744 A.2d 864, 886 (Vt. 1999) (adhering to the view "that a case beyond the imagining of the framers of our Constitution may, nevertheless, be safely anchored in the values that infused it"). The Revolutionary egalitarian philosophy, with its rejection of arbitrary societal distinctions and its endorsement of individual freedom, yet endures, and should be taken into account when interpreting the Constitution today.

B. The Textual Basis for the Commitment to Equality and the Protection of Liberty

The centrality of equality and liberty as state constitutional values is reflected in many provisions of the Declaration of Rights, including Articles I, VI, VII and X, and the Preamble. A textual examination of these provisions shows a substantive concern for the inherent equality of citizens and individual liberty.

Article I expressly provides that

> All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of

> seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.[5]

This language reflects the framers' understanding, as exemplified by the Essex Result, that all individuals are possessed of natural, essential and unalienable rights and, therefore, share an inherent equality - no one person is born to rights not shared by all. See Wood, American Revolution, supra, at 234. Accordingly the first sentence of Article I has always been recognized as a powerful guarantee of inherent equality, a guarantee that this Court has understood to encompass equality with respect to sex and race among other classes, long before those classes were specifically added to Article I by the ERA in 1976. See Inhabitants of Winchendon v. Inhabitants of Hatfield, 4 Mass. (1 Tyng) 123, 128 (1808) (stating that "in the first action involving the right of the [slave] master, which came before the Supreme Judicial Court, after the establishment of the constitution, the judges declared, that, by virtue of the first article of the declaration of rights, slavery in this

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[5] The Equal Rights Amendment ("ERA"), Amendment Article CVI, substituted the word "people" for "men" in the first sentence and added the second sentence.

state was no more");[6] Roberts v. City of Boston, 59 Mass. (5. Cush.) 198, 206 (1849) (recognizing that "all persons, without distinction of age or sex, birth or color, origin or condition, are equal before the law."); Commonwealth v. Mackenzie, 368 Mass. 613, 615 (1975) (applying heightened scrutiny in case of sex discrimination).[7] Article I also embraces unalienable rights which the framers understood to include the right to enjoy one's liberty and to seek and obtain happiness - a liberty guarantee that reflects the framers' vision of a community in which individuals decide for themselves what happiness shall entail.

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[6] As early as the 1780's, this Court observed that Article I abolished slavery in Massachusetts. See John D. Cushing, The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the "Quock Walker Case", 5 Am. J. Legal Hist. 118, 133 (1961). See also Commonwealth v. Aves, 35 Mass. 193 (1836) ("[B]y the general and now well established law of this Commonwealth, bond slavery cannot exist, because it is contrary to natural right, and repugnant to numerous provisions of the constitution and laws, designed to secure the liberty and personal rights of all persons within its limits and entitled to the protection of the laws.").

[7] These cases reflect the Court's commitment to the kind of dynamic constitutional interpretation necessary to account for evolving understandings of the commitment to equality.

Article VI endorses a commitment to the equality of citizens, by focusing on equal treatment of individuals by the government. That provision states:

> No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or his relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

This provision establishes that no individual or group may receive special privileges. Expressing a concern for the potentially destructive societal effect of government-conferred privileges based upon notions of nobility, heredity or social hierarchy, this Court has interpreted Article VI to prohibit the Legislature from conferring upon individuals advantages distinct from those received by the rest of the community. See Opinion of the Justices, 175 Mass. 599, 601 (1900).

Thus Article VI approaches the issue of equal treatment from a different perspective than Article I. Article I establishes the principle of inherent equality, while Article VI confirms that such equality embraces an anti-discrimination principle — precluding

different treatment of similarly situated individuals absent a very particular justification. See, e.g., Brown v. Russell, 166 Mass. 14, 23 (1896) ("[i]t is for the purpose of rendering service to the public in a public office that advantages and privileges distinct from those of the community may be obtained"); Lowell v. City of Boston, 111 Mass. 454, 461 (1873) ("The promotion of the interests of individuals ... although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object."). In precluding differential treatment, Article VI emphasizes that equality serves the end of inclusion - ensuring that no member of the community is singled out for favorable treatment by government.

Article VII adds to this understanding of equality, announcing in relevant part that:

> Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men ....

This provision emphasizes the framers' view that government does not exist for the good of one particular citizen or class of citizens, but rather for the "common good," and that governmental action

must not favor one class of citizens over another. This Court accordingly has interpreted Article VII as prohibiting government from enacting legislation "for the profit, honor, or private interest of any one man, family, or class of men." Brown, 166 Mass. at 21; see also Corning Glass Works v. Ann & Hope, Inc., 363 Mass. 409, 416-17 (1973) (noting that Art. VII requires that laws bear "a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare."). Here, again, the text reflects the framers' belief that, in a community in which all members share an inherent equality, certain individuals should not be excluded from whatever benefits the government offers.

Article X protects both equality and liberty. This provision states in relevant part that "[e]ach individual of the society has a right to be protected in the enjoyment of his life, liberty and property, according to standing laws." By establishing individual liberty as a specific constitutional guaranty, Article X emphasizes the framers' mandate that the agencies of government observe the importance of individual self-determination. By its terms, Article X guarantees individuals the rights to life,

liberty, and property, and establishes an additional "right to be protected" in the enjoyment of those rights. This promotes the fundamental ideal that government must avoid establishing a hierarchy of the ways in which individuals may exercise their rights or pursue their interests, and instead leave to individuals the choices and decisions by which they seek to define themselves. See Holden v. James, 11 Mass. (1 Tyng) 396, 401 (1814) (acknowledging that, from the earliest days of the Commonwealth, Article X has been understood to guarantee individuals the "first principles" of liberty and equality); Opinion of the Justices, 211 Mass. 618, 619 (1912) (observing that Article X demands that "any free government" must secure the rights of safety, liberty, and property to the people).

In addition to Articles I, VI, VII, and X, the Preamble adds to an understanding of the equality and liberty guarantees under the Massachusetts Constitution.[8] The Preamble provides in relevant part:

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[8] This Court has acknowledged that the Declaration of Rights fulfills each and every promise made in the Preamble. See Opinion of the Justices, 303 Mass. 631, 641 (1939). For this reason, the spirit of the Preamble should influence the way in which particular provisions are understood.

> The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights.

This statement, echoing the revolutionary discourse about equality and liberty, confirms that the governmental framework elaborated in the Constitution of 1780 should serve primarily to allow individuals to lead free and prosperous lives; indeed, this Court has recognized that the Preamble announces that "[t]he preservation of rights and liberties" is the principal purpose of government. McDuffy, 415 Mass. at 565. Importantly, the Preamble confirms that the polity of citizens the Constitution was designed to govern and protect is composed of individuals equally capable of determining for themselves how their lives shall be lived.

In sum, a textual analysis of Articles I, VI, VII and X, and the Preamble commands a recognition that individuals are inherently equal. This commitment represents a mandate that the Commonwealth cannot declare an individual or group less worthy than any other to participate fully and equally in the life of the community. Analysis of these provisions also

establishes the importance of liberty in the constitutional framework, confirming that individuals in a constitutional democracy must have the freedom to exercise the fundamental right to self-determination without governmental interference.

C. A Structural and Institutional Analysis Confirms the Importance of the Commitment to Equality and the Protection of Liberty

A thorough understanding of equality and liberty under the Constitution requires an examination not just of the historical context and language of the equality and liberty provisions, but also the structural and institutional functions of those provisions. As discussed above, in McDuffy this Court utilized a structural analysis to situate public education within the constitutional framework. See also Opinion of the Justices, 303 Mass. at 641 ("All these constitutional provisions must be construed together to make an harmonious frame of government."); In re Opinion of the Justices, 234 Mass. 597, 601 (1920) (noting that the Court must interpret constitutional provisions to "conform[] to the structure of the original Constitution, which is a frame of government, comprehensive in its provisions, general in its terms, and calculated to endure as the

basis of a free and intelligent republic, whatever changes may come."). In McDuffy, for example, the fact that an entire chapter of the Constitution was devoted to education led the Court to conclude that education should be regarded as a value with particular constitutional significance. See McDuffy, 415 Mass. at 563.

The placement of the equality and liberty provisions at the forefront of the Declaration of Rights emphasizes their primacy in the constellation of constitutional values. Further, the commingling of the provisions establishing the inherent equality of citizens with those establishing equal political participation demonstrates that these principles should be viewed as equally instrumental to the design of the Massachusetts governmental structure. The guarantees of a "free and equal" citizenry and a government pledged not to award certain individuals "particular and exclusive privileges" in Articles I and VI, for example, complement the interest in political equality underlying the right of the people in Article VIII to elect their government officers.

In addition to promoting the principle of inherent equality, Articles I, VI, VII, and X also

serve an institutional purpose; the commitment to equality is important not simply to individuals, but to the larger community of the Commonwealth and the system of government it supports. In the federal system, Congress and the President possess only those specific powers delegated them by the federal constitution. State legislatures, on the other hand, possess plenary authority to address issues affecting the health, safety and welfare of the citizenry. See Robert F. Williams, Comment: On the Importance of a Theory of Legislative Power Under State Constitutions, 15 Quinnipiac L. Rev. 57, 60 (1995). In a system in which the legislature's reach may extend to nearly every aspect of the lives of citizens, the commitment to equality provides a check on governmental authority, to prevent arbitrary discrimination against particular individuals or groups.

In this light, a claim of unequal treatment serves to regulate the relationship between government and the citizenry, by pressing the Commonwealth to explain how, in fact, governmental line-drawing in respect to benefits and burdens enhances the public welfare in a given instance. This Court has recognized the institutional concern that a vigorous

equality jurisprudence serves to address, reasoning that a claim of unequal treatment "requires the court to look carefully at the purpose to be served by the statute in question and at the degree of harm to the affected [individuals]." English v. New England Medical Ctr., Inc., 405 Mass. 423, 428 (1989). Such a pledge acknowledges the community's interest in ensuring that governmental actors honor the commitment to equality, as well as this Court's responsibility for seeing that equality values are appropriately vindicated in particular cases.

D. Equality and Liberty Values Expressed In Other State Constitutions

The most comprehensive state constitutional analysis of the issues that this Court faces may be found in the Vermont Supreme Court decision Baker v. State, 744 A.2d 864 (Vt. 1999). In that case, the Vermont Supreme Court interpreted the Vermont constitution's "common benefits clause" to provide a specific equality guarantee.[9] The court determined

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[9] The Vermont Constitution provides

> That government is, or ought to be instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set

that Vermont could not, consistent with its constitutional commitment to equality, deny same-sex couples the benefits and privileges of the marriage laws. See id. at 887. The Baker court analyzed the claim of unequal treatment in light of the interests implicated by the benefits and privileges that attend marriage, and whether the denial of those benefits and privileges could be justified by any competing interest. See id. at 886.

Importantly, the Baker court relied upon the inclusionary principle that lay at the heart of the Vermont Common Benefits Clause to inform the ways in which Vermont's equal protection doctrine places limits on the government's distribution of benefits and privileges. As noted above, Articles VI and VII of the Massachusetts Constitution similarly reflect the importance of inclusion as an animating principle, by establishing that government cannot arbitrarily exclude individuals from the community by denying them the privileges and benefits afforded to all other community members. Given that both the Vermont and

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> of persons, who are a part only of that community ....

Vt. Const., Ch. I, Art. 7.

Massachusetts constitutions reflect this inclusionary principle, Baker is particularly instructive to the interpretation of the parallel equality provisions in the Declaration of Rights.

III. This Court's Jurisprudence Reflects the Enduring Values of Equality and Liberty Animating the Massachusetts Constitution

The commitments to equality and liberty that emerge from an analysis of the historical context of the Constitution's framing, the text of Articles I, VI, VII, and X, and the Preamble, an appreciation of the institutional and structural concerns, and guidance offered by other courts, have deeply influenced this Court's equal protection and substantive due process jurisprudence. Though all governmental action may involve some kind of line-drawing, see Blue Hills Cemetery, Inc. v. Board Of Registration, 379 Mass. 368, 373, 376 (1979), this Court has not lost sight of the revolutionary ideals embodied in the commitments to equality and liberty. For while the Court has embraced the tiered analysis of individual rights claims popularized by the federal courts, it has applied this doctrinal framework as necessary to reflect the dictates of the Constitution. See Opinion of the Justices, 374 Mass. 836, 840-41

(1977) (observing that, unlike the federal courts, this Court applies strict scrutiny to sex-based classifications). This Court has consistently applied this framework to vindicate the values animating the Constitution's equality and liberty provisions. Application of that framework demonstrates that the marriage prohibition is unconstitutional, and that a contrary result would undermine the values that framework was designed to effectuate.

This Court applies strict scrutiny to governmental action that discriminates against individuals or groups on the basis of a suspect classification, or that abridges a fundamental right. See Animal Legal Defense Fund, Inc. v. Fisheries & Wildlife Board, 416 Mass. 635, 640 (1993). For governmental action to survive strict scrutiny, the Commonwealth must prove that it "furthers a demonstrably compelling interest and limits its impact as narrowly as possible consistent with the legitimate purpose served." Opinion of the Justices, 373 Mass. 883, 886 (1977). Governmental action that does not infringe upon a fundamental right or employ a suspect classification will survive the Court's review if it can be shown to advance a legitimate interest; but, as

a general matter, if the governmental action is arbitrary, capricious or otherwise irrational, it will be deemed unconstitutional. See Murphy v. Comm'r of the Dept. of Industrial Accidents, 415 Mass. 218, 227 (1993). In applying this analytical framework to claims arising under Article I, VI, VI, and X, this Court has developed a body of caselaw that reflects the values underlying the constitutional provisions.

A. Fundamental Liberties Under the Massachusetts Constitution

The Court has consistently applied strict scrutiny to governmental action that implicates a fundamental liberty interest. In determining whether a liberty interest should be deemed fundamental, the Court has not hesitated to rely upon a conception of liberty that recognizes the framers' ideal of a community of autonomous individuals, each of whom is in the best position to make the decisions most important in his or her personal life. This is not to say, of course, that the Court's view of liberty is unbounded, but, rather, that the Court has delimited a sphere of personal interests in which government must leave decision-making to the individual.

This constitutionally protected sphere of liberty includes "rights associated with the family - the right of an individual to marry, establish a home and bring up children." Tarin v. Comm'r of the Div. of Med. Assistance, 424 Mass. 743, 756 (1997). The Court has held repeatedly that individuals have a fundamental liberty interest in the freedom to make the choices involved in marriage and family life. See, e.g., A.Z. v. B.Z., 431 Mass. 150, 162 (2000) ("[R]espect for liberty and privacy requires that individuals be accorded the freedom to decide whether to enter into a family relationship."); Sec'y of the Commonwealth v. City Clerk of Lowell, 373 Mass. 178, 185 (1977) ("[T]here is a private realm of family life which the State cannot enter.").

Moe v. Secretary of Administration, exemplifies the Court's understanding of this fundamental liberty interest. 382 Mass. 629 (1981). Moe concerned the question whether restrictions on the payment of State Medicaid funds for abortions violated the rights of Medicaid-eligible pregnant women under Articles I and X of the Massachusetts Declaration of Rights. See id. at 632-39. The Court emphasized that the Massachusetts Constitution's commitment to liberty

primarily protected personal autonomy. The Court reasoned that, if liberty means anything, it is that "the sanctity of individual free choice and self-determination" are "fundamental constituents of life." Id. (quotations omitted). See also Superintendent of Belchertown State Sch. v. Saikewicz, 373 Mass. 728, 742 (1977) ("The constitutional right to privacy, as we conceive it, is an expression of the sanctity of individual free choice and self-determination as fundamental constituents of life."). This liberty interest is, by necessity, limited to important personal decisions involving personal autonomy and intimate family relations. See, e.g., Tobin's Case, 424 Mass. 250, 252-53 (1997) (no fundamental liberty interest in workers' compensation benefits).

The decision to marry a person of one's own choice is a fundamental liberty interest. That choice fits squarely within the realm of decisions at the core of liberty: if the constitutional protection of liberty would not permit the government to order that a person conceive (or not conceive) a child, see Moe, 382 Mass. at 648, it follows that the government also

may not dictate whom a person can marry, and whom they cannot, unless absolutely required.[10]

B. Suspect Classifications Under the Massachusetts Constitution

The Court has also consistently applied strict scrutiny to governmental action that involves a suspect classification, including distinctions based on sex, race, color, creed or national origin.[11] The commitment to equality guarantees that the government equally respect the inherent equality of each citizen, without regard to personal characteristics such as sex. As this Court observed in Attorney General v. Massachusetts Interscholastic Athletic Ass'n, 378 Mass. 342 (1979), sex cannot serve as a proxy for biological and functional differences. See id. at 357 (the biological differences between men and women "are not so clear or uniform as to justify a rule in which sex is sought to be used as a kind of 'proxy' for a functional classification."). Because the Commonwealth's interpretation of the marriage statutes

[10] Such a restriction may be justified only by a compelling interest, as in the case of the restrictions on incestuous, polygamous, or adult-child relationships.

classifies individuals on the basis of sex, it is antithetical to a governmental structure predicated upon equality between all individuals: to restrict the marriage choice by sex violates anti-discrimination and inclusionary principles, making certain individuals unequal before the law.[12]

These equality principles also direct that classifications based upon sexual orientation should be regarded as suspect. Since 1780, Article I has expressly guaranteed equality for all people. The ERA, which added the second sentence to Article I, reinforced this commitment to equality. The ERA expressly identified certain groups that traditionally faced invidious discrimination; yet neither the Amendment nor any of the other equality provisions prohibits recognizing other groups that, due to historical or social prejudices, may be subject to unequal treatment as a class. Indeed, it would be

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[11] See Part II.B, supra (suspect classifications were strictly scrutinized by this Court long before the adoption of the ERA).

[12] It is not sufficient, of course, to suggest that the plaintiffs could avoid the restriction by choosing to marry a member of the opposite sex, for in that case the Commonwealth would still be dictating the choice of a spouse's sex, a decision which rightly falls within the sphere of liberty the framers envisioned.

anathema to the commitment to equality expressed in the first sentence of Article I if a constitutional amendment were required to ensure the equality of every past and future minority who has been or will be the victim of invidious discrimination. The fact that the Commonwealth's application of the marriage statutes operates to discriminate primarily against individuals of a particular sexual orientation - a group long subject to widespread discrimination - should make that application of the law suspect for the unequal treatment it promotes.

C. Strict Scrutiny Under the Massachusetts Constitution

Because the Commonwealth's application of the marriage statutes at issue here implicates a fundamental liberty interest and involves suspect classifications, the real issue in this case is whether the Commonwealth can justify its application with a compelling state interest. As the plaintiff-appellants explain in their brief, what reasons the Commonwealth and the court below have presented in defense of such a prohibition fall far short of the compelling justification necessary.

D. Rational Basis Review Under the Massachusetts Constitution

This Court has not confined its equal protection review of governmental action to the simple labeling and categorizing of claims. Rather, the Court has held that terms like "strict scrutiny" and "rational basis scrutiny" are merely "a shorthand for referring to the opposite ends of a continuum of constitutional vulnerability determined at every point by the competing values involved." Marcoux v. Attorney General, 375 Mass. 63, 66 n.4 (1978). Because of the panoply of interests that may be affected by the exercise of the Commonwealth's broad police power, this Court has acknowledged that, even under rational basis review, it must carefully examine the interests involved and the aims of the Commonwealth. See Moe, 382 Mass. at 656; Saikewicz, 373 Mass. at 740-41.

Thus, the Court has endorsed judicial review of governmental action that considers whether such action affects interests that implicate substantive constitutional values. See Blue Hills Cemetery, 379 Mass. at 372 (noting that intensity of judicial scrutiny is a reflection of "the values at issue"); Coffee-Rich, 348 Mass. at 421 (state constitution "may

guard more jealously against the exercise of the State's police power" in cases involving non-economic legislation). In addition, the Court has eschewed unblinking deference toward the political branches of government: even absent an effect on a fundamental right or a suspect class, legislation still must bear "a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare." Chebacco Liquor Mart, Inc. v. Alcoholic Beverages Control Comm'n, 429 Mass. 721, 724 (1999) (quotation omitted).

Consider, in this regard, Murphy v. Comm'r of Dept. of Industrial Accidents. In Murphy, the Court held unconstitutional the requirement of a fee for workers' compensation claims filed with the assistance of counsel. See 415 Mass. at 227. The Court carefully weighed the competing interests at stake: the government's concern to reduce the costs of administrative proceedings and to deter frivolous appeals, as against the individual's interest in unfettered access to justice. See id. at 233. In striking that balance, the Court reasoned that the substantive constitutional value of individual access to justice required the Legislature to use

classifications that actually served the Commonwealth's legitimate interest, and invalidated the classification because it did not.

The Murphy decision reflects a concern for both the principle of inherent equality in the Declaration of Rights, and the larger value of equality to the community, even absent the existence of a fundamental interest or suspect class. The decision also recognizes a necessary check on the Legislature's otherwise broad discretion, by compelling legislators to fashion laws that actually carry out the legitimate purposes of government.[13]

Notably, even when a claim involves governmental restrictions on purely economic interests, the commitment to equality requires that the Commonwealth offer some plausible explanation for the discriminatory classifications at issue. This Court has not endeavored to supply such an explanation where none exists. See Mansfield Beauty Academy v. Bd. Of

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[13] Murphy is by no means the only instance in which the Court has applied this careful scrutiny to government action that implicates a substantive constitutional value. In Bachrach v. Secretary of the Commonwealth, 382 Mass. 268 (1981), for example, the Court struck down ballot legislation that restricted expression, as not supportable under any standard of review. See id. at 278 n.18.

Registration, 326 Mass. 624, 627-28 (1951) (holding unconstitutional statute prohibiting hairdressing school from charging for services because Commonwealth failed to demonstrate that the law advanced any specific goal); Hall-Omar Baking v. Comm'r of Labor & Indus., 344 Mass. 695, 707-08 (1962) (holding unconstitutional economic legislation distinguishing, without rational basis, among different classes of products sold).

In short, the question whether governmental action offends the commitment to equality in a given instance requires a careful examination of the interests at stake and the quality of the government's justification for the discrimination. This approach resembles that endorsed by the Vermont court in Baker, which disdains rote categorization at the expense of effective judicial scrutiny. See Baker v. State, 744 A.2d 864 (Vt. 1999). The approach acknowledges that there exists a continuum of interests between the purely economic and the fundamental that demand careful scrutiny. By focusing on whether the government has met its burden of establishing a real and substantial connection between its distinctions

and the public purpose served, the Court assures that the constitutional commitment to equality is honored.

Application of that approach in this case leads to at least two conclusions. The first is that, whether or not the Court deems the right to marry a person of one's choosing, regardless of sex, a fundamental interest, this right implicates such a substantive constitutional value that careful scrutiny is warranted. The marriage prohibition intrudes upon an interest that touches the ability of individuals to lead autonomous lives by making decisions related to the establishment of intimate family relationships. At a minimum, the commitment to equality demands that, where such an interest is concerned, government must act evenhandedly. See Opinion of the Justices, 332 Mass. 769, 780 (1955) (Constitution requires that "all persons in the same category and the same circumstances be treated alike").

The second conclusion is that, regardless of whether strict scrutiny applies in this instance, the Court should recognize that the Commonwealth's application of the marriage statutes shares no real or substantial connection to any legitimate end. As cases like Mansfield Beauty Academy and Hall-Omar

Baking make clear, the Legislature is not free to enact discriminatory legislation absent reasonable justification, and this Court has consistently declined invitations to invent rational bases for discrimination when none exist. See Dickerson, 396 Mass. at 743 (even absent fundamental interest or suspect class, law must be "rationally related to the furtherance of a legitimate State interest").

IV. Conclusion

Articles I, VI, VII, and X, and the Preamble embrace a commitment to equality and liberty as deeply rooted constitutional values. The equality provisions, establishing the inherent equality of individuals, guarantee that government must treat similarly-situated individuals and classes alike. The liberty provisions guarantee each individual the right to self-determination - to make the most important personal decisions in their lives without government interference. These constitutional values have informed the articulation of the doctrinal framework the Court uses to address claims of unequal treatment, and these values should continue to inform the application of that framework in this case.

The marriage prohibition at issue here is unconstitutional. A contrary decision would undermine the inherent equality and the concomitant anti-discrimination and inclusion principles, as well as the value of equality claims as a means by which the community may regulate governmental action. Not least, it would deny the freedom to make self-determining choices to a large number of individuals in the Commonwealth, thereby subverting the self-autonomy upon which the framers' view of constitutional government was founded.

In view of the commitment to the enduring values of equality and liberty, the conclusion that the marriage prohibition is unconstitutional fits comfortably among the Court's prior decisions. The interest at stake relates directly to the ability of individuals to make decisions concerning family and intimate relationships, and restricts certain individuals completely from whatever benefits and status the statutory scheme of marriage affords. At its core, the discrimination the marriage prohibition works is antithetical to the most basic conception of the equality and liberty values reflected in the Declaration of Rights: it both entirely abridges the

the equality and liberty values reflected in the Declaration of Rights: it both entirely abridges the right of certain individuals to self-determination, and excludes those individuals utterly from the benefits and privileges that other community members enjoy. It is precisely this kind of discrimination that the framers sought to preclude, and that this Court should, consistent with the values the framers embraced, declare unconstitutional under Articles I, VI, VII and X of the Massachusetts Constitution. Therefore, we respectfully request that this Court grant the relief requested by the plaintiff-appellants.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Gabriel M. Helmer, an attorney for Amici Curiae Professors of State Constitutional Law, Robert F. William et al., hereby certify that on November 8, 2002 I served the foregoing Brief of Amicus Curiae by causing two copies to be mailed, first class postage prepaid, to counsel for all parties of record.

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Addendum

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PREAMBLE

The descriptive article headings appearing herein are not a part of the official text of the Constitution, but have been editorially supplied.

Objects of government; body politic, how formed; its nature

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

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 certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

DECLARATION OF RIGHTS

Art. I. Equality of people; natural rights

ART. I. All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

Historical Notes

The One hundred and sixth Article of Amendment, approved November 2, 1976, annulled the original Article I of Part the First and adopted the present text in place thereof. The original article provided:

"ARTICLE I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

Art. VI. Title to obtain advantages or privileges; inheritance or transmission of title

ART. VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

Art. VII. Objects of government; right of people to institute and change government

ART. VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Art. X. Right of protection and duty of contribution; taking of property; consent to laws; taking of property for highways and streets

ART. X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

Article 7th. [Government for the people; they may change it]

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

HISTORY

Source. Con. 1777, ch. 1, art. 6. Con. 1786, ch. 1, art. 7.