

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Department
of the Trial Court

Civil Action No. 04-2656-G

SANDRA and ROBERTA COTE-WHITACRE,
AMY ZIMMERMAN and TANYA WEXLER,
MARK PEARSALL and PAUL TRUBEY,
KATRINA and KRISTIN GOSSMAN,
JUDITH and LEE MCNEIL-BECKWITH,
WENDY BECKER and MARY NORTON,
MICHAEL THORNE AND JAMES THEBERGE, and
EDWARD BUTLER and LESLIE SCHOOF,

Plaintiffs,

v.

DEPARTMENT OF PUBLIC HEALTH,
CHRISTINE C. FERGUSON, in her capacity as Commissioner
of the Department of Public Health;
REGISTRY OF VITAL RECORDS AND STATISTICS, and
STANLEY E. NYBERG, in his capacity as Registrar of Vital
Records and Statistics,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are eight loving and committed gay and lesbian couples challenging the Defendants' application of Mass. Gen. C. 207, §11 ("Section 11") to bar all non-resident same-sex couples like themselves from marrying. The Plaintiff Couples raise both state and federal constitutional claims in support of their request for preliminary injunctive relief (and file herewith a supporting Memorandum of Law and Appendix):

1. Each of the Plaintiff Couples have been in committed relationship for between 5 and 37 years. The Commonwealth has provided marriage licenses to five Plaintiff Couples but now

publicly questions the validity of those marriages. In addition, municipal clerks denied marriage licenses to the three remaining Plaintiff Couples after Attorney General Reilly demanded, under threat of legal sanction, that all municipalities apply Section 11 to bar all non-resident gays and lesbians from marrying in the Commonwealth.

2. Every day the Defendants deny marriage rights and the validity of the Plaintiff Couples' completed marriages under the auspices of Section 11 is a day that violates the Plaintiff Couples' rights under the Massachusetts Constitution and the Privileges and Immunities Clause of the Federal Constitution (U.S. Constit. art. 4, §2). Without the requested preliminary injunction, the Plaintiff Couples will suffer on-going violation of their constitutional rights and irreparable harm.

3. There is no rational basis for the Defendants' reliance upon Section 11 to deny marriage rights to the Plaintiffs Couples in light of *Goodridge v. Dep't. of Pub. Health*, 440 Mass. 309 (2003) and its progeny. The Defendants' reliance upon Section 11's incorporation of the discriminatory marriage laws of sister States does not make the Department's present denial of these marriage rights any more rational under Massachusetts law. Moreover, the Defendants' selective enforcement of this law to bar only marriages by gays and lesbians, and the racial animus associated with Section 11's enactment combine to raise further questions about the law's legitimacy in the aftermath of *Goodridge*.

4. Moreover, Section 11's distinction between the marital rights of residents and nonresidents runs afoul of the Privileges and Immunities Clause of the United States Constitution (U.S. Const. Art. IV, § 2). However, the Commonwealth lacks a substantial justification for its discrimination between nonresident same-sex couples and resident same-sex couples and cannot demonstrate a substantial relationship between its discrimination and any purported justifications for Section 11's application here.

5. By way of preliminary relief, the Plaintiff Couples seek:
- (i) a declaration that Section 11 is unconstitutional as applied to non-resident same-sex couples;
 - (ii) a preliminary order enjoining the Defendants from enforcing Section 11 with respect to non-resident same-sex couples;
 - (iii) a preliminary order requiring the Defendants to process and index non-resident same-sex couples' marriage applications in the ordinary course; and
 - (iv) such other and further relief as this Court may deem just and proper.

WHEREFORE, the Plaintiff Couples request that this Court grant their Motion for a Preliminary Injunction.

Respectfully submitted,

PLAINTIFF COUPLES

By their Counsel,

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Dated: June __, 2004

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party by hand on June 23, 2004.

Michele Granda, Esq.