

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

NO.

\_\_\_\_\_  
JOHANNA SCHULMAN, )  
Plaintiff, )  
 )  
v. ) COMPLAINT  
 )  
THOMAS REILLY, in his official )  
capacity as the Attorney General, )  
 )  
and )  
 )  
WILLIAM F. GALVIN, in his official )  
capacity as the Secretary of the )  
Commonwealth, )  
Defendants. )  
\_\_\_\_\_)

INTRODUCTORY STATEMENT

1. This is a civil action in the nature of certiorari and mandamus under G.L. c. 249, §4 and G.L. c. 249, §5, respectively, and for declaratory relief pursuant to G.L. c. 231A. The Plaintiff, a registered voter, taxpayer and resident of the Commonwealth, seeks relief relating to a citizen-initiated constitutional amendment Initiative Petition No. 05-02 ("the Petition") that has been certified by the Attorney General under Amendment Article 48 of the Massachusetts Constitution ("Article 48"). The Plaintiff maintains that the Petition relates to

an excluded matter under Article 48 and therefore should not have been certified by the Attorney General and should not be the subject of any further official actions by the Secretary of the Commonwealth.

#### JURISDICTION

2. This Court has jurisdiction of this matter pursuant to G.L. c. 249, §§4, 5 and G.L. 231A, §1.

#### PARTIES

3. The Plaintiff, Johanna Schulman, is a registered voter and taxpayer who resides in Cambridge, Massachusetts.

4. The Defendant Thomas Reilly is the Attorney General of the Commonwealth of Massachusetts having his usual place of business at One Ashburton Place, Boston, Massachusetts. He is sued in his official capacity as Attorney General of the Commonwealth.

5. The Defendant William F. Galvin is the Secretary of the Commonwealth having his usual place of business at the State House, Boston, Massachusetts. He is sued in his official capacity as Secretary of the Commonwealth.

FACTS

6. On or before August 3, 2005, a signed "Initiative Petition for a Constitutional Amendment to Define Marriage" was filed with the Attorney General's Office and given the designation Initiative Petition No. 05-02 (hereinafter "the Petition"). A copy of the Petition and the Initiative Petition Information Sheet as posted on the Attorney General's website at <http://www.ago.state.ma.us/sp.cfm?pageid=2144> is attached to this Complaint as Exhibit A.

7. The Petition seeks to amend the Massachusetts Constitution to add the following language as an article of amendment:

When recognizing marriages entered into after the adoption of this amendment by the people, the Commonwealth and its political subdivisions shall define marriage only as the union of one man and one woman.

8. On September 7, 2005, pursuant to Article 48, THE INITIATIVE, II, §3, the Attorney General certified that the Petition was in proper form for submission to the people in that, among other things, it contains only subjects not excluded from the popular initiative; and the Attorney General explained his certification decision in a letter, a

copy of which is posted on the Attorney General's website at <http://www.ago.state.ma.us/sp.cfm?pageid=2144>.

9. The Attorney General also prepared a "Summary of No. 05-02" to comply with the requirements of Article 48, THE INITIATIVE, II, §3. A copy of the "Summary of No. 05-02" as posted on the Attorney General's website at <http://www.ago.state.ma.us/sp.cfm?pageid=2144> is attached to this Complaint as Exhibit B.

10. On information and belief, on or after September 7, 2005, the Petition's proponents filed the Petition and the Attorney General's Summary with the Secretary of the Commonwealth.

11. On information and belief, the Office of the Secretary of the Commonwealth assigned the letter "K" to the Petition and, on or before September 21, 2005, prepared and distributed blank signature forms for circulation by the proponents of the Petition.

12. On information and belief, by December 7, 2005, the proponents filed with the Secretary of the Commonwealth what they asserted to be a sufficient number of certified signatures on Petition 05-02 to require the Secretary of the Commonwealth to transmit the Petition to the General Court.

13. The Plaintiff believes that it is the intention of the Secretary of the Commonwealth to transmit the Petition to the General Court on January 4, 2006, the first day of the legislative session.

COUNT I

14. The Plaintiff repeats and realleges the allegations set forth in Paragraphs 3 through 13.

15. In certifying the Petition, the Attorney General rejected the proposition that this citizen-initiated constitutional amendment was barred by Article 48's exclusion of any measure that "relates ... to the reversal of a judicial decision."

16. In explaining his position that the Petition did not relate to "the reversal of a judicial decision," the Attorney General made a distinction between amending the constitution by a citizen initiative petition in order to overturn the result of a court decision and establishing a process by which the people could recall a judicial decision and determined that Article 48 excluded only the latter and not the former. The Attorney General's September 7, 2005 letter explaining his certification of

the Petition is posted on the Attorney General's website at <http://www.ago.state.ma.us/sp.cfm?pageid=2144>.

17. On information and belief, and based upon a review of all materials provided by the Attorney General's Office in response to public records requests as well as all materials contained in the Attorney General files maintained at the Massachusetts State Archives and identified as relating to initiatives and referenda, the Attorney General's Office has never previously adopted or espoused the interpretation of the "reversal of a judicial decision" exclusion set forth in the defendant Attorney General's letter of September 7, 2005 when either certifying or refusing to certify an initiative petition.

18. The Attorney General erred in certifying Petition 05-02 as proper for submission to the people.

19. The Secretary of the Commonwealth will violate his public duty if he undertakes any further steps toward the placement of Petition 05-02 on the ballot.

20. A controversy exists between and among the parties.

21. The Petition does not comply with the requirements of Article 48 for certification, introduction

into the General Court or eventual submission to a vote by the people for the following reason: (a) the Petition relates to "the reversal of a judicial decision." Article 48, THE INITIATIVE, II, §2.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests that a judgment enter:

1. In the nature of certiorari declaring that the Attorney General erred as a matter of law in certifying Petition 05-02 under Amendment Article 48 of the Massachusetts Constitution and quashing that certification.

2. In the nature of mandamus directing that the Secretary of the Commonwealth take no further steps pursuant to Amendment Article 48 of the Massachusetts Constitution to advance Petition 05-02 in any manner, including but not limited to, any actions relating to the submission of Petition 05-02 to the voters.

3. Declaring that Petition 05-02 fails to meet the requirements of Amendment Article 48 of the Massachusetts Constitution.

4. Affording the Plaintiff such other relief as is just and proper.

JOHANNA SCHULMAN  
By her attorneys,

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Jennifer L. Levi (#562298)  
Mary L. Bonauto (#549967)  
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& Defenders  
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DATED: January 3, 2006



CERTIFICATE OF SERVICE

I, Gary D. Buseck, Esq., hereby certify that I have this day served a copy of the foregoing Complaint by hand delivering a copy of the same to Peter Sacks, Esq., Deputy Chief, Government Bureau, One Ashburton Place, Boston, MA 02108 and to Michelle Tassinari, Esq., Director of Elections, Office of the Secretary of the Commonwealth, One Ashburton Place, Room 1705, Boston, MA 02108.

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Gary D. Buseck, Esq.

DATED: January 3, 2006