

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT P. LARGESS

Plaintiff,

vs.

Case No.

SUPREME JUDICIAL COURT FOR THE  
STATE OF MASSACHUSETTS;  
CHIEF JUSTICE MARGARET MARSHALL,  
JUSTICE ROBERT J. CORDY, JUSTICE  
JUDITH A. COWIN, JUSTICE JOHN M.  
GREANEY, JUSTICE RODERICK L. IRELAND,  
JUSTICE MARTHA B. SOSMAN, JUSTICE  
FRANCIS X. SPINA, in their official capacities  
as Justices of the Supreme Judicial Court of  
Massachusetts; MASSACHUSETTS  
DEPARTMENT OF PUBLIC HEALTH;  
CHRISTINE C. FERGUSON, in her official  
capacity as Commissioner of the Massachusetts  
Department of Public Health; JUDY A.  
McCARTHY, in her official capacity as City  
Registrar for the City of Boston; CITY AND  
TOWN CLERKS 1-350,

Defendants.

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF, DECLARATORY RELIEF**

COMES NOW the Plaintiff, ROBERT P. LARGESS, by and through his undersigned counsel, and respectfully requests this Court to issue a Temporary Restraining Order, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief. In support thereof, Plaintiff shows unto the Court as follows:

1. This is a civil action whereby Plaintiff seeks Declaratory Judgment, Preliminary and Permanent Injunctive Relief, and a Temporary Restraining Order. Plaintiff seeks Preliminary and Permanent Injunctive Relief, enjoining Defendants, the Supreme Judicial Court, Justices Marshall, Greaney, Ireland, Spina, Cowin, Sosman and Cordy, Department of Public Health, Commissioner of Public Health, City of Boston City Registrar, City and Town Clerks Nos. 1 through 350, their

agents, servants and employees and those acting in active concert and with actual notice thereof, from enforcing *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003) so as to permit the issuance of marriage licenses to same-sex couples, or the recording of those licenses.

2. Plaintiff prays for Declaratory Judgment to determine the constitutionality of the actions of the Supreme Judicial Court in exercising jurisdiction over the *Goodridge* case and in redefining marriage.

3. An actual controversy exists between the parties involving substantial constitutional issues, in that the actions of the Supreme Judicial Court in exercising jurisdiction over the *Goodridge* case and in redefining marriage constitute actions delegated to other branches of the government under the Massachusetts constitution, thereby violating the federal constitutional guarantee to the citizens of Massachusetts to a republican form of government.

#### **JURISDICTION AND VENUE**

4. This action arises under Article IV, Section 4 of the United States Constitution, 42 U.S.C. §1983.

5. This Court has jurisdiction of this claim under, and by virtue of, 28 U.S.C. §§1331, 2201-02.

6. Venue is proper under 28 U.S.C. §1391 (b). Each and all of the acts alleged herein were done by the Supreme Judicial Court, in the District of Massachusetts.

7. This Court is authorized to grant Declaratory Judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 implemented through Rule 57 of the Federal Rules of Civil Procedure, and to issue the Temporary Restraining Order, and the Injunctive Relief requested by Plaintiff under Rule 65 of the Federal Rules of Procedure.

8. This Court is authorized to grant Plaintiff's prayer for relief regarding costs, including a reasonable attorney's fee, under 42 U.S.C. §1988.

#### **PARTIES**

9. Plaintiff, ROBERT P. LARGESS, is and was at all times relevant herein, an

individual and resident of the State of Massachusetts and is Vice-President of the Catholic Action League.

10. Defendant, the SUPREME JUDICIAL COURT, is the highest court in the State of Massachusetts.

11. Defendants JUSTICES MARSHALL, GREANEY, IRELAND, SPINA, COWIN, SOSMAN AND CORDY are Justices of the Massachusetts Supreme Judicial Court.

12. Defendant, the DEPARTMENT OF PUBLIC HEALTH, is the public entity responsible for recording of all validly issued marriage licenses for the State of Massachusetts into the Registry of Vital Records and Statistics, and is capable of being sued..

13. Defendant, CHRISTINE C. FERGUSON, Commissioner of Public Health, is the person in charge of the Department of Public Health, who is responsible for overseeing the activities of the Department of Public Health in recording validly issued marriage licenses into the Registry of Vital Records and Statistics.

14. Defendant, JUDY A. MCCARTHY is the City of Boston City Registrar, the city office that issues marriage licenses in Boston, Massachusetts..

15. Defendants City and Town Clerk numbers 1-350 are those city and town clerks responsible for issuing marriage licenses throughout the State of Massachusetts..

#### **STATEMENT OF FACTS**

16. The plaintiffs in *Goodridge v. Department of Health*, 440 Mass. 309 (2003) are seven same-sex couples who sought and were denied marriage licenses.

17. The *Goodridge* plaintiffs commenced suit in the Superior Court in April, 2001, against the Department of Public Health and Commissioner of Public Health

18. In that complaint, the *Goodridge* plaintiffs argued that “the exclusion of the plaintiff couples and other qualified same sex couples from access to marriage licenses, and the legal and social status of civil marriage, as well as the protections, benefits and obligations of marriage, violates Massachusetts laws.”

19. On May 7, 2002, the Superior Court granted summary judgment in favor of defendants.

20. The matter was directly appealed to the Supreme Judicial Court.

21. In July, 2003, the Supreme Judicial Court issued its decision in the *Goodridge* case.

22. In its decision, the *Goodridge* court stated that the “everyday meaning of ‘marriage’ is ‘the legal union of a man and woman as husband and wife’ . . . and the plaintiffs do not argue that it has ever had a different meaning under Massachusetts law.”

23. In analyzing Massachusetts statutory law, the *Goodridge* court found that the language of the licensing statute could not be construed so as to permit same-sex couples to marry.

24. The *Goodridge* “declare[d] that barring an individual from the protections, benefits and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts constitution.”

25. As part of its holding, the *Goodridge* court “construe[d] civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others.”

26. The *Goodridge* court characterized its decision as a “reformulation” of marriage.

27. The *Goodridge* court specifically did not invalidate the marriage laws.

28. The *Goodridge* court stated that its decision would become effective 180 days after the date of the court’s order.

29. May 17, 2004 will be 180 days from the date of the *Goodridge* decision.

30. Defendants McCarthy and Town and City Clerks 1-350 will be required to issue marriage licenses to same-sex couples on and after May 17, 2004.

31. Upon information and belief, Town and City Clerks have publicly stated that they intend to abide by the Supreme Judicial Court’s decision in *Goodridge* and issue marriage licenses to same-sex couples.

32. Defendant Ferguson is responsible for recording validly-issued marriage licenses.

33. Defendant Ferguson will be required to record marriage licenses issued to same-sex

couples on and after May 17, 2004.

34. Part I, Art. IV of the Massachusetts Constitution provides that “The people of this commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state . . . .”

35. Part I, Art. V of the Massachusetts Constitution provides that “All powers residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.”

36. Part I, Art. VII of the Massachusetts Constitution provides in part that “the people alone have an incontestable, unalienable, and inalienable right to institute government.”

37. Part I, Art. XVIII of the Massachusetts Constitution provides that “The people . . . have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.”

38. Part I, Art. XXX of the Massachusetts Constitution provides in part that “the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men.”

39. Part II, Chp. 1, sec. 1, Art. IV of the Massachusetts Constitution provides “And further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws . . . as they shall judge to be for the good and welfare of this Commonwealth.”

40. Part II, Chp. II, sec. 1, Art. V of the Massachusetts Constitution provides that “All causes of marriage, divorce, and alimony, and all appeals from the judges of probate shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.”

41. Massachusetts Courts are only enabled to hear cases related to marriage that involve,

affirmation, annulment, divorce and alimony.

42. Massachusetts Courts are not empowered by either the Massachusetts Constitution or the Massachusetts Statutes to hear cases involving the definition of marriage.

43. Article IV, § 4 of the United States Constitution provides that “The United States shall guarantee to every State in the Union a Republican Form of Government.”

#### **First Cause of Action**

##### **(The Supreme Judicial Court violated the Republican Guarantee Clause when it Redefined Marriage)**

44. Plaintiff hereby incorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 43.

45. The Massachusetts constitution grants to the Legislature the power to pass legislation that defines marriage.

46. The Supreme Judicial Court redefined marriage.

47. The Supreme Judicial Court exceeded the powers granted to it in the Massachusetts Constitution.

48. The Supreme Judicial Court’s violation of the separation of powers constitutes a violation of plaintiff’s federal constitutional guarantee of a republican form of government.

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory and injunctive relief set forth herein.

#### **Second Cause of Action**

##### **(The Supreme Judicial Court violated the Republican Guarantee Clause when it Exercised Jurisdiction over the Goodridge Case)**

49. Plaintiff hereby incorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 43.

50. The Massachusetts constitution grants to the Governor and Council the authority over “causes” of marriage except to the extent the Legislature has granted authority to another branch.

51. The *Goodridge* case concerned a “cause” of marriage.

52. The Legislature had not granted authority to the court to hear “causes” of marriage.

53. The Supreme Judicial Court exceeded the powers granted to it in the Massachusetts Constitution.

54. The Supreme Judicial Court’s violation of the separation of powers constitutes a violation of plaintiff’s federal constitutional guarantee of a republican form of government.

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory and injunctive relief set forth herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

A. That this Court immediately issue a Temporary Restraining Order against Defendants, Supreme Judicial Court for the State of Massachusetts; Chief Justice Margaret Marshall, Justice Robert J. Cordy, Justice Judith A. Cowin, Justice John M. Greaney, Justice Roderick L. Ireland, Justice Martha B. Sosman, Justice Francis X. Spina, in Their Official Capacities As Justices of the Supreme Judicial Court of Massachusetts; Massachusetts Department of Public Health; Christine C. Ferguson, in Her Official Capacity as Commissioner of the Massachusetts Department of Public Health; Judy A. Mccarthy, in Her Official Capacity as City Registrar for the City of Boston; City and Town Clerks 1-350, and all other persons acting in concert with them, restraining the enforcement of the Supreme Judicial Court’s decision in *Goodridge* and from issuing marriage licenses to same-sex couples, from recording marriage licenses issued to same-sex couples or in any other way from violating Plaintiff’s rights under Article 4, §4 of the United States Constitution;

B. That this Court immediately issue preliminary injunction against Defendants, Supreme Judicial Court for the State of Massachusetts; Chief Justice Margaret Marshall, Justice Robert J. Cordy, Justice Judith A. Cowin, Justice John M. Greaney, Justice Roderick L. Ireland, Justice Martha B. Sosman, Justice Francis X. Spina, in Their Official Capacities As Justices of the Supreme Judicial Court of Massachusetts; Massachusetts Department of Public Health; Christine

C. Ferguson, in Her Official Capacity as Commissioner of the Massachusetts Department of Public Health; Judy A. Mccarthy, in Her Official Capacity as City Registrar for the City of Boston; City and Town Clerks 1-350, and all other persons acting in concert with them, enjoining the enforcement of the Supreme Judicial Court's decision in *Goodridge* and from issuing marriage licenses to same-sex couples, from recording marriage licenses issued to same-sex couples or in any other way from violating Plaintiff's rights under Article 4, §4 of the United States Constitution;

C. That this Court issue a Permanent Injunction against Defendants, Supreme Judicial Court for the State of Massachusetts; Chief Justice Margaret Marshall, Justice Robert J. Cordy, Justice Judith A. Cowin, Justice John M. Greaney, Justice Roderick L. Ireland, Justice Martha B. Sosman, Justice Francis X. Spina, in Their Official Capacities As Justices of the Supreme Judicial Court of Massachusetts; Massachusetts Department of Public Health; Christine C. Ferguson, in Her Official Capacity as Commissioner of the Massachusetts Department of Public Health; Judy A. Mccarthy, in Her Official Capacity as City Registrar for the City of Boston; City and Town Clerks 1-350, and all other persons acting in concert with them, permanently enjoining them enforcing the *Goodridge* decision as a basis from issuing marriage licenses to same-sex couples, from recording marriage licenses issued to same-sex couples or in any other way from violating Plaintiff's rights under Article 4, §4 of the United States Constitution

D. That this Court render a Declaratory Judgment:

- (1) Declaring the Supreme Judicial Court exceeded its authority in redefining marriage to constitute the voluntary union of two persons as spouses, to the exclusion of others;
- (2) Declaring that the Supreme Judicial Court exceeded its authority in exercising jurisdiction over the *Goodridge* case.

E. That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

F. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order;

G. That this Court award Plaintiffs the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C. §1988.

H. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 10th day of May, 2004.

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