

COMMONWEALTH OF MASSACHUSETTS

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SUPREME JUDICIAL COURT  
SJC No. 08860

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HILLARY GOODRIDGE AND JULIE GOODRIDGE ET AL.,  
APPELLANTS

V.

DEPARTMENT OF PUBLIC HEALTH ET AL.,  
APPELLEE

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BRIEF IN SUPPORT OF APPELLEE OF  
AMICUS CURIAE JOSEPH URENECK

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**STATEMENT OF INTEREST OF AMICUS**

Amicus is a concerned individual residing in the state of Massachusetts who seeks to protect his status, rights and responsibilities under the Commonwealth's marriage laws and the longstanding tradition in support of marriage defined as the union of one man and one woman. Amicus presents this Brief to the court with the hope that the argument herein will assist the Court in reaching a reasonable and just decision.

Amicus, submitting this brief in support of the Appellee, has come to understand that the long held traditional view of marriage is now in Massachusetts and nationwide under critical scrutiny heretofore unknown to the general public and believes that such activity represents activity detrimental to society. Amicus believes that although the state may prohibit invidious discrimination against private individual behavior such protection should not lead to the diminishment of the institution of marriage. To do so would undercut the rights of the Amicus and the majority of individuals in this state and nationwide who depend upon government institutions for their general welfare and for support and

guidance through our laws in their relationship with family, friends and society. Amicus also believes that although the opinion of the trial court in this case answered the Constitutional and due process issues raised by Plaintiffs it did not completely address questions raised by the Plaintiff in the area of the nature and impact of biological differences on marriage relations, the detrimental impact of a 'slippery slope' decision in favor of same-sex marriage on society and the need to sustain the foundation of opposite sex marriage for the purpose of procreation and child rearing.

It is to these questions that Amicus will address the Court.

#### **STATEMENT OF ISSUES**

Amicus adopts the Appelles's's Statement of the Issues

#### **STATEMENT OF THE CASE**

Amicus adopts Appellee's Statement of the Case

## ARGUMENT

### 1. Legal, cultural and standard definition of marriage has always been of a union of one man and one woman.

It is appropriate to begin with the standard dictionary meaning of the word marriage (<http://dictionary.Law.com>) " marriage n. the joining of a male and female in matrimony by a person ." As correctly noted *Judge Connolly*, RA pgs. 111-112 the application and statutory construction of the word 'marriage' has always been that of a union between a man and a woman. Moreover, despite the Appellants' argument that the description of marriage *Inhab. of Milford*, 7 Mass at 52 is neither proscriptive nor dispositive (Appellant Brief, PG 14, n. 6) the description therein is clearly stated, *id.*, in the manner of a *definition* by Parsons, C. J.:

'Marriage is unquestionably a civil contract, founded in the social nature of man, and intended to regulate, chasten, and refine, the intercourse between the sexes; and to multiply, preserve and improve the species. It is an engagement by which a single man and a single woman, of sufficient discretion, take

each other for husband and wife." (Emphasis added)

The definition clearly brings to the fore several key concepts and beliefs on marriage. First, marriage is a civil contract. Second, it is "founded in the social nature of man, and intended to regulate .....the intercourse between the sexes." The Appellants argue that this biological imperative between the sexes expressed in marriage lacks a 'rational basis' in the marriage laws (Appellant Brief, pg. 79) but the history of such laws (Opinion of Connolly, RA 114-115) demonstrate otherwise. Moreover, gay people are not excluded from marriage. Instead the Appellants are demanding the special right to marry outside of the accepted ordered social system. Gay people

"already have the same legal right to marry as everybody else--to marry, that is, members of the opposite sex. What they claim instead is a new right: the right to reconfigure the conditions of marriage in such a way as to change its very definition, while denying they are doing any such thing." (SEE Kurtz-  
[http://www.findarticles.com/cf\\_0/m1061/2\\_110/65014588/print.jhtml](http://www.findarticles.com/cf_0/m1061/2_110/65014588/print.jhtml))

The idea of a required ordered social system, moreover, is accepted by the Appellants when they recognize the "bright

lines which help to order our society" (Appellant Brief, pg. 10) The crux of the matter is that Appellants want to reorder those lines to fit the requirements of their sexual lifestyle. To do so would be a mistake.,

"What is distinctive about marriage is that it is an institution created to sustain child-rearing" and "entrusted in principle to married heterosexual couples because after much experimentation--several thousand years, more or less--we have found nothing else that works as well." (James. Q. Wilson, Commentary, March 1996 v101 n3 p34(6) )

Appellants argue that "immutability" is not a requirement and that the Supreme Court does not limit suspect classes by this criteria (Urban League of Eastern Mass et al Amicus Brief, pg. 44-45),and at the same time that homosexuality is indeed 'beyond the individual's control". Although this conclusion has not been settled it does leave us with the fact that "nature or nurture has fostered upon some people a tragic burden. How to deal with a tragic burden, however, is very different from whether Judaism, Christianity and western civilization should drop their heterosexual marital ideal".( Dennis Prager, Los Angeles Times, 'Right and Wrong' July 16, 1993 )

**2. Procreation and childrearing are best left to the union of one woman and one man.**

There is also the conceptual basis of a family which the SJC realized in *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) "The Constitution protects the sanctity of the family *precisely because* the institution of the family is deeply rooted in this Nation's history and tradition" (emphasis added); The primary definition of family (See dictionary.law.com) is "n. 1) husband, wife and children", in *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) and "Marriage *and* procreation are fundamental to the very existence and survival of the race." (Emphasis added) Thus the argument (Appellant Brief, pg. 41-42) that "the entire edifice of laws protecting married persons is premised on the notion of a unitive pairing of two people with an emotional and financial interdependence and reciprocal rights and responsibilities" (emphasis added) is disingenuous. More accurately, while financial and emotional reasons of course play a role in the motive force behind marriage it is a secondary one as far as society is

concerned. The 'entire edifice' is premised on the notion that marriage and procreation are essential to human existence. No matter how energetic the Appellant may try to diminish its importance and place the emotional and financial aspects of a personal relationship front and center, procreation is and has been central to the foundation of the marriage compact.

To this end it is reasonable that the state may enforce MGL 207 using the meaning of marriage as defined above in order to promote the general welfare of the people. "The Fourteenth Amendment (SJC 268 U.S. 510;45 S. Ct. 571;69 L. Ed. 1070;1925 U.S. LEXIS 589;39 A.L.R. 46 June 1, 1925 ) does not remove or restrict the power of the State to enact laws necessary to promote the health, safety, peace, morals, education or general welfare of its people. *Munn v. People of Illinois*, 94 U.S. 278; *Boston Beer Co. v. Massachusetts*, 97 U.S. 25; *Barbier v. Connolly*, 113 U.S. 27, 31; *Mugler v. Kansas*, 123 U.S. 623, 666; *Powell v. Pennsylvania*, 127 U.S. 678; *Re Kemmler*, 136 U.S. 436, 449; *Crowley v. Christensen*, 137 U.S. 86; *Jones v. Brim*, 165 U.S. 180, 182; *Jacobson v. Massachusetts*, 197 U.S. 11; *Interstate Consol. Street R. Co. v. Massachusetts*, 207 U.S. 79; *McLean v. Arkansas*, 211 U.S. 539; *Middleton v.*

*Texas Power & L. Co.*, 249 U.S. 152; *N. O. Gas Light Co. v. Louisiana Light, etc., Mfg. Co.*, 115 U.S. 650; *Slaughter House Cases*, 16 Wall. 22; *Stone v. Mississippi*, 101 U.S. 814; *Sanitary District of Chicago v. United States*, 266 U.S. 405.

The state has a clear interest in the support and promotion of laws in favor of heterosexual marriage and is only limited as to whether this is legitimate state concern. *Cited by 1992 U.S. LEXIS 4751,\*;505 U.S. 833; 112 S. Ct. 2791;120 L. Ed. 2d 674* "the regulation of constitutionally protected decisions, such as where a person shall reside or whom he or she shall marry, must be predicated on legitimate state concerns other than disagreement with the choice the individual has made. Cf. *Turner v. Safley, supra; Loving v. Virginia*, 388 U.S. 1, 12, 18 L. Ed. 2d 1010, 87 S. Ct. 1817 (1967)."

There is indeed a legitimate state concern at issue here and it is based on the social compact, a compact created by the people of this state wherein a clear majority of the people of Massachusetts, given the opportunity to voice their opinion on the direction of this question within the social compact, will prohibit same-sex

marriage. Proponents of same-sex marriage are aware of this and would rather the designers of the social compact be constricted to fewer members. "Representative Alice K. Wolf, a Cambridge Democrat, said gay-rights advocates have long feared that conservative groups would take their campaign to the voting booth." See "Ballot Effort Eyes Gay Marriage Ban (See Boston Globe, Benjamin Gedan, 07/25/2001)" )

**3. Allowance of same-sex marriage does create a 'slippery slope' harmful to society.**

The legislature does have the power to determine whether same-sex marriage is a 'slippery slope' .

"Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature. That body prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution." "(Emphasis added) *Maynard v. Hill*, 125 U.S. 190, 209 (1888) cited by

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434 U.S. 374;98 S. Ct. 673;54 L. Ed. 2d 618;1978 U.S. LEXIS  
57;24 Fed. R. Serv. 2d (Callaghan) 1313 And, id., " State  
power over domestic relations is not without constitutional  
limits. The Due Process Clause requires a showing of  
justification "when the government intrudes on choices  
[\*40] concerning family living arrangements" in a manner  
which is contrary to deeply rooted traditions. Moore v.  
East Cleveland, 431 U.S. 494, 499, 503-504 (1977)  
(plurality opinion)(Emphasis added). Though the Appellants  
may not adhere to its norms, they surely do not dispute  
that the ideal of heterosexual marriage is indeed a deeply  
rooted tradition in Western Judeo-Christian culture. Should  
the Appellants be successful the moral and psychological  
underpinnings of our society will be shaken.

"Once legal marital status and biological connection  
can be set aside by a court on grounds of emotional  
connection, the notion of marriage itself is  
effectively mooted. At that point, anyone who claims  
emotional connection can gain court recognition as a  
de facto parent or marriage partner. Homosexuality  
posits a sexuality that is justified by pleasure alone  
and that is completely divorced from the burden of

reproduction; as such, it strikes at the heart of the organization of Western culture and societies, destabilizing both monogamous marriage and the role of two sexually complementary parents within the nuclear family.' "(See Kurtz

<http://www.nationalreview.com/kurtz/kurtz112602.asp>)

"Marriage is based on a natural teleology, on the different, complementary nature of men and women-and how they refine, support, encourage and complete one another. It is the institution through which we propagate, nurture, educate and sustain our species. This is a large, tolerant, diverse country. In America people are free to do as they wish, within broad parameters..... It is also a country in sore need of shoring up some of its most crucial institutions: marriage and the family, schools, neighborhoods, communities. But marriage and family are the greatest of these. That is why they are elevated and revered. We should keep them so. "

(See William Bennett, "Leave Marriage Alone." From Newsweek 3 June 1996. (c) 1996)

CONCLUSION

The majority of residents in Massachusetts and nationwide depend on stable and ordered legal and moral codes of society. Changing the essential nature of the institution of marriage by allowing same-sex individuals to marry would sow deep seated confusion about these codes which provide order to our lives and those of our children, especially in the realm of marriage and personal relationship, and which are in large measure the creators of responsible and productive members of society. For this and the foregoing reasons, the Court is encouraged to find there was no error in the decision of the trial court in this case.

Respectfully Submitted,

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