

Goodridge Case Has Alternative to Gay Marriage

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Reprinted from the January 8, 2004 edition of the Boston Herald

In the wake of the Supreme Judicial Court's decision in the Goodridge case, Governor Mitt Romney has proposed amending the Massachusetts state constitution to define marriage as the union of one man and one woman. Amending the constitution is a difficult and time-consuming process. Meanwhile, the Massachusetts Senate has placed before the SJC a civil union bill providing same sex couples with the benefits and protections of marriage to see if it conforms with the Court's opinion. Unfortunately, the Senate's action seems to imply there is an "either-or" response to the Court's ruling--full marriage rights or some civil union-type statute.



There is, however, an immediate alternative to legally recognizing "same-sex marriages"--an alternative that is provided for in the Goodridge decision.

The alternative, roughly stated, is this: Reaffirm and clarify the current marriage statute to define marriage as between one man and one woman. Include within the re-enactment express legislative findings, stating clearly the rational bases for reserving the status of marriage to one man and one woman. We believe that the SJC, by its own language and the limited nature of its reasoning in Goodridge, invites just this response as an alternative to recognizing same-sex marriages.

Here is why we think so:

Although some might read the Goodridge majority opinion to imply that the current marriage statute is, everything considered, irrational in excluding same-sex marriage, nowhere does the court say that the current statute cannot have a rational basis. The closest the Court comes is a one-sentence, guarded "suggest(ion)," near the end of the opinion, that without such a rationale the statute may be rooted in prejudice. But the Court's considered position is quite different, conditional and limited: the Department of Public Health did not adequately justify the law, and the law itself does not set forth the grounds upon which it is based. The Court did not deny the adequacy, in principle, of those or other grounds. As a result, the Court left open the possibility that the statute could have been adequately supported by clearer evidence. Of course, we would never wish to accept the implication that Massachusetts' marriage statute has been wanting in a rational foundation all these years. It is a matter, rather, of understanding that it can never be out of season for the law to justify itself.

As the SJC itself affirmed explicitly, there can be "appropriate government restrictions in the interests of public health, safety and welfare" It is important to note in this context that the court read the existing statute to uphold marriage between one man and one woman, but found therein no rational explanation for the policy.

In sum, the Supreme Judicial Court has committed itself to the rational basis standard for constitutionality and, as a result, it has left open this approach as a response. At the very least, we believe that the Court would be bound to stay enforcement of its Goodridge judgment for as long as it takes to litigate the adequacy of the grounds for a re-enacted statute.

Page last updated: Wed, Oct 11, 2006, 09:56:32 EDT. [HLS Contact Information](#)

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