

# The Decision

## **What did the Court decide in *Goodridge v. Department of Public Health*?**

The Massachusetts Supreme Judicial Court ruled that the exclusion of some-sex couples from civil marriage is unconstitutional under the equality and liberty provisions of the Massachusetts Constitution. ([W]e conclude that the marriage ban does not meet the rational basis test for either due process or equal protection.)

To remedy this constitutional violation, the Court stated "We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others. This reformulation redresses the plaintiffs' constitutional injury and further the aim of marriage to promote stable, exclusive relationships." It also added, "[E]xtending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit."

## **When can same-sex couples get married in Massachusetts?**

The Court stayed the entry of final judgment (delayed the date it takes effect) for 180 days. Thus, 180 days from the date of the decision (i.e. May 17<sup>th</sup>, 2004), city and town clerks will be able to issue licenses to qualified marriage applicants regardless of sex.

## **Why did the Court stay the decision (delay the date it takes effect) for 180 days?**

The Court stayed judgment "to permit the Legislature to take such action as it may deem appropriate in light of this opinion." This stay was a courtesy to allow the Legislature time to conform its marriage laws with the Court's opinion, for example, by ridding from the licensing law and other laws associated with marriage any gender-specific language. However, because even gender-specific laws are supposed to be interpreted neutrally (unless the context suggests otherwise), the Legislature need not take any action to effectuate the Court's declaration of constitutional rights.

## **Can the Legislature use the 180 days to enact legislation denying same-sex couples the right to marry?**

No. While the Legislature may act as it wishes when it reconvenes in January, it has no ability to legislate away the constitutional right to marry the person of one's choice regardless of that person's sex. Any legislative action must comport with the constitutional ruling from the court, so any attempt to re-write discrimination into the marriage laws is a dead letter.

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## **Can the Legislature now provide civil unions or domestic partnerships to satisfy the Court's opinion?**

Apparently some politicians are determined to think so, but GLAD thinks this interpretation of the opinion is tortured and baseless. See GLAD's response to Attorney General Tom Reilly for further details and analysis of the ruling. Opponents of legal respect for same-sex couples, in addition to folks who are so far uncomfortable with the idea of equal legal marriage, are searching for a "compromise" that is less than the full equality we sought and won in court. We expect that their efforts to provide anything less than full and equal access to civil marriage will be in vain. As the majority opinion stated: "The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens." And as one of the dissenting justices stated, "the majority conclude[d] that a marriage license cannot be denied to an individual who wishes to marry someone of the same-sex."

## **Can the Legislature amend the state constitution during this 180-day period to deny gays and lesbians the right to marry?**

No, the Massachusetts state constitution cannot be amended in that length of time, and we don't believe that either the legislature or the public is inclined to do so. An amendment to the Massachusetts state constitution needs to be approved by the Constitutional Convention (composed of the combined House and Senate) in two successive legislative sessions and then ratified by the public. The soonest an amendment could be brought to the public for a vote would be November 2006, and that is if everything goes against us in the interim. Polling further suggests that the public is not interested in undermining the Court's ruling as well. See polls of registered voters conducted by Decision Research (59% support civil marriage, 77% find the notion of civil marriage for gay people acceptable), the Boston Globe (50% support civil marriage, 53% want lawmakers to do nothing to block the implementation of the court ruling or to adjust the laws only so that they conform with the SJC opinion, 53% oppose a constitutional amendment) and the Boston Herald (49% support civil marriage, 4% oppose a constitutional amendment) for more information.

**Gay Lesbian Advocates and Defenders (GLAD)**

30 Winter Street, Suite 800  
Boston, MA 02108

(617) 426-1350 [gladlaw@glad.org](mailto:gladlaw@glad.org)

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