

Joint Letter to Governor Mitt Romney from Pro-Family Leaders

(This letter was hand-delivered to the Governor's staff on Dec. 20, 2006.)

December 20, 2006

The Honorable W. Mitt Romney
Governor, Commonwealth of Massachusetts
The State House
Boston, MA 02133

Dear Governor Romney:

You have a few weeks left in your term to take action on the issue of marriage. Contrary to opinions offered up by liberal commentators, liberal legal authorities, and perhaps even your own staff, you have the authority as Governor to reverse the damage that has been done to the sacred institution of marriage. The signatories below urge you to declare immediately that homosexual "marriage" licenses issued in violation of the law are illegal and to issue an order to all state and local officials to cease violating the law.

As is increasingly well known, the Massachusetts Constitution denies the Judicial Branch any role in marriage policy:

"All causes of marriage...shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision." (PART THE SECOND, Ch. III, Article V.)

In hearing the *Goodridge* case and issuing an opinion, four of the seven judges violated the Supreme Law of Massachusetts. Massachusetts courts have admitted, on other occasions, that neither they nor legislators, nor the governor are authorized to violate the Constitution:

"[The words of the Constitution] are *mandatory* and not simply directory. They are highly important. There ***must be compliance*** with them." (*Town of Mount Washington v. Cook* 288 Mass. 67)

Nevertheless, after these judges issued an illegal opinion, you told the citizens of Massachusetts and all of America that you had no choice but to "execute the law." Oddly, you were not referring to a *law*, but to the judges' opinion.

Your oath to uphold the Constitution requires treating an *unconstitutional* opinion as void (as President Thomas Jefferson did in *Marbury v. Madison*). You failed to do this. Nor did you treat it as an illegal ruling that affected only the specific plaintiffs (as Abraham Lincoln did, refusing to accept the *Dred Scott* ruling as law, pointing out that judges *do not make law*).

Instead, you asserted that the court's opinion was a "law" and thus binding. Though the Legislature never revoked the actual law, you issued – with no legal authority -- the first "homosexual marriage" licenses in American history.

The Massachusetts Constitution does not confirm either your statements or your actions:

"[T]he people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent." (PART THE FIRST, Article X.)

The Constitution also disproves your assertion to the nation that the marriage statute (M.G.L. Chapter 207) was somehow suspended or nullified by the four judges:

"The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for." (PART THE FIRST, Article XX.)

In light of both your actions and your explanations, it comes as a great surprise to many of us to learn that, under the Massachusetts Constitution, *judges cannot suspend or alter statutes*. This principle is clearly fundamental to Massachusetts' system of government and is restated in multiple ways.

"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." (PART THE FIRST, Article XXX.)

We note that the Massachusetts Constitution so completely protects citizens from the rule of judges that even laws passed in the Colonial period *before the Constitution itself was ratified* cannot be suspended by judges:

"All the laws which have heretofore been adopted, used and approved ... shall still remain and be in full force, until altered or repealed by the legislature..." (PART THE SECOND, Article VI.)

We note, Governor, that in all of your justifications to the nation, there was no mention of these parts of the Constitution which you swore to defend. Why? Even this same court is forced to admit:

"The Constitution as framed is the only guide. To change its terms is within the power of the people alone." (*Opinion of the Justices*, 220 Mass. 613, 618)

We note Massachusetts Chief Justice Hutchison's words in 1767: "laws should be established, else Judges and Juries must go according to their Reason, that is, their Will" and "[T]he Judge should never be the Legislator: Because, **then the Will of the Judge would be the Law**: and this tends to a State of Slavery.'" As Judge Swift put it in 1795, courts "ought **never to be allowed** to depart from the well known boundaries of express law, into the wide fields of discretion."

As for your claims about the authority of *Goodridge* and its illegal 180-day instruction to the Legislature, the same court had admitted in 1992 that they cannot issue an order to the legislature *or the governor*:

"The courts [instructing] when and how to perform...constitutional duties" (mandamus) "is not available against the Legislature [or] against the Governor."

"The...principles expressed in...the Massachusetts Constitution...call for the judiciary to refrain from intruding into the power and function of another branch of government." (LIMITS v. President of the Senate, 414 Mass. 31, 31 n.3, 35 (1992))

We also note this ruling in 1969: "an unconstitutional overreaching by the judiciary is an act that is "not only not warranted but, indeed, [is] precluded." (Commonwealth v. Leis)

We note that even the *Goodridge* majority said they were ***not*** suspending the marriage statute:

"Here, no one argues that striking down the marriage laws is an appropriate form of relief."

In fact, they admitted that under the statute, Chapter 207 of the Massachusetts General Laws, homosexual marriage is illegal: "We conclude, as did the judge, that M.G.L. c. 207 ***may not be construed to permit same-sex couples to marry.***"

Moreover, we note that nothing in the *Goodridge* ruling asked or pretended to authorize *the governor* to violate the statute in the event that the Legislature would not repeal it.

We also note that the statute remains in the Massachusetts General Laws, and has never been stricken, suspended or nullified. The court itself has previously clarified your obligation:

"But the statute, so long as it stands, imposes upon both branches [of the Legislature] uniformity of procedure so far as concerns this particular matter. One branch cannot ignore it without a repeal of the statute. **A repeal can be accomplished only by affirmative vote of both branches and approval by the governor.**" (Dinan v. Swig, 223 Mass. 516, 519 (1916))

Nevertheless, **with no legislation authorizing you to do so**, you ordered the Department of Public Health to change the words on marriage licenses from "husband" and "wife," to "Partner A" and "Partner B." Stunningly, you later admitted that without enabling legislation you cannot change birth certificates in a similar way.

We note that, despite the court's admission that the statute prohibits "homosexual marriage," and the Constitution's statement that only the Legislature can suspend laws, you *ordered* officials to perform homosexual marriages and thus violate the statute (a crime under c. 207 §48), and the oath of office by. Those who refused, you ordered to resign.

This emboldened other local officials, including the mayor of Boston, to boast publicly that they would *break* the law by "marrying" out-of-state homosexual couples – also a crime under c. 207 §48.

In summary, while the four judges asserted that Chapter 207 is unconstitutional, they did not suspend the marriage statute and were powerless to do so. The legislature has not changed or repealed it. Therefore:

1. The marriage statute is *still in effect*.
2. The statute continues to *prohibit* same-sex marriages.

We note that you swore no oath to execute court opinions, but rather *laws* and the Constitution. The same Massachusetts high court itself said in 1986: [The Executive branch] **must "be faithful to the words of the statute ... as written, and an event or contingency for which no provision has been made does not justify judicial [or Executive Branch] legislation."** (Amherst v. Attorney General, 398 Mass. 793)

You swore an oath to uphold the Constitution against assault from the other two branches. You swore on a Holy Bible, and said, "So help me, God." Your oath *itself* declares that it is violated on penalty of perjury, a felony.

Like much of America, many of us accepted as sincere your explanations of your role in this social and constitutional crisis that is fundamentally altering the moral fabric of our culture and eroding basic building block of human society. We are now forced to look at your role, as constitutional sentry and a gatekeeper of our form of government, in a different light.

We would be greatly disappointed if your principal contribution to history will be imposing homosexual marriage -- knowingly or unknowingly, willfully or negligently -- in violation of the state Constitution you swore to uphold.

- ◆ We urge you in the strongest possible way to fulfill the obligation imposed by the Constitution of Massachusetts upon the "Supreme Executive Magistrate" to uphold Massachusetts General Laws Chapter 207 the marriage statute, by declaring immediately in a formal, written executive order that the *Goodridge* court cannot overrule the Constitution and that homosexual marriage therefore remains against the law.
- ◆ We urge you also to issue immediately a public memorandum from the Office of the Governor declaring members of the Legislature to be engaged in a conspiracy against the Constitution, to which the oath of office attaches the *penalties of perjury* -- a felony.
- ◆ We urge you to immediately notify the legislators who openly conspired against the Constitution in denying the first marriage amendment petition a vote in 2002 that:
 - they violated the oath of office, a *constitutional felony*, and
 - as a citizens' constitutional petition, that initiative *remains pending until brought to one of the five final actions* the Constitution requires and
 - therefore their crime against the Constitution is *perpetual and without statute of limitations*
 - unless they vote, you will call them into session on that original marriage petition and
 - will order the state police to arrest them and bring them to the chambers to vote (as the Governor of Texas ordered in May 2003 when Texas legislators refused to convene a quorum).

Under conditions of repeated and systematic constitutional abuse, these steps by a governor are the minimum required to defend constitutional democracy and our republican form of government.

Signed,

Paul Weyrich, Free Congress Foundation
*Sandy Rios, Culture Campaign
*Gary Kreep, Esq., president, United States Justice Foundation ++
*Robert Knight, a draftsman of the federal Defense of Marriage Act
Linda Harvey, Mission America
Rev. Ted Pike, National Prayer Network
Randy Thomasson, Campaign for Children and Families
Peter LaBarbera, Americans for Truth
Dr. Chuck Baldwin, radio host, columnist
Paul Likoudis, *The Wanderer*
Rev. Stephen Bennett, Stephen Bennett Ministries
Phil Lawler, *Catholic World News*
Rev. Scott Lively, Esq., Defend the Family
*Dr. William Greene, RightMarch.com
Michael Heath, Christian Civic League of Maine
David E. Smith, Illinois Family Institute
Gary Glenn, American Family Association of Michigan
Diane Gramley, American Family Association of Pennsylvania
Micah Clark, American Family Association of Indiana
Kevin McCoy, West Virginia Family Foundation
Stephen Cable, Vermont Center for American Cultural Renewal
Joe Glover, Family Policy Network (National)
Terry Moffitt, Family Policy Network of North Carolina
Marnie Deaton, Family Policy Network of Virginia
Danny Eason, Family Policy Network of Texas
Matt Chancey, Family Policy Network of Alabama
Ron Shank, Family Policy Network of Tennessee
*John R. Diggs, Jr., M.D., leading expert on the medical risks of homosexuality
Sonja Dalton, Real Civil Rights Illinois
Allyson Smith, Americans for Truth/California
Brian Camenker, MassResistance
Bunny S. Galladora, Woman's Christian Temperance Union
Dr. Paul Cameron, Family Research Institute
James Hartline, *The Hartline Report*
Jan Markell, Olive Tree Ministries & Radio
Bill Cotter, Operation Rescue Boston
R. T. Neary, ProLife Massachusetts
Mike O'Neil, CPF/The Fatherhood Coalition, Massachusetts
John F. Russo, Marriage & Family, Massachusetts
*Stacy Harp, Active Christian Media, host, *The Right View*
Rena Havens, Mothers Against Pedophilia
John Haskins, Parents' Rights Coalition
Rev. Michael Carl, Constitution Party of Massachusetts
Carl Parnell, author, *From Schoolhouse to Courthouse*

Affiliations are listed for identification purposes only and do not imply a formal endorsement or commitment by those organizations.

**Signed after December 20, 2006.*

++Notes he has not had an opportunity to investigate punishable criminal consequences of violating the Massachusetts oath of office.

Massachusetts in-state contact: John Haskins, 781-890-6001