

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT FOR
SUFFOLK COUNTY

C. JOSEPH DOYLE, RAYMOND L.)
FLYNN, RICHARD F. GUERRIERO,)
BRONWYN E. LORING, ROBERTO S.)
MIRANDA, PHILIP D. MORAN, JOSEPH R.)
NOLAN, JOSSIE E. OWENS, RICHARD W.)
RICHARDSON, MITT ROMNEY, and)
PHILIP TRAVIS, all in their individual)
capacities,)

Plaintiffs,)

v.)

WILLIAM F. GALVIN, as he is)
SECRETARY OF THE)
COMMONWEALTH and)
ROBERT E. TRAVAGLINI, as he is)
PRESIDENT OF THE SENATE and)
PRESIDING OFFICER OF THE JOINT)
SESSION OF THE MASSACHUSETTS)
GENERAL COURT,)

Defendants.)

COMPLAINT FOR EQUITABLE AND DECLARATORY RELIEF

This is an action by eleven Massachusetts residents and voters (collectively the “Plaintiffs”) for a declaratory judgment (1) that the Senate President as presiding officer of the joint session of the Massachusetts General Court has a nondiscretionary obligation under the Massachusetts Constitution to convene and maintain a joint session of the General Court until such time as final action is taken on the Marriage Initiative Amendment (as defined below) before the expiration of the 2005-2006 General Court, and that his failure to do so is an abdication of his constitutional duty; or, in the alternative, (2) absent final action by the joint

session before the expiration of the 2005-2006 General Court, that the Marriage Initiative Amendment has met the material requirements of Article 48 for presentation as a ballot question to the citizens of the Commonwealth. Plaintiffs further request an order in the nature of mandamus directing the Senate President as presiding officer to reconvene the joint session and to present the Marriage Initiative Amendment for a vote on or before January 2, 2007, and in the absence of such action, directing the Secretary of the Commonwealth to place the Marriage Amendment on the ballot at the 2008 statewide election.

Over the past 24 years, the General Court has failed and refused to follow the mandate of Article 48 in five of the six initiative amendments proposed by citizens of the Commonwealth. In each instance, the legislature had a legal duty to act, but failed or refused to do so. In resolving the questions presented in this action, this Court will determine whether public officials of the Commonwealth, sworn to uphold its Constitution, can ignore and thereby effectively nullify the terms and purpose of Article 48.

In further support of their Complaint, Plaintiffs state as follows:

PARTIES

1. Plaintiffs are residents and voters of the Commonwealth of Massachusetts and signatories to a petition for an initiative amendment to the Commonwealth's Constitution defining marriage.¹

¹ Plaintiff C. Joseph Doyle is a qualified voter who resides in Roxbury, Suffolk County.
Plaintiff Raymond L. Flynn is a qualified voter who resides in Boston, Suffolk County.
Plaintiff Richard F. Guerriero is a qualified voter who resides in South Weymouth, Norfolk County.
Plaintiff Bronwyn E. Loring is a qualified voter who resides in Prides Crossing, Essex County.
Plaintiff Roberto S. Miranda is a qualified voter who resides in Somerville, Middlesex County.
Plaintiff Philip D. Moran is a qualified voter who resides in Salem, Essex County.
Plaintiff Joseph R. Nolan is a qualified voter who resides in Belmont, Middlesex County.
Plaintiff Jossie E. Owens is a qualified voter who resides in Mansfield, Bristol County.
Plaintiff Richard W. Richardson is a qualified voter who resides in Tewksbury, Middlesex County.
Plaintiff Mitt Romney is a qualified voter who resides in Belmont, Middlesex County.
Plaintiff Philip Travis is a qualified voter who resides in Rehoboth, Bristol County.

2. Defendant William F. Galvin (“Galvin”) is the Secretary of the Commonwealth, and as such performs certain duties respecting the implementation of Article 48.

3. Defendant Robert E. Travaglini (“Travaglini”) is the President of the Massachusetts Senate, and now serves as the presiding officer of the joint session of the Massachusetts General Court convened to consider initiative amendments including the Marriage Initiative Amendment.

JURISDICTION

4. General Laws c. 214, § 1, gives this Court jurisdiction over the Plaintiffs’ complaint. General Laws c. 231A, § 1, authorizes this Court to grant declaratory relief.

FACTUAL STATEMENT

5. This is an action for declaratory relief under General Laws c. 231A, § 1 and for related equitable relief on behalf of the Plaintiffs as Massachusetts residents and voters to secure rights afforded them and other residents and voters of the Commonwealth under Article 48 of the Articles of Amendment of the Constitution of the Commonwealth of Massachusetts, as amended from time to time (“Article 48”).

6. Article 48 reserves to the citizens of the Commonwealth the power to submit constitutional amendments, so-called “initiative amendments,” to the voters for approval or rejection. The purpose of Article 48 is to provide a “means by which the people could move forward on measures which they [deem] necessary and desirable without the danger of their will being thwarted by legislative action.” Citizens for a Competitive Massachusetts v. Secretary of the Commonwealth, 413 Mass. 25, 30 (1992).

7. Article 48 requires that a joint session of the General Court, before the conclusion of the legislative term, consider and vote “yea” or nay” on each initiative amendment.

8. The Attorney General for the Commonwealth has received, in accordance with Article 48, the petitions of at least ten qualified voters in support of an initiative amendment relative to the definition of marriage (the “Marriage Initiative Amendment”). Specifically, the Marriage Initiative Amendment provides as follows:

When recognizing marriages entered into after the adoption of this amendment by the people, the Commonwealth and its political subdivisions shall define marriage only as the union of one man and one woman.

9. The Attorney General reviewed the petitions and, in accordance with Article 48, duly certified that “the measure and the title thereof are in proper form for submission to the people, and that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent.”

10. Also in accordance with Article 48, the certified petitions, along with the Attorney General’s certification, were duly filed with the Secretary of the Commonwealth, who prepared signature blanks for subsequent signers.

11. The petitioners collected and timely filed with the Secretary of the Commonwealth the signatures of qualified voters numbering in the aggregate of at least three percent of the votes cast in the 2002 gubernatorial election, as required by Article 48. In fact, the petitioners collected over 170,000 signatures—a record number. Of these, Galvin, as Secretary of the Commonwealth, certified over 123,000, significantly more than the quantum required by Article 48. Galvin thereafter transmitted the Marriage Initiative Amendment to the General Court, where it was then deemed introduced and pending.

12. Article 48 requires the President of the Senate to convene a joint session of the General Court to consider and take final action on all initiative amendments that are introduced and pending. An initiative amendment “shall, not later than the second Wednesday in May, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.” Article 48, The Initiative, Pt. IV, § 2, *amended by* Mass. Const., amend. art. 81, § 1.

13. Article 48 further provides that “[f]inal legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session ... an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.” Article 48, The Initiative, Pt. IV, § 4.

14. Notwithstanding this constitutional mandate to take “final action” on the Marriage Amendment Initiative, the General Court has never taken such action, but instead has implemented the same procedural devices used since 1982 to avoid a vote and evade its constitutional duties.

15. The General Court assembled in a joint session on July 12, 2006, for the ostensible purpose of considering all pending initiative amendments, including the Marriage Initiative Amendment.

16. In derogation of its constitutional duties, the joint session failed to take final action upon the Marriage Amendment Initiative, among others, and instead voted (by a vote of 100 to 91) to recess the joint session until November 9, 2006.

17. The joint session reconvened on November 9, 2006, again took no vote on the Marriage Amendment Initiative. Instead, after a motion declared to be non-debatable, the General Court voted to recess the joint session (by a vote of 109 to 87), until 2:00 p.m. on the afternoon of January 2, 2007, the last day of the 2005-2006 legislative session.

18. These serial recesses, and the public statements of legislators respecting them, confirm a legislative plan, pattern, and strategy calculated to thwart the meaning and intent of Article 48 to persist in a practice of avoiding a vote, and to defeat the Marriage Initiative Amendment by simply letting the legislative session expire.

19. Article 48 imposes a mandatory duty on the General Court to convene in joint session to take final action on the Marriage Initiative Amendment. The purpose of Article 48 is to establish a people's process that could overcome the indifference, obstruction or political reluctance of a majority of the elected members of the General Court.

20. The Senate President, as presiding officer, has an affirmative duty under Article 48 to timely convene the joint session and to maintain that joint session until it takes final action on all pending initiative amendments. The Constitution provides no alternative mechanism, and it does not give the Senate President any measure of discretion in the performance of this ministerial duty—the joint session must convene, and it is the Senate President's obligation to ensure that it does so.

21. The Senate President, as presiding officer, has failed to carry out his ministerial duty to require final action upon the Marriage Initiative Amendment.

22. The potential to amend the Massachusetts Constitution pursuant to Article 48 is the most direct safeguard against the deprivation of a republican form of government in violation of Article IV, § 4 of the United States Constitution. The persistent failure of the General Court to convene and maintain the joint session until final action is taken upon each pending initiative has the practical effect of depriving the people of this most fundamental right.

23. Notwithstanding the clear intentions of the drafters of Article 48, the General Court has repeatedly and persistently ignored Article 48's mandate, thwarted its demonstrated purpose, and frustrated or prevented the timely, appropriate, and constitutionally required vote or "final action." Indeed, in the past 24 years, the joint session has failed to vote upon five of the six initiative amendments proposed by citizens of the Commonwealth. If (and when) the current legislative session expires without the joint session having voted upon the two initiative amendments currently before it, seven of the last eight citizen-initiated petitions will have been ignored and eliminated in the joint session.

24. If the General Court persists in ignoring its constitutional duties, this Court must step into the constitutional breach and direct the Secretary of the Commonwealth to place the Marriage Initiative Amendment before the voters.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court:

- (1) Declare and determine that the Marriage Initiative Amendment is a matter constitutionally required to be voted on by the joint session on January 2, 2007, by votes of yeas and nays and that such a vote is required to be on the merits of the initiative as a "final action taken" under Article 48 of the Constitution;
- (2) Order Defendant Travaglini, as the presiding officer of the constitutional convention and in fulfillment of his ministerial duties, to present to the constitutional convention while in session on January 2, 2007, the terms of the Marriage Initiative Amendment for a "yea" or "nay" vote on its merits as required by Article 48 of the Massachusetts Constitution;

- (3) Failing the constitutionally mandated vote of the joint session on January 2, 2007, on the Marriage Initiative Amendment, order and direct the Defendant Galvin to include the terms thereof on the ballot at the 2008 statewide election for approval or rejection of the citizens of the Commonwealth;
- (4) Grant such other and further relief as may be necessary to assure the constitutionally protected access to the ballot to which plaintiffs and other Massachusetts voters are entitled.

Dated: November 24, 2006

By: 
John D. Hanify (BBO #219880)
Daniel J. Dwyer (BBO #567026)
Natalie B. Sawyer (BBO #660072)
HANIFY & KING, P.C.
One Beacon Street
Boston, MA 02108
(617) 423-0400

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2006, I have caused to be served by hand delivery and first-class mail, upon the parties named below, a true and correct copy of the foregoing Complaint for Equitable and Declaratory Relief:

The Hon. William F. Galvin
Secretary of the Commonwealth
One Ashburton Place
Boston, MA 02133

The Hon. Robert E. Travaglini
President of the Senate
State House, Room 330
Boston, MA 02133

The Hon. Thomas F. Reilly
Attorney General
One Ashburton Place
Boston, MA 02133

Dated this 24th day of November 2006 at Boston, Massachusetts.


Daniel J. Dwyer