

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2004-0169

C. JOSEPH DOYLE

vs.

HILLARY GOODRIDGE et als.

MEMORANDUM AND ORDER

This matter came before me on the petition of C. Joseph Doyle requesting "an extension of the stay of entry of judgment in Goodridge v. Department of Pub. Health, 440 Mass. 309 (2003)." The petitioner also requested a hearing and a waiver of notice and timing requirements, or, in the alternative, a hearing before the full court. I have carefully considered the petition, oppositions, and reply submitted to me, noting that all of the parties in the Goodridge litigation oppose the petition on various procedural and substantive grounds.

The Goodridge decision was a decision of the full court, and the rescript in that case has already issued to the Superior Court. See Mass. R. A. P. 23, as amended, 367 Mass. 921 (1975) and Mass. R. A. P. 28, as amended, 378 Mass. 925 (1979). The

rescript sets forth the full court's directive to the Superior Court as to the judgment that shall be entered in this case and the specific timing of the entry of that judgment. The petitioner is asking, essentially, that I, as a single justice, alter the directive that has been given by the full court to the Superior Court. With the case in this posture -- the appeal already having been decided by the full court and the rescript having issued to the Superior Court -- I, as a single justice, do not have the authority to change the specific directive that is contained in the full court's rescript. Even if I had this authority, I would exercise my discretion to deny the relief sought for at least the following reasons.

First, as a matter of Massachusetts law, the petitioner cannot collaterally attempt to alter the full court's rescript in this fashion. He points to no authority, and I am aware of none, that permits an individual who is not a party in a case to attempt to alter, amend, or stay an appellate court's rescript in the case. The petitioner cites S.J.C. Rules 2:01 through 2:22, as amended, as the basis for his petition. He states that his "petition is brought pursuant to" these rules. These are simply the rules governing single justice practice in this court. Nothing in these rules purports to permit a petitioner to proceed in this fashion, attempting essentially to affect the outcome of a case in which he is not a party. I agree with the Department

of Public Health and its commissioner's assessment stated in their opposition to the petition, i.e., that this is, at base, an improper collateral attempt by a nonparty to alter the full court's rescript and to affect the outcome.

Second, the petitioner's claim that his right to participate in the constitutional amendment process will be diluted unless the judgment is stayed until that process has been completed, is insufficient as a matter of Massachusetts law to give him standing. "Not every person whose interests might conceivably be adversely affected is entitled to judicial review." Group Ins. Comm'n v. Labor Relations Comm'n, 381 Mass. 199, 204 (1980). "To have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury." Slama v. Attorney Gen., 384 Mass. 620, 624 (1981). "Injuries that are speculative, remote, and indirect are insufficient to confer standing." Ginther v. Commissioner of Ins., 427 Mass. 319, 323 (1998). The petitioner's claim of injury in this case rests on his assumption that the constitutional amendment process currently underway will conclude with a given result. Because the process has only recently moved past the initial stage, because it must proceed through other stages over the course of years, and since the outcome at any stage is not certain, the petitioner's alleged injury can properly be described as both speculative and remote. See Slama v. Attorney Gen., supra at 625

(holding that city's claim of injury was insufficient to create standing, where its claim was premised on assumption that initiative petition would ultimately be approved by voters; reasoning that court could not speculate as to results of election). He therefore lacks standing under Massachusetts law. See also Barbara F. v. Bristol Div. of the Juvenile Court Dep't, 432 Mass. 1024 (2000).

Third, the petitioner's request for a stay that would endure for more than two years is simply unreasonable. The State constitutional amendment process, which began with the Legislature's consideration of proposed constitutional amendments in February, 2004, will not end until November, 2006, at the earliest.¹ If the Legislature does not approve the proposed amendment for a second time in its next session, what would be the fate of the stay; would the petitioner request additional stays? Why should same-sex couples, who have been determined to

¹ Many of the petitioner's arguments for a stay seem to be predicated on an assumption that the full court was somehow unaware of the possibility that the Legislature could respond to the decision by proposing a constitutional amendment and, thus, that the court needs to reconsider or stay its decision in light of new developments. Amending the Constitution in response to a decision of the court is not new, and, therefore, the assumption is not only without merit, but also demonstrates a lack of understanding of this court's case history. See, e.g., Commonwealth v. Colon-Cruz, 393 Mass. 150, 151-152 (1984) (court declared death penalty impermissibly cruel under art. 26 of the Massachusetts Declaration of Rights and voters subsequently approved a constitutional amendment authorizing Legislature to impose death penalty for certain crimes).

have the right to marry under the Massachusetts Constitution as it exists here and now, be required to wait to exercise that right simply because the petitioner and others hope -- again, it is speculative at this point whether they will be successful -- to be able to amend the Constitution and take away that right at some point in the future?

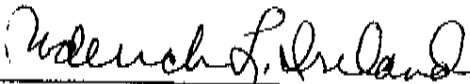
In sum, I conclude that a single justice does not have authority to alter a rescript of the full court. But even if I had the authority to alter the rescript and stay further the entry of the judgment in the Superior Court, I would decline to do so as a matter of my discretion because the petitioner has not demonstrated that he has any proper basis to be before this court, and, even if he had demonstrated that he has a basis to be before the court, his request for a stay for more than two years is unreasonable in these circumstances.

I also conclude that the petitioner improperly named the Supreme Judicial Court and the individual Justices of the court as parties in his petition. The court and the individual Justices are hereby designated as nominal parties only.

Cf. S.J.C. Rule 2:22.

Accordingly, it is ORDERED as follows:

1. The petition is DENIED; and
2. As the Justices and the court are nominal parties only, the case shall be recaptioned on the docket to reflect the real parties in interest, namely, C. Joseph Doyle vs. Hillary Goodridge, et als., and any future filings in this matter shall be so captioned.



Roderick L. Ireland
Associate Justice

ENTERED: May 3, 2004