

C.A. No. 04-1621

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ROBERT P. LARGESS, et al.,
Plaintiffs-Appellants,

vs.

SUPREME JUDICIAL COURT FOR THE STATE
OF MASSACHUSETTS, et al.,
Defendants-Appellees,

and

HILLARY GOODRIDGE and JULIE GOODRIDGE, et al.,
Intervenors-Appellees.

BRIEF OF INTERVENORS-APPELLEES IN SUPPORT OF
AFFIRMANCE OF THE ORDER OF THE DISTRICT COURT

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JURISDICTIONAL STATEMENT

While Plaintiffs assert that the District Court had subject matter jurisdiction under 28 U.S.C. § 1331, in fact, the *Rooker-Feldman* doctrine prohibits the District Court's exercise of subject matter jurisdiction in this case. In addition, this Court lacks appellate jurisdiction because Plaintiffs' motion for preliminary injunctive relief has been rendered moot.

STATEMENT OF THE ISSUES FOR REVIEW

1. Whether this Court lacks jurisdiction to consider this appeal because Plaintiffs' request for a preliminary injunction has become moot.
2. Whether the District Court properly denied Plaintiffs' motion for preliminary injunctive relief and a temporary restraining order on the basis that Plaintiffs are unlikely to succeed on the merits of their claim that the decision of the Massachusetts Supreme Judicial Court ("SJC") in *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (Mass. 2003) ("*Goodridge*") violated article IV, § 4 of the United States Constitution.
3. Whether the District Court's denial of the preliminary injunction was also proper because there is no significant risk of irreparable harm to Plaintiffs and the balance of the equities weighs heavily in favor of defendants.
4. Whether the Plaintiffs lack standing to bring this action.

5. Whether, under the *Rooker-Feldman* doctrine, the District Court lacked jurisdiction to hear Plaintiffs' claim.

STATEMENT OF THE CASE

Plaintiffs seek to enjoin a decision of the Massachusetts Supreme Judicial Court ("SJC"), in *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003) ("*Goodridge*"), which held that the Massachusetts Constitution prohibits the Commonwealth from denying same-sex couples the benefits and protections of marriage.

On May 10, 2004, Robert Largess filed a complaint ("Complaint") in the United States District Court for the District of Massachusetts against the SJC, the individual Justices of that Court, the Massachusetts Department of Public Health ("DPH"), the Commissioner of the DPH, the Registrar for the City of Boston, and 350 City and Town Clerks. The Complaint alleged that the SJC's ruling in *Goodridge* "exceeded the powers granted to it by the Massachusetts Constitution" and, therefore, constituted "a violation of plaintiff's federal constitutional guarantee of a republican form of government" as set forth in article IV, § 4 of the Federal Constitution (the "Guarantee Clause"). Complaint ¶ 54 [App. Tab 2]. Largess filed an accompanying motion for a preliminary injunction and a temporary restraining order. App. Tab 3.

On May 11, 2004, an Amended Complaint was filed that added as plaintiffs eleven Massachusetts legislators. App. Tab 5. Plaintiffs simultaneously filed a renewed motion for preliminary injunctive relief. App. Tab 6. On this same day, (1) the SJC and the individual Justices moved to dismiss for lack of subject matter jurisdiction, and (2) the seven same-sex couples who were plaintiffs in *Goodridge*—Hillary Goodridge and Julie Goodridge, David Wilson and Robert Compton, Michael Horgan and Edward Balmelli, Maureen Brodoff and Ellen Wade, Gary Chalmers and Richard Linnell, Heidi Norton and Gina Smith, and Gloria Bailey and Linda Davies (the “*Goodridge* Intervenors”)—filed a motion for leave to intervene in the action. App. Tabs 9, 10. The District Court held a hearing on May 12, 2004, during which it denied the motion to dismiss filed by the SJC and the Justices and granted the motion for leave to intervene filed by the *Goodridge* Intervenors. Transcript pp. 8, 9 [App. Tab 11].

On May 13, 2004, the District Court issued a written memorandum and an accompanying order denying Plaintiffs’ motion for a preliminary injunction and temporary restraining order because it determined that their claim lacked a reasonable likelihood of success on the merits. App. Tabs 12, 13. That same day, Plaintiffs filed a notice of appeal to the First Circuit along with an emergency motion for an injunction to stay the entry of judgment in *Goodridge* pending that appeal. *See* Docket p. 14 [App. Tab 1]. On May 14, 2004, this Court entered an

order denying the motion for an injunction pending appeal. App. Tab 15. This Court gave several reasons for its ruling. First, it noted that, “[f]or much of its history the Supreme Court has treated almost all claims under article IV, § 4, as non-justiciable political questions” Order Denying Injunction Pending Appeal p. 2 [App. Tab 15]. It also recognized that, in order to succeed on the merits, Plaintiffs would have to show “that a federal court should disregard the long-standing practice of federal courts to treat the decisions of the highest state courts as controlling interpretations of state law.” *Id.* Finally, this Court determined that “*Goodridge* does not establish permanent martial law or declare the Commonwealth a monarchy; and it cannot plausibly be argued that every disagreement about allocation of power within a state government—even a very important disagreement—raises a question under article IV, § 4.” *Id.* Because this Court found that “it is not obvious why [] resolution [of this disagreement as to the SJC’s authority to define marriage] one way rather than another threatens a republican form of government,” Plaintiffs were not likely to succeed on the merits. *Id.* Accordingly, this Court denied Plaintiffs’ motion for an injunction pending appeal.

On May 14, 2004, Plaintiffs petitioned the United States Supreme Court to enter an emergency injunction staying entry of the judgment in *Goodridge*. That same day, the petition was denied by the Supreme Court. App. Tab 16.

STATEMENT OF THE FACTS

In *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (2003), the SJC declared that “[l]imiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution.” 798 N.E.2d at 968. The Court recognized that “[t]he benefits accessible only by way of a marriage license are enormous, touching nearly every aspect of life and death,” *id.* at 955, and that “the right to marry means little if it does not include the right to marry the person of one’s choice,” *id.* at 985. The Court concluded that “[t]he [same-sex] marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason” and that “[t]he absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual.” *Id.* at 968. Because the SJC found no rational basis for prohibiting same-sex couples from marrying, it held that the same-sex marriage ban violates the guarantee of the Massachusetts Constitution to equal protection under the law.

In order to remedy this constitutional violation, the SJC “construe[d] civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others.” *Id.* at 969. It then remanded the case to the superior court “for entry of judgment consistent with [its] opinion.” *Id.* at 970. The Court stayed entry of judgment for 180 days—until May 17, 2004—in order “to afford the Legislature an opportunity to conform the existing state statutes to the *Goodridge* decision.” *See Opinion of the Justices to the Senate*, 802 N.E.2d 565, 568 (2004).

Subsequent to its decision in *Goodridge*, the SJC decided a motion to intervene in *Goodridge* brought by thirteen state Legislators—including eight of the Legislators who are plaintiffs in this case. The Legislators argued that the SJC had no jurisdiction to decide the case based on Part 2, chapter III, article V of the Massachusetts Constitution, which provides that “[a]ll causes of marriage, divorce, and alimony, and all appeals from the judges of probate shall be heard and determined by the governor and council, until the legislature shall by leave, make other provisions.” The SJC ruled that it had jurisdiction under the Massachusetts Constitution to decide *Goodridge* because *Goodridge* was not a “cause” of marriage and because “[i]t was within the Court’s jurisdiction to resolve an adversary case requiring interpretation of the Constitution and a determination of the validity of our laws.” *Goodridge v. Dep’t of Pub. Health*, No. SJC-08860, at 3 (Mass. filed May 7, 2004) (per curiam) [Intervenor-Appellee’s Supplemental

Addendum (“Supp. Add.”) at 3]. This view was recently reinforced by Justice Spina in his May 14, 2004 Memorandum and Decision denying a motion to intervene in *Goodridge*. *Goodridge v. Dep’t of Pub. Health*, No. SJ-2004-0214 (Mass. filed May 14, 2004) [Supp. Add. at 3]. Justice Spina explained that Part 2, chapter III, article V did not prevent the SJC from exercising jurisdiction in *Goodridge* because this provision “does not purport to define marriage” and “does not elevate the 1780 definition of marriage to a fixed principal of constitutional law.” *Id.* at 2.

SUMMARY OF ARGUMENT

Plaintiffs’ appeal should be dismissed as moot. Plaintiffs filed this action and the accompanying motion for preliminary injunctive relief in order to prevent the entry of judgment in *Goodridge* on May 17, 2004. May 17, 2004 has come and gone: Judgment has been entered in *Goodridge*, and same-sex marriage licenses have been issued to thousands of couples, many of whom have already been married. Because the *preliminary* relief sought by Plaintiffs is no longer possible, this appeal is moot, and this Court lacks jurisdiction to consider it.

Even if this Court had appellate jurisdiction, the law would clearly require it to affirm the ruling of the District Court because Plaintiffs have failed to demonstrate a likelihood of success on the merits. Plaintiffs’ claim is based entirely on their allegation that, by construing and defining the term marriage as

used in the Massachusetts Constitution, the SJC exceeded its jurisdictional authority under the state constitution. But on May 7, 2004, the SJC—the final arbiter of the Massachusetts Constitution—itself considered and expressly rejected the state constitutional arguments on which Plaintiffs have predicated their entire claim in this case. *Goodridge v. Dep’t of Pub. Health*, No. SJC-08860, at 3 (Mass. filed May 7, 2004) (per curiam) [Supp. Add. at 3].

Although it is well-settled that federal courts view as conclusive the judgment of a state’s highest court on matters of state law, Plaintiffs nonetheless attempt to evade the SJC’s ruling by masking their argument as a federal claim under the Guarantee Clause of the United States Constitution. *See* U.S. Const. art. IV, § 4. But, as recognized by this Court in its May 14, 2004 Order denying Plaintiffs’ motion for an injunction pending appeal, there is simply no reason why the SJC’s exercise of its authority under Massachusetts law to hear and decide cases and to determine whether a Massachusetts statute conflicts with the Constitution “threatens a republican government.” Order Denying Stay p. 2 [App. Tab 15].

Finally, even if Plaintiffs had any chance of demonstrating a substantial likelihood of success on the merits, this Court would be obligated to affirm the order of the District Court denying preliminary injunctive relief because: (1) there is no significant risk of irreparable harm to Plaintiffs, and the balance of the

equities weighs heavily in favor of the *Goodridge* Intervenors and the Commonwealth; (2) the Plaintiffs lack standing to bring this action; and (3) under the *Rooker-Feldman* doctrine, the District Court lacked jurisdiction to hear Plaintiffs' claim.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE ISSUANCE OF MARRIAGE LICENSES ON MAY 17, 2004 HAS RENDERED THE REQUESTED INJUNCTION MOOT.

This Court has repeatedly held that it lacks jurisdiction to hear an appeal from a grant or denial of a preliminary injunction when the appeal has become moot. *See Newspaper Guild of Salem v. Ottaway Newspapers, Inc.*, 79 F.3d 1273, 1277 (1st Cir. 1996). “[A]n appeal from the denial of a motion for preliminary injunction is rendered moot when the act sought to be enjoined has occurred.” *Id.*; *see also CMM Cable Rep., Inc. v. Ocean Coast Props., Inc.*, 48 F.3d 618, 621 (1st Cir. 1995) (“[N]o justiciable controversy exists because this appeal can no longer serve the intended harm preventing function or, put another way, this court . . . has no effective relief to offer.”); *Oakville Dev. Corp. v. FDIC*, 986 F.2d 611, 613 (1st Cir. 1993) (“When . . . the act sought to be enjoined actually transpires, the court may thereafter be unable to fashion . . . meaningful [relief]. In such straitened circumstances, the appeal becomes moot.”).

In this case, Plaintiffs sought preliminary injunctive relief in order to prevent the entry of judgment in *Goodridge* on May 17, 2004. That date has now passed, the Superior Court has entered judgment in *Goodridge*, and city and town clerks across Massachusetts have issued marriage licenses to same-sex couples. Accordingly, “the act sought to be enjoined has occurred,” and this appeal has been rendered moot. *Newspaper Guild of Salem*, 79 F.3d at 1277.

Indeed, Plaintiffs themselves have argued that the preliminary relief they requested could only be effective if granted prior to May 17, 2004. In support of their request for preliminary injunctive relief, Plaintiffs claimed that “once we cross that bridge of May 17, the damage done will be virtually impossible to repair.” Appellants’ Emergency Motion for Injunction Pending Appeal, Expedited Appeal, Expedited Briefing Schedule and for Immediate Hearing (“Emergency Motion”) at ¶ 7 [Supp. Add. at 9]. Likewise, Plaintiffs claimed:

[I]t is not an understatement that should same-sex marriages be allowed to occur on May 17, Pandora’s box will be opened. The legal and cultural ramifications of allowing same-sex marriage . . . unleashes numerous and untold consequences that cannot be undone.

Id. at ¶ 9 [Supp. Add. at 10-11]. Even now, Plaintiffs continue to maintain that when “[t]he decision of the SJC went into effect Monday, May 17, 2004, . . . marriage as universally understood for millennia of human history was forever changed.” Appellants’ Initial Brief at 32. Because Plaintiffs themselves assert that

the alleged harm caused by the issuance of marriage licenses on May 17, 2004 “cannot be undone,” they have conceded that this Court has no effective preliminary relief to offer. Accordingly, this appeal has been rendered moot.

II. THE DISTRICT COURT PROPERLY DENIED THE PRELIMINARY INJUNCTIVE RELIEF BECAUSE APPELLANTS HAVE NO LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIM

In order to obtain a preliminary injunction, “plaintiffs bear the burden of demonstrating (1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest.” *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir. 2003). The District Court held that Plaintiffs had not met even the first of these four requirements because they had failed to demonstrate a substantial likelihood of success on the merits. Accordingly, it properly denied the Plaintiffs’ motion for a preliminary injunction without even examining the latter three requirements for preliminary injunctive relief. Memorandum p. 11 [App. Tab 13].

A district court’s denial of a motion for a preliminary injunction is entitled to substantial deference:

Appellate review of an order granting or denying a preliminary injunction proceeds deferentially. The trial court’s evaluation of the four elements embedded in the preliminary injunction calculus will stand unless the appellant can show an abuse of discretion. An error of law is, of course, an abuse of discretion. Apart from

error of law, an abuse of discretion occurs when the district court considers improper criteria, ignores criteria that deserve significant weight, or gauges only the appropriate criteria but makes a clear error of judgment in assaying them.

Rosario-Urdaz v. Rivera-Hernandez, 350 F.3d 219, 221 (1st Cir. 2003) (citations omitted); *see also Narragansett Indian Tribe v. Warwick Sewer Auth.*, 334 F.3d 161, 166 (1st Cir. 2003) (“[T]his court affords ‘considerable deference’ to the ‘judgment calls’ the district court made in applying this [preliminary injunction] test, while reviewing pure issues of law de novo and factual findings for clear error.”).

A. Plaintiffs’ Claim Is Based on an Interpretation of the Massachusetts Constitution that Has Been Squarely Rejected by the Supreme Judicial Court

Although Plaintiffs couch their claim as arising under the Guarantee Clause of the Federal Constitution, at bottom, Plaintiffs are asking this Court to overrule the SJC’s authoritative construction of the Massachusetts Constitution. The Plaintiffs assert that the SJC lacked jurisdiction to hear and decide *Goodridge* and to redefine the definition of the term “marriage” because “[t]he Massachusetts Constitution uniquely grants to the Executive exclusive authority over marriage, with the proviso that the Legislature may make other provisions.” Appellants’ Initial Brief at 18. Plaintiffs cite Part 2, chapter III, article V of the Massachusetts Constitution, which provides that “[a]ll causes of marriage, divorce, and alimony,

and all appeals from the judges of probate shall be heard and determined by the governor and council, until the legislature shall by leave, make other provisions.”

But the full SJC itself has squarely ruled that Part 2, chapter III, article V of the Massachusetts Constitution did not deprive it of subject matter jurisdiction to decide *Goodridge*. On May 7, 2004, the SJC issued an Order in *Goodridge* rejecting a state constitutional argument identical to that asserted by Plaintiffs here. *See Goodridge v. Dep’t of Pub. Health*, No. SJC-08860 (Mass. filed May 7, 2004) (per curiam) [Supp. Add. at 3]. The SJC explained that “the assertion that the court did not have subject matter jurisdiction is based on the erroneous premise that the case before us constituted a ‘cause[] of marriage’ . . . within the meaning of the Massachusetts Constitution.” *Id.* at 2.¹ The SJC also held that it had subject matter jurisdiction to hear and decide *Goodridge* based on its well-established jurisdiction to review acts of the Legislature and public officials for constitutional soundness. *Id.* at 2-3 (holding that plaintiffs’ claims involved an “interpretation of the Constitution and a determination of the validity of our laws,” a matter “within the Court’s jurisdiction to resolve.”); *see also Goodridge*, 798 N.E.2d at 966 (“The

¹ This view was recently reinforced by Justice Spina in his May 14, 2004 Memorandum and Decision denying a motion to intervene in *Goodridge*. *Goodridge v. Dep’t of Pub. Health*, No. SJ-2004-0214 (Mass. filed May 14, 2004) [Supp. Add. at 3]. Justice Spina explained that Part 2, chapter III, article V of the Massachusetts Constitution “does not purport to define marriage” and “does not elevate the 1780 definition of marriage to a fixed principle of constitutional law.” *Id.* at 2.

Massachusetts Constitution requires that legislation meet certain criteria and not extend beyond certain limits. It is the function of courts to determine whether these criteria are met and whether these limits are exceeded. . . . To label the court’s role as usurping that of the Legislature . . . is to misunderstand the nature and purpose of judicial review.”²

Federal courts regard a state supreme court’s interpretation of state constitutional law as controlling. *See Senn v. Tile Layers Protective Union*, 301 U.S. 468, 477 (1937) (holding that judgment of state’s highest court on construction of state constitution is “conclusive”); *Redgrave v. Boston Symphony Orchestra*, 855 F.2d 888, 911 (1st Cir. 1988) (deferring to state supreme court’s interpretation of state constitution); *In re Jerome P. Troy*, 505 F.2d 746, 747 (1st Cir. 1974) (holding that determination of SJC on interpretation of state law is

² Indeed, the authority of a state’s highest court to decide whether state legislative enactments comport with the state constitution, and to remedy constitutional defects, is one of the most elementary tenets of Massachusetts’ constitutional jurisprudence, and the nation’s as well. *See, e.g., Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (characterizing such review as “the very essence of judicial duty”); *Horton v. Attorney Gen.*, 169 N.E. 552, 554 (Mass. 1930) (“a duty is cast upon the judicial department of government, when the question is properly raised between litigants, to determine whether a public officer is overstepping constitutional bounds and whether statutes duly enacted conform to the fundamental law as expressed in the Constitution”); *Bowe v. Sec’y of the Comm.*, 69 N.E.2d 115, 125 (Mass. 1946) (“The nature of the power of courts to enforce the provisions of the Constitution of Massachusetts as against a conflicting statute . . . is a necessary function, if constitutional provisions are to be the supreme law”); *Trefry v. Putnam*, 116 N.E. 904, 906 (Mass. 1917) (stating that Constitution “was designed by its framers and accepted by the people as an enduring instrument, so comprehensive and general in its terms that a free, intelligent and moral body of citizens might govern themselves under its beneficent provisions through radical changes in social, economic, and industrial conditions.”).

“binding”). Thus, as this Court has already recognized, Plaintiffs in this case are improperly asking “a federal court [to] disregard the long-standing practice of federal courts to treat the decisions of the highest state courts as controlling interpretations of state law.” Order Denying Stay p. 2 [App. Tab 15].

Accordingly, consistent with the SJC’s interpretation of the state constitution, the District Court properly determined that the “SJC has the authority to interpret, and reinterpret, if necessary, the term marriage as it appears in the Massachusetts Constitution.” Memorandum p. 10 [App. Tab 13].

B. Plaintiffs’ Guarantee Clause Claim Is Not Likely to Succeed on the Merits

In order to evade the clear holding of the SJC that it has jurisdiction to define and interpret the meaning of “marriage,” Plaintiffs have attempted to disguise their state law issue as a federal claim under the Guarantee Clause of the United States Constitution. This evasion tactic does not assist Plaintiffs’ cause, however, because the Guarantee Clause gives states enormous leeway to shape their governments and to allocate public functions as they see fit. *See Highland Farms Dairy v. Agnew*, 300 U.S. 608, 612 (1937) (denying Guarantee Clause claim and concluding that “how power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself”). As Professor Lawrence H. Tribe has explained, the Guarantee Clause of the Federal Constitution recognizes a duty “to respect the state’s most fundamental

structural choices as to how its people are to participate in and shape the processes of their own governance[,] . . . [a]nd no doubt many options exist, consistent with those basic norms [of openness and equal protection], for implementing the ideals of representative democracy through the requirement of ‘republican’ form.”

Laurence H. Tribe, *American Constitutional Law* § 5-12, p. 908 (3d ed. 2003).³

As this Court has already recognized, Plaintiffs have presented no explanation of how the resolution of whether the SJC has jurisdiction to consider and define marriage “one way rather than another threatens a republican form of government” in violation of the Guarantee Clause. Order Denying Stay p. 2 [App. Tab 15]; *cf. Forsyth v. Hammond*, 166 U.S. 506, 519 (1897) (where decision of state supreme court on territorial boundaries involved claim of infringement of legislative functions, no Guarantee Clause issue would be implicated because the “preservation of legislative control in such matters is not one of the essential

³ As Professor Tribe notes, the Guarantee Clause has two sides: one which operates as a restraint on state governmental forms and another which protects states against the intrusion of the federal government. Stated differently, the Guarantee Clause also requires the federal government—including its courts—to respect states’ decisions on how it works its republican form of government. *See generally*, Tribe, *supra*, § 5-12, pp. 909-910. *See also Wilson v. North Carolina ex rel. Caldwell*, 169 U.S. 586, 594 (1898) (“In its internal administration the state (so far as concerns the federal government) has entire freedom of choice as to the creation of an office for purely state purposes . . . [a]nd in such matters the decision of the state court that the procedure by which an officer has been suspended or removed from office was regular, and was under a constitutional and valid statute, must generally be conclusive in this court.”); *Missouri v. Lewis*, 101 U.S. 22, 31 (1879) (holding that a state has the right to make decisions about political subdivisions and court systems and that “it would seriously interfere with the power of a State to regulate its internal affairs to deny it this right. We think it is not denied or taken away by any thing in the Constitution of the United States.”).

elements of a republican government”). Thus, the District Court properly held that “the SJC did not usurp the power of the Massachusetts Legislature in violation of the Guarantee Clause, when it ‘reformulat[ed]’ the term marriage to mean ‘the voluntary union of two persons as spouses, to the exclusion of all others.’”

Memorandum p. 10 [App. Tab 13] (alteration in original) (quoting *Goodridge*, 798 N.E.2d at 969).

III. PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION BECAUSE THERE IS NO SIGNIFICANT RISK OF IRREPARABLE HARM TO PLAINTIFFS AND THE BALANCE OF THE EQUITIES WEIGHS HEAVILY IN FAVOR OF THE *GOODRIDGE* INTERVENORS AND THE DEFENDANTS.

Even if Plaintiffs could demonstrate a substantial likelihood of success on the merits, this Court would be required to affirm the District Court’s decision because Plaintiffs have shown no particularized, irreparable harm and because the balance of the equities overwhelmingly weighs in favor of the *Goodridge* Intervenor.

The implementation of *Goodridge* on May 17, 2004, as scheduled, has caused no harm to the Plaintiffs or to any other citizens of Massachusetts. Nor do Plaintiffs allege that they have suffered any particularized, concrete harm in the week-and-a-half since judgment was entered in *Goodridge*. Instead, Plaintiffs speculate that, “[s]hould Plaintiffs *ultimately* succeed in their claim,” then “[c]haos will ensue” because any “same-sex marriages performed in the intervening period

would be in limbo.” Appallants’ Initial Brief at 33 (emphasis added). There are several flaws in this argument. First, as noted above, same-sex marriage licenses have already been issued. Thus, even if Plaintiffs could support their assertion that the issuance of same-sex marriage licenses will lead to “chaos” if Plaintiffs ultimately prevail in this case, the grant of a preliminary injunction at this point would not remedy this alleged harm.

Second, Plaintiffs have completely failed to allege that they will suffer and direct, concrete or imminent harm from entry of the judgment in *Goodridge* and the issuance of marriage licenses to same-sex couples.⁴ To the contrary, they assert only an unsupported and overblown speculation that “chaos” will ensue if and when *Plaintiffs themselves* ultimately succeed in overturning or preempting the SJC’s decision in *Goodridge*. Plaintiffs recognize the speculative nature of this alleged harm when they assert that, should they ever succeed in overturning the SJC’s decision in *Goodridge* it would lead to “*untold consequences.*” Appellants’ Initial Brief at 34 (emphasis added). Further, Plaintiffs provide no evidence of how these “untold consequences” will effect them personally. Because the Plaintiffs fail to allege any present, concrete, or particularized harm caused by the

⁴ Moreover, as discussed below, because Plaintiffs have not suffered any cognizable harm, they lack legal standing to pursue the present action at all.

entry of judgment in *Goodridge* or the resulting issuance of same-sex marriage licenses, they are not entitled to preliminary injunctive relief.

Finally, even if the Plaintiffs had alleged any direct or concrete harm stemming from the SJC’s decision in *Goodridge* and the subsequent issuance of same-sex licenses, these allegations would not support the preliminary relief they request. The SJC’s ruling in *Goodridge* is neither the first significant change in civil marriage nor does it mark the first time marriage laws have differed dramatically from state to state. *See, e.g., Goodridge*, 798 N.E.2d at 958 (noting divergence in state laws regarding eligibility to marry based on race).⁵ Over time, the law has adjusted to a changing society, as courts and lawmakers throughout the United States reformed marriage laws to reflect contemporary views of racial and gender equality, privacy, and fundamental fairness. These changes to the meaning and availability of civil marriage over time have benefited—rather than harmed—our society, and Plaintiffs have failed to demonstrate how the change in the scope

⁵ In 1948, the California Supreme Court became the first state high court to declare a ban on interracial marriage unconstitutional in *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948). At the time, “racial inequality was rampant and normative, segregation in public and private institutions was commonplace, the civil rights movement had not yet been launched, and the ‘separate but equal’ doctrine of *Plessy v. Ferguson* . . . was still good law.” *Goodridge*, 798 N.E.2d at 958 n.16. The dissent in *Perez* predicted “social tension” and determined interracial marriage to be “incompatible with the general welfare.” 198 P.2d at 45. Yet, as the SJC noted, by the time the U.S. Supreme Court struck down all remaining interracial marriage laws nationwide in *Loving v. Virginia*, 388 U.S. 1 (1967), “antimiscegenation statutes were in ‘full-scale retreat.’” *Goodridge*, 798 N.E.2d at 958 n.16.

of Massachusetts civil marriage brought about by the SJC's judgment in *Goodridge* is any different.

While Plaintiffs have failed to allege any harm resulting from entry of judgment in *Goodridge*, the *Goodridge* Intervenors and other same-sex couples would have suffered substantial harm if the District Court had granted the preliminary relief requested by Plaintiffs and enjoined entry of the *Goodridge* judgment. Almost six months after the SJC declared that same-sex couples have a constitutional right to marry, and three years after this hard-fought litigation commenced in state court, the denial of the constitutional right to marry to the *Goodridge* Intervenors and other same-sex couples finally came to an end on May 17, 2004.⁶ As the United States Supreme Court has made clear, the “deprivation of constitutional rights calls for prompt rectification.” *Watson v. Memphis*, 373 U.S. 526, 532 (1963) (rejecting resistance to desegregation of city parks based on speculations of chaos and unrest). The Supreme Court has explained:

[A]ll [constitutional] rights [are] present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled.

⁶ Notably, even though *Goodridge* was decided on November 18, 2003, Plaintiffs have waited until now to assert their claim of “imminent” harm.

Id. Likewise, the constitutional right of same-sex couples to marry is a “present right” that is to be “promptly fulfilled” absent an “overwhelmingly compelling reason.” *Id.* Appellants offer no reason—let alone an overwhelmingly compelling reason—for this Court to deny the *Goodridge* Intervenors the constitutional right to marry or the myriad protections “accessible only by way of marriage” and “touching nearly every aspect of life and death.” *Goodridge*, 798 N.E.2d at 955.⁷

Because the continued deprivation of the *Goodridge* Intervenors’ constitutional rights clearly outweighs the speculative and remote “injuries” advanced by Plaintiffs, the District Court properly denied Plaintiffs’ request for preliminary injunctive relief.

IV. PLAINTIFFS LACK STANDING TO BRING THIS ACTION.

Plaintiffs lack standing to bring this action or to seek the preliminary injunctive relief they request. In order for a plaintiff to have standing, “the suit must present more than ‘abstract questions of wide public significance which amount to generalized grievances, pervasively shared and most appropriately addressed in the representative branches.’” *McInnis-Misenor v. Maine Med. Ctr.*,

⁷ Similarly, the Justices of the SJC would be irreparably harmed by an open-ended injunction that necessarily would call into question their competency to opine on state matters. Calling into question the appropriateness of the SJC’s authority to decide *Goodridge* would place a cloud over the SJC’s constitutional credibility, threatening not only its independence but, equally important, its ability to interpret and enforce the rule of law. As the District Court stated, “[t]o rule that, through its actions in the *Goodridge* case, [the] SJC usurped the power of the Massachusetts Legislature . . . would be to deprive that court of its authority and

319 F.3d 63, 68 (1st Cir. 2003) (quoting *N.H. Right to Life Polit. Action Comm. v. Gardner*, 99 F.3d 8, 15 (1st Cir. 1996))). Plaintiffs’ contention that “[c]haos will ensue” from the issuance of marriage licenses to same-sex couples “[s]hould [p]laintiffs ultimately succeed in their claim,” Appellants’ Initial Brief at 33, is exactly the type of “generalized grievance[]” that this Court lacks jurisdiction to address.

Moreover, Plaintiffs lack standing to bring this action because they have failed to “demonstrate an ‘injury in fact,’ which is ‘concrete,’ ‘distinct and palpable,’ and ‘actual or imminent.’” *McConnell v. Fed. Communications Comm’n*, 124 S. Ct. 619, 707 (2003) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). To the contrary, Plaintiffs make only vague, general contentions regarding the “chaos” and “untold consequences” that will allegedly result from the issuance of same-sex marriage licenses should Plaintiffs eventually succeed in this action. Appellants’ Initial Brief at 33.

Simply put, Plaintiffs have not “alleged such a personal stake in the outcome of the controversy as to warrant invocation of federal-court jurisdiction.” *McInnis-Misenor*, 319 F.3d at 67 (quoting *Warth v. 422 U.S. 490, 498-99* (1975) (internal quotations omitted)). Accordingly, Plaintiffs cannot meet the constitutional or prudential requirements for standing, and the District Court lacked jurisdiction to

obligation to consider and resolve, with finality, Massachusetts constitutional

rule on Plaintiffs’ motion for preliminary injunctive relief. *See McInnis-Misenor*, 319 F.3d at 68 (“The standing inquiry ‘involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.’” (quoting *Warth v. 422 U.S. at 498*)).

V. UNDER THE *ROOKER-FELDMAN* DOCTRINE, THE DISTRICT COURT LACKED JURISDICTION TO CONSIDER PLAINTIFFS’ CLAIMS.

Even if Plaintiffs had standing, the District Court nonetheless lacked subject matter jurisdiction to grant such relief. The *Rooker-Feldman* doctrine prohibits federal district courts from acting as “superappeals” courts sitting in review of state court orders, even if nominally done in review of a federal constitutional claim.⁸ *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414-417 (1923) (recognizing that only the United States Supreme Court has jurisdiction to reverse or modify the judgment of a state court for errors); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 486, 486-87 (1983). Under the *Rooker-Feldman* doctrine:

Where a party did not actually present its federal claims in state court, *Rooker-Feldman* forecloses lower federal court jurisdiction over claims that are inextricably intertwined with the claims adjudicated in a state court. A federal claim is inextricably intertwined with the state-court claims if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.

issues. Memorandum p. 11 [App. Tab 13].

⁸ The *Rooker-Feldman* doctrine is jurisdictional in nature and cannot be waived. *See, e.g., In re Zambre*, 306 B.R. 428, 432 (Bankr. D. Mass. 2004).

Rosenfeld v. Egy, 346 F.3d 11, 18-19 (1st Cir. 2003) (rejecting jurisdiction over Fourth Amendment claim that could only exist if the state probate court wrongly decided the matter); *see also Mandel v. Town of Orleans*, 326 F.3d 271 (1st Cir. 2003) (“[T]he [*Rooker-Feldman*] doctrine is widely used by federal courts to prevent end-runs around state judgments.”).⁹

Plaintiffs’ claim, although brought under 42 U.S.C. § 1983,¹⁰ is completely dependent upon, and intertwined with, state constitutional law claims that have already been adjudicated and expressly rejected by the SJC.¹¹ Plaintiffs assert that

⁹ At its essence, the *Rooker-Feldman doctrine* is a simplified variation of the *res judicata* rubric. *See Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27, 33 (1st Cir. 2004) (“[F]ederal courts regularly use *Rooker-Feldman* to rebuff collateral attacks on prior state court judgments without purporting to apply the technical preclusion rules of *res judicata*.”) Unlike *res judicata*, “*Rooker-Feldman* does not depend on what issues were actually litigated in the state court. . . . [I]t is enough that granting [plaintiffs] the injunction [they] seek would effectively overturn the state court’s decision.” *Id.*

¹⁰ Section 1983 does not provide litigants with a basis to collaterally attack state court proceedings, even where federal challenge alleges that the state court’s action was unconstitutional. *See, e.g., Wilson v. Shumway*, 264 F.3d 120, 126 (1st Cir. 2001) (“[T]he *Rooker-Feldman* doctrine is applicable to cases brought under 42 U.S.C. §1983.”); *Hagerty v. Succession of Clement*, 749 F.2d 217, 220 (5th Cir. 1984), *cert. denied*, 474 U.S. 968 (1985) (recognizing “well-settled rule that a plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action”); *South Boston Allied War Veterans Council v. Zobel*, 830 F. Supp. 643, 647 (D. Mass. 1993) (rejecting restyled Section 1983 claim that challenged constitutionality of state court action under *Rooker-Feldman*).

¹¹ Plaintiffs’ attempt to avoid the limits of the *Rooker-Feldman* doctrine by arguing that this doctrine does not apply unless the federal court plaintiffs were also party to the state court litigation. This assertion is plainly wrong. *See Rooker*, 263 U.S. at 414 (including two defendants who had not been state court parties); *see also Angle v. Nevada*, 274 F. Supp. 2d 1152, 1155 (D. Nev. 2003) (applying *Rooker-Feldman* doctrine to plaintiff who was not party in state court where party directly attacks state court judgment). Moreover, eight of the Plaintiffs in this case *filed* the motion to intervene that resulted in the SJC’s May 7, 2004 ruling that it had jurisdiction to hear *Goodridge* and, thus, were party to the SJC’s decision on this matter. *See Goodridge v. Dep’t of Pub. Health*, No. SJC-08860, at 3 (Mass. filed May 7, 2004) (per curiam) [Supp. Add. at 3].

they have been denied “the [federal] guarantee of a republican form of government” by the SJC’s judgment in *Goodridge* because, under Part 2, chapter III, article V of the Massachusetts Constitution, only the Governor—and not the SJC—has authority to define marriage under the Massachusetts Constitution. This claim cannot possibly be resolved without overturning the SJC’s express ruling that Part 2, chapter III, article V of the Massachusetts Constitution did not deprive it of jurisdiction to hear and decide *Goodridge*. See *Goodridge v. Dep’t of Pub. Health*, No. SJC-08860, at 3 (Mass. filed May 7, 2004) (per curiam) [Supp. Add. at 3]; *Goodridge v. Dep’t of Pub. Health*, No. SJ-2004-0214 (Mass. filed May 14, 2004) [Supp. Add. at 3]. Accordingly, the District Court lacked jurisdiction to adjudicate Plaintiffs’ § 1983 claim.

CONCLUSION

For the foregoing reasons, the *Goodridge* Intervenors respectfully request that this Court affirm the District Court's denial of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

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