

## How Civil Rights Are Born— By Democracy, Not Lawsuits

*Contrary to those who argue that “you can’t let people vote on civil rights,” the people in Massachusetts should vote on marriage because:*

1. Civil rights come from the democratic process, not lawsuits and the courts.
2. The people or their elected representatives vote to give particular claims the legal status of civil rights. That’s called the “consent of the governed.”
3. The courts apply the law, enforcing civil protections granted by the people. The courts do not create civil rights.
4. In Massachusetts, same-sex marriage was never approved by the people and was rejected by the people’s elected representatives in the state legislature:
  - In the 1700s, same-sex marriage was not an issue when the people ratified the state constitution and its declaration of rights;
  - In 1976, backers of the state Equal Rights Amendment banning sex discrimination disavowed any intent to legalize same-sex marriage;
  - In 1989, the legislature prohibited gay rights law from legitimizing or validating same-sex marriage.

The 2003 *Goodridge* case: Four unelected judges on the state’s highest court ruled without the backing of democracy and contrary to common sense that limiting marriage to the union of man and woman:

- was as evil as racism,
- was based on a desire to harm homosexuals, and
- was no longer to be tolerated by the state.

*Treating same-sex marriage as if it were a civil right will harm those with moral or religious objections:*

The state must now punish anyone who “interferes” with the so-called “civil right” of same-sex marriage.

The punishment will be severe. Laws banning interference with “civil rights” impose stiff fines and, after *Goodridge*, will authorize serious damage awards against anyone who on moral grounds refuses to recognize or honor the so-called “civil right” of same-sex marriage. If the people are denied a vote on marriage, then the persecution will begin in earnest.

*The question before the legislature is not same-sex marriage, but democracy:*

Justice requires democracy before punishment. It is unjust to accuse supporters of traditional marriage of being bigots and to subject them to the threat of punishment without the people’s approval.

Those who want same-sex marriage to be treated as a civil right and its opponents to be punished as bigots lack democracy’s backing. The people never voted to make same-sex marriage a civil right.

The issue is not about whether civil rights should be put to a vote, but about voting whether to elevate same-sex marriage to the level of a civil right in the first place. Under the Article 48 initiative process, deciding civil rights is the people’s civil right.

The ballot gives the people a clear choice: Either traditional marriage policy should be punished as a form of bigotry that violates a civil right or it should be reaffirmed as a matter of common sense. **Let the people vote on marriage!**