



Goodridge et al. v. Department of Public Health et al. **The Role of Litigation in the Struggle for Same-Sex Marriage**

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Abstract: Much debate in Political Science has focused on the role of court decisions as catalysts of social reform. Scholar Gerald Rosenberg has argued litigation often only creates short-term effects, as courts are constrained in creating concrete public policy. Scholar Michael McCann, instead, has suggested legal strategies have lasting effects even when decisions go against activists' claims. In his view, they are capable of increasing social mobilization and awareness of rights, and helping activists develop alternative strategies. This thesis tests those diverging theories by analyzing the effects of the landmark 2003 Massachusetts Supreme Judicial Court decision on same-sex marriage (*Goodridge, et al. v. Department of Public Health, et al.*). This requires empirical research on select political, judicial and social events throughout the country, evaluation of public opinion towards the legal recognition of same-sex relationships, analysis of surveys of gays and lesbians' response to the same-sex marriage debate, and personal interviews with select Massachusetts figures involved in the same-sex marriage movement. The findings suggest that the *Goodridge* suit was an effective strategy used by activists in the creation of concrete policy regarding same-sex marriage in the Commonwealth. Despite the backlash it created, the decision has spurred further same-sex marriage litigation across the country, influenced non-legal actors to support and often promote same-sex marriage, increased "rights consciousness" in the gay and lesbian community, and strengthened the work among national and state gay-rights groups. This thesis argues that effective social reform can be achieved through the use of litigation, legal strategies have lasting extra-judicial effects, and that state supreme court decisions have become crucial in changing the status quo.

The year 2003 and 2004 were marked by a wave of events related to gay and lesbian rights throughout the country. First, in June 2003, the U.S. Supreme Court deliv-

ered a landmark decision in *Lawrence v. Texas* by declaring the unconstitutionality of sodomy laws. The decision marked a great victory for gay-rights activists who

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for decades had battled the issue at the state and national levels. Yet, *Lawrence* only preceded what some have called one of the most groundbreaking legal decisions regarding gay and lesbian rights in the United States. On November 18, 2003, in *Goodridge et al. v. Department of Public Health et al.*, the Massachusetts Supreme Judicial Court delivered a landmark ruling by stating that gay and lesbian couples could no longer be excluded from civil marriage in the state. The 4-3 opinion recognizing the plaintiffs' argument that barring gays and lesbians from marrying their loved ones was unconstitutional was the first of its kind in the country. As established by the Justices, one-hundred-and-eighty days following the decision, the first same-sex marriages were performed in the state.

Goodridge became a major victory in the more-than-half-a-century-long struggle for rights by gays and lesbians in the United States. The suit was part of a strategically crafted decision by gay-rights advocates to use litigation in pursuing the right for same-sex couples to legally marry. The S.J.C. decision sent shockwaves across the country, and same-sex marriage became part of the national political and social debate. *Goodridge* has also been responsible for revitalizing a debate among scholars on the role of court decisions in bringing about social reform. Political scientists have long ago come to question the effectiveness of the use of legal strategies by social movements in challenging the status quo and creating lasting social changes.

In regards to the debate on the importance and necessity of the use of litigation as catalyst of social reforms, the arguments of scholars Gerald N. Rosenberg and Michael W. McCann illustrate the diverging views on the issue. Rosenberg has argued that legal mobilization is a futile and ineffective tactic used by reformers, either because law often only creates short-term effects, courts are constrained in creating concrete public policy, or due to the fact

that legal tactics block a more collective participation in pushing for change. In reaction to those views, McCann has suggested that the use of law is important in indirectly reforming society. Court decisions, in that sense, even when against social activists' claims, have lasting effects that range from increasing social mobilization towards changing the status quo, to enhancing individuals' awareness of their rights.

In the case of *Goodridge*, some have come to question what role the decision has and will play in the struggle for same-sex marriage in Massachusetts and at the national level. Thus, this thesis sought to analyze the validity of those scholarly arguments when applied to *Goodridge*. It examined and tested the diverging theories of Rosenberg and McCann through the analyses of the impacts and role of the use of legal tactics by gay and lesbian activists in the fight for same-sex marriage. The main focus of this research was not just to determine the direct judicial effects per se of the decision (i.e., the actual implementation of public policy) but to determine whether or not *Goodridge* has had, in Massachusetts and in the rest of the country, some of the extra-judicial effects described by scholars. Thus, the main question becomes what role *Goodridge* has played in expanding the goal of legal recognition of same-sex relationships nationwide, as well as its role in affecting society in ways other than the direct creation of public policy.

The original version of this paper was divided in six different sections. The first one provided a brief explanation of Rosenberg and McCann's arguments. Those ideas enabled us to structure the analytical framework through which *Goodridge* was studied in the later sections. Moreover, in order to better understand the importance and impacts of the decision within the gay and lesbian community, the second section presented the historical development of the gay and lesbian rights movement. This

helped us situate the same-sex marriage debate within a historical spectrum, and determine the changes brought by *Goodridge* to the movement and to the gay and lesbian community at large.

The third, fourth, and fifth sections presented the substantive discussion and findings of this research. The thesis argued that decisions by State Supreme Court have become crucial in changing the status quo, and that effective social reform can be achieved through the use of litigation. Furthermore, it was argued that legal strategies have lasting extra-judicial effects, and that the use of litigation has made gay-rights groups diversify the strategies being used to achieve their goals. The findings suggested that the *Goodridge* lawsuit was an effective strategy used by gay and lesbian activists that has gone beyond the creation of concrete policy regarding same-sex marriage in Massachusetts.

The sixth and last section revisited some of Rosenberg and McCann's arguments and established which view seemed to better explain the role played by *Goodridge*.

Because of the difficulties in publishing the lengthy original paper in its entirety, only a snippet of the final work follows. In particular, the reader will only find the fourth section of the thesis which discusses the 'extra-judicial' effects of the use of litigation by rights activists.

The effects of court decisions can go beyond the actual implementation of public policy. Often court decisions are charged with extra-judicial effects that deeply transform society. Michael McCann's careful analyses of the struggle of the Women's Pay Equity Movement for equal rights brought into light how law can spark organizational action, and create "rights consciousness" among "attentive audiences." Legal strategies can create valuable shifts in people's perceptions about themselves and about others that can reach beyond those that di-

rectly benefit from social change. Court decisions at times also play an inspirational role as they open up the minds of many to the belief that change can be achieved, and that the status quo is not static.

Some of McCann's detailed extra-judicial effects seem to have been confirmed with *Goodridge*. The momentum created by the S.J.C. decision and the political, legal and social events that followed were responsible for publicizing the struggle of same-sex couples nationwide. The findings of this study suggest that the attention given by the media to the same-sex marriage is associated with the increase in society's support for legal recognition of same-sex relationships—especially among younger generations. Nonetheless, the impacts of *Goodridge* are even more noticeable within the gay and lesbian community, in which extra-judicial effects such as the increase in awareness of rights among individuals and organizational changes within the movement have greatly transformed the struggle for the rights of same-sex couples.

Goodridge was responsible for increasing the publicity around the issue of same-sex marriage. As many other landmark court decisions in the United States, news of the 2003 S.J.C. ruling was locally and nationally broadcast. The decision became front-page in newspapers and magazines across the country. From news stories covering the profile of the plaintiffs, to debates on the effects of same-sex marriage on heterosexual marriage, *Goodridge* sparked a nationwide discussion on the issue. Later, with San Francisco Mayor Gavin Newsom and other officials' decisions to issue marriage licenses to gays and lesbians, suddenly the idea of same-sex marriage was introduced to individuals across the country. As Paul R. Brewer and Clyde Wilcox state, "For many Americans, the issue of same-sex marriage burst upon the political scene in the fall of 2003, when the highest court in Massachusetts ruled that the state

had no grounds to deny gay and lesbian couples their right to marry. Within a few months same-sex marriages were performed in a number of cities and counties, including large numbers of weddings in San Francisco, to widespread media attention" (599).

David Wilson, one of the plaintiffs in *Goodridge*, gave more insight about the work and importance of the media in Massachusetts and in the country following *Goodridge*,

I think the national TV media have hurt and helped. CNN's Paula Zahn, Anderson Cooper, for example: balanced. Fox: not so balanced; extreme portrayal of gay and lesbian people. But I think the media in Massachusetts has been very good. Throughout the marriage case for us, the three networks that covered us, they were great. ABC, NBC, CBS, they were great; came to our home, interviewed us; balanced story. They have helped bring the story to the general public. If CBS or ABC comes to our house and does a story, they get it to AP [(Associated Press)], on the national network. Often they would cast it on CNN. We were in the middle of a story one afternoon, and they asked us if we would be on Paula Zahn that night, because they thought it was an important story. So, yes, I think the local media has really helped in Massachusetts for presenting a positive picture to the country; a very positive picture to the country. Actually, we haven't had one negative interview in Massachusetts.

The media played an important role in publicizing the same-sex marriage issue, and explaining to the rest of the country why gay-rights groups believe civil mar-

riage is so important for gays and lesbians.

The litigation in Massachusetts, and the subsequent media attention also enabled gay-rights activists to bring the struggle for marriage rights to the everyday conversations of individuals throughout the United States. Surveys conducted by National Pew Research Center following the 2003 U.S. Supreme Court decision in *Lawrence*, the S.J.C.'s decision in *Goodridge*, and Mayor Newsom's decision all confirm that idea. Three months after *Lawrence*, when asked if they were following "the issue of gay and lesbian marriage," close to half of respondents answered they were doing so "very or fairly close" (Brewer and Wilcox, 601). That number grew to 58% three months after *Goodridge*, and to 62% following marriages in San Francisco (Brewer and Wilcox, 601). Same-sex marriage had become a mainstream issue, and individuals started to become more familiar with the arguments pro and against gay marriage.

The priceless publicity sparked by *Goodridge* would play a similar 'normalizing' role once played by the acts of gays and lesbians in different historical periods of the Gay Rights Movement. As the visibility of gays and lesbians and their relationships increase, the general public tends to become more educated about the issues faced by homosexuals. It was the decision to 'come out' as gays and lesbians to those close to them that increased the visibility of homosexuals in society during the 1970s. "By coming out, gays and lesbians allow their friends, family, and co-workers to know a gay person, and thereby come to realize that gay people are just like everyone else. Movement activists believe this recognition leads to greater tolerance of homosexuality and support for lesbian and gay civil rights. Public opinion data support this perspective" (Haider-Markel, 1359). As gays and lesbians became more visible, people also became more familiar with homosexuality. A certain 'normalizing' effect

towards homosexuality took place once sexual taboos began to be dealt with as individuals came out. Many began to accept homosexuality as a common characteristic of certain individuals, and no longer as an abnormality. Although the process was not always easy, many relatives, friends and workmates of homosexuals became more accepting of the once repressed sexuality of loved ones.

A similar process was evident during the 1980s with the AIDS epidemic and the 'lesbian baby boom.' Because of AIDS, gay and lesbian couples' struggle for inheritance and hospital visitation rights, for instance, became more visible in society, at the same time that it increased same-sex couples' awareness of the lack of legal protections for their relationships. As social awareness on the lack of rights of same-sex couples increased, courts in different states also began to deliver decisions expanding the rights of gay and lesbian couples (through adoption and inheritance rights, for instance), and legislators passed the first bills recognizing same-sex relationships.

With *Goodridge*, once again that 'normalizing' effect started to take place. The visibility around gay and lesbian relationships brought about by the media after the decision, and the publicity of the actual same-sex marriages that have taken place seem to have increased people's acceptance towards those relationships. As Matthew McTighe, political director of MassEquality, argued,

I think, immeasurably [*Goodridge* got] people talking about [same-sex marriage], talking and seeing as we have seen here in Massachusetts that it has not had any of the negative effects that the opponents of same-sex marriage said that would. Same-sex marriage has not caused the moral decay and the unraveling of societal threats. (...) But

you can't say that anymore when you look at Massachusetts. When you look at Massachusetts, we're a part of this country, like any other state, and we've had this experiment going on for three years where it has worked just better than everybody had imagined. It is as real as marriage can be. It's full and complete. And really the only side effect, the only thing that has caused is for roughly 8,500 same-sex couples to be a little happier, a little bit more secure legally in their lives as they are raising families. And their extended families, their parents, their friends, their neighbors, they've all sort of been a part of that, and seen the full completion that comes for these couples when they are actually legally recognized as married.

The actual implementation of policy brought about by the decision has enabled gay and lesbian couples to strengthen their argument that same-sex marriage does not have any negative social effects, and that gay and lesbian families are not different than heterosexual ones.

Mary Bonauto, the lead counsel in the *Goodridge* suit also gave a similar explanation of the effects of the actual marriages in Massachusetts during an interview to Jo Ann Citron in October 2004,

I think that learning curve has really been accelerated by the fact that now gay people *are* married, and the doomsayers have egg on their faces. They have nothing they can point to in terms of how anyone has been harmed. Even Governor Romney has conceded that these marriages cause no harm to the Commonwealth. When he testified to the subcommittee on the constitution in late June [2004], he specu-

lated again about the impact on children and so on, but he couldn't say how these marriages hurt the institution or hurt other people's marriages. He conceded that they didn't affect other people's marriages at all.

The 'normalizing' effect on the general public was also seen in other parts of the country. Newspapers and magazines across the United States have helped educate the public about gay and lesbian families. An article on *Newsweek*, for instance, talked about how "'ordinary' looking" same-sex couples receiving marriage licenses at the San Francisco City Hall were (Chauncey, 137). Same-sex couples' families were often portrayed as being similar to or only slightly different than those of heterosexuals.

Among gays and lesbians, the publicity also sparked a discussion over the rights and responsibilities that are associated with civil marriage. Once gays and lesbians began to consider whether or not to marry, enter in civil unions, or to be outspoken about the lack of legal recognition to their relationships, co-workers, friends and relatives were once again immersed in this different form of 'coming out.' David Wilson explained how this process came about:

I think [same-sex marriage] has been a way for gay and lesbian couples, even couples that are not married, to talk about their families. It has allowed couples to come out, or even individuals to come out. The whole marriage discussion since the Goodridge decision has ended up at the dinner table across the state. So, as college kids go home, it comes up; as people go to their work place, it comes up at lunches and water coolers. So, I think the whole discussion of marriage has allowed gay and lesbian

people to talk about their lives, and as a result of that talk about their relationships. So, at least to my way of understanding, it has really opened up an opportunity for us to be more open and more real in our lives, and known. And the more people that know us, the more likely they are to vote with us. And that is what we have seen since 2003: we have really seen a percentage of people that are with us and support our rights increase every day. People are going to weddings, people are hearing about weddings, people are coming to the office after a marriage in the weekend, and co-workers are asking questions about how it was to attend those weddings. So, it has just really allowed our lives to become of knowledge for so many people that were living in the closet, and this has given them a chance to talk about a mainstream issue. 'I got married.' and everybody understands what that is.

The 'coming out' of gays and lesbian couples fomented by *Goodridge* enabled the general public to become familiar with the legal, economic, and social issues faced by those in same-sex relationships. That alone would play a crucial role in changing people's opinions towards same-sex couples.

Goodridge and its aftermath affected the general public in two different ways. First, despite the vocal and powerful opposition that gained strength following *Goodridge*, it seems that, in the long run, the backlash has not strongly affected Americans' opinions on the issue. According to a national survey conducted by the Pew Research Center in 2006, 56% of Americans continue to be against same-sex marriage, while 35% support it. On one hand, it is true that most Americans still oppose the idea of civil marriage to gay and lesbian couples. None-

theless, on the other hand, that majority which opposes gay marriage has not steadily increased following the 2003 decision. The interesting fact here is that, as the Survey reports, “these figures are largely unchanged over the past several years” (Pew 2006). It is impossible to say whether those numbers would be different if *Goodridge* had never taken place, but what is remarkable is how little the decision has affected the opposition towards same-sex marriage in the long run.

The second effect of *Goodridge* has to do with the increase in people’s support for the legal recognition of same-sex relationships. Some may argue that only an increase in support for same-sex marriage could be used as proof of the changing and lasting effects of the 2003 decision in the general public—since some may see that only an increase in support for marriage, and not for other forms of recognition, would be considered important, as the decision was one over civil marriage. However, it is unquestionable that an increase in the general public’s support towards other forms of legal recognition to same-sex relationships (even if not towards civil marriage) already proves how important *Goodridge* has been in changing people’s perceptions towards homosexual relationships.

According to the same surveys by Pew Research, 54% of Americans “favor allowing gay and lesbian couples to enter into legal agreements giving them many of the same rights as married couples,” while 42% oppose it. Just in October 2003, prior to *Goodridge*, that opposition was actually a majority (47%), while those who favored giving rights to same-sex couples were a minority (45%) (Pew 2006). Since *Goodridge*, the number of those who are in favor of legally recognizing same-sex relationships has increased by 9%, and now represents a majority. According to Brewer and Wilcox, “In every poll conducted from 2004 onward, more respondents favored some sort

of recognition than favored no recognition, with the difference exceeding the margin of error in every case except one” (603). There has been a trend in the increase of support towards legally recognizing homosexual relationships. As Matthew McTighe explains,

The Goodridge decision sped up the progression so substantially to the point that, now, nationwide, civil unions are sort of looked [at] as a compromise, because people are truly focused on and talking about full civil marriage equality. And a lot of people weren’t talking about that before.

And that ‘compromise’ is clearly seen in the way some lawmakers, politicians, and the general public have become more accepting of civil unions throughout the U.S.

As it was mentioned earlier, the civil union bills approved by lawmakers in Connecticut and New Jersey exemplify how the shift towards legalizing same-sex relationships have become a compromise to legislators in some states—even though same-sex marriage is still often seen as taboo. In that sense, the ‘threat’ of decisions similar to *Goodridge* has had the positive effect of forcing some legislators, politicians, the public, and courts to accept with less politically heated debates other forms of legal recognition for same-sex relationships. For instance, the first win for gay-rights groups in defeating an anti-marriage amendment took place in Arizona, in 2006. It is believed that 51% of voters rejected the amendment because it would not only outlaw same-sex marriage, but also any form of recognition for same-sex couples (NGLTF 2006). The main strategy used by gay-rights groups in Arizona was to make voters aware of what activists considered to be the discriminatory purpose of the amendment. The amendment would have probably been ap-

proved by voters if it had just focused on outlawing same-sex marriage. The fact that people have become more supportive of legally recognizing gay and lesbian relationships since *Goodridge* shows how powerful the decision has been in increasing an awareness that same-sex couples deserve at least some of the protections, benefits, responsibilities, and rights given to heterosexual couples.

If the effects of *Goodridge* have been noticeable in the general public, the impacts of the decision seem to have been even more substantial within the gay and lesbian community. The same-sex marriage decision was able to turn same-sex marriage into one of the most important issues for many gays and lesbians. The effects of *Goodridge* have been felt not only by those able to legally marry in Massachusetts. The gay and lesbian community at large, even those individuals that are not in committed relationships, has been impacted by the S.J.C. decision. The findings suggest that *Goodridge* has created a “transformative legacy” that goes beyond Massachusetts, and reaches gays and lesbians in many other states. From enhancing “rights consciousness” in the community, to driving gay-rights activists and groups to join forces in the struggle for marriage, *Goodridge* can be associated with many extra-judicial effects.

One of the most important effects of the 2003 S.J.C. decision has been the increase in “rights consciousness” among gays and lesbians across the country. The findings confirm what McCann described as the “transformative legacy of legal action.” Similar to the impact of court decisions for the Women’s Pay Equity Movement, *Goodridge* was a turning point in the way gays and lesbians see the importance and meaning of the right to legally marry. As George Chauncey explains,

Few people who were debating the desirability of marriage so fervently actually thought there was much

prospect of it becoming available to gay couples anytime soon. (...) By making marriage seem a real possibility for the first time and by provoking a massive conservative reaction, the court decisions intensified the gay debate but also shifted its center of gravity. More and more activists and non-activists came to believe that both the security and recognition that marriage provided were worth fighting for. (122-123)

In the case of *Goodridge*, once the highest court in Massachusetts came to recognize that nothing short of civil marriage for same-sex couples would satisfy the state constitution, gays and lesbians realized that changing the status quo was possible, and that effective social change could be achieved in their lifetimes.

In an interview to Daniel R. Pinello, Roey Thorpe, an activist for Basic Rights Oregon, described the importance of *Goodridge* for gays and lesbians:

Massachusetts was key, certainly in terms of the momentum that occurred nationally. I also think there was a shift in the consciousness of same-sex couples. The *Goodridge* decision just opened the floodgates of people’s imaginations and of their sense of self-worth. I think that was transformational. (184)

Many did not believe that concrete policy change would be possible in the near future. In *America’s Struggle for Same-Sex Marriage*, Pinello offers many testimonials of gays and lesbians that demonstrate the increase in rights consciousness sparked by *Goodridge* and by the marriages in San Francisco, Oregon, and New York. In a small survey of gays and lesbians, for instance, Pinello found that 80% of respondents believed that same-sex marriage in Massa-

achusetts was the most important event “for achieving their social goal” (189).

In another interview conducted by Pinello, San Francisco Supervisor Bevan Dufty weighted the impact of same-sex marriage in gays and lesbians’ consciousness:

There’s always been a core of activism in the community. But marriage touched a deeper essence that made us hopeful and want to do things. (...) So I think marriage equality has given lesbians and gay men a positive reason to be involved, something that fighting either the AIDS epidemic or employment discrimination didn’t do in the same way. It’s really helped raise consciousness, so that gay people see clearly where they stand in the American political universe. (191-192)

Although many same-sex couples believed they deserved the same rights afforded to heterosexual couples, many did not realize a lack of rights until the events in Massachusetts, San Francisco, and in other parts of the country.

All the interviewees for this study also confirmed the importance of *Goodridge* in changing people’s opinions towards the possibility of being able to legally marry. Matthew McTighe explained the impact of the decision in the gay and lesbian community at large,

Nationally I think it has had a huge impact; mostly from the standpoint of what the gay community think is attainable in terms of equality. There was a lot of people that had always thought, had always hoped, some day there would be same-sex marriage, but most of them, if you would have asked someone ten years ago, I

think the average person in the gay and lesbian community probably would have said ‘It will never happen in my lifetime anywhere in this country; it’s something that it is so far off that maybe couple generations from now is the kind of thing that maybe we can start to see.’ And [*Goodridge*] just very rapidly changed things. (...) I think most of them felt that it was so far out, it wasn’t going to happen in their lifetime, it wasn’t something they could see ever happening, so why focus on it. When Vermont first legalized civil unions, that got people talking about rights and benefits; but even that, I think, a lot of people looked as something that was really a long way off. The *Goodridge* decision really sped that process up, I think, immeasurably to really get people talking about it.

Furthermore, *Goodridge* has had such a powerful effect in the consciousness of many gays and lesbians that same-sex marriage has become an issue of major importance for many in the community. The awareness and rights consciousness that the decision catalyzed has made same-sex marriage and/or the legal recognition for same-sex relationships top the list of priorities for many in the gay and lesbian community since 2003. In the year 2000, the National Gay and Lesbian Task Force, a national gay-rights lobbying group, began surveying gays and lesbians during Gay Pride celebrations in major American cities. Although the surveys may not be representative of the gay and lesbian community as a whole, they provide some insight and information on the shifts in mentality in part of the community.

In the first survey of its kind in the year 2000, individuals were asked “to identify the top three issues facing [Lesbian, Gay, Bisexual, Transgender (LGBT)] people”

(NGLTF, Pride survey 2006). The 2,645 respondents placed HIV and hate crime violence as their top two issues, while “marriage/domestic partnership” was only considered the third most important issue. Then, in June 2003, 1,471 pride attendees in New York, L.A., and Washington, D.C., were part of a similar survey. This time, 32% of respondents said that “partner recognition was ‘the most important issue facing the GLBT community’”—either through marriage/civil unions/domestic partnership (20%), inheritance and spousal benefits (9%), or immigration rights (3%) (NGLTF, Pride Survey 2004). Non-discrimination legislation came in second place with 26%, while HIV prevention/treatment, and hate crime laws were tied in third place with 9.5% each. Legal recognition for same-sex couples had become a policy priority for some gays and lesbians already prior to *Goodridge*. Nonetheless, that number did not represent a substantial majority.

Finally, a survey of the same kind was conducted in six major U.S. cities during Gay Pride parades in late spring and early summer of 2006. Individuals were given a list of ten “policy priorities for the LGBT community” and asked to circle up to three; the responses of 1,162 were used in the survey (NGLTF, Pride Survey 2006). “Marriage equality/partner recognition” was chosen by 800 respondents, topping the list of priorities. “Anti-LGBT discrimination,” and “hate violence/harassment” came in second and third, being chosen, respectively, by 526 and 434 respondents. The fact that nearly 69% of respondents circled “marriage equality/partner recognition” as one of their choices shows how the legal recognition for same-sex couples have become an issue of great interest for many gays and lesbians nationwide. The numbers suggest that since *Goodridge*, a substantial number of gays and lesbians have become more aware of the importance of fighting for the creation of policies that can safeguard their

relationships. The numbers also suggest that there has been an increase in rights consciousness regarding the legal recognition of those relationships following *Goodridge*.

Another interesting effect of the *Goodridge* decision has been to establish in the minds of most gays and lesbians the idea that any form of legal recognition for same-sex couples other than civil marriage would be discriminatory. Before *Goodridge* brought about the reality of same-sex marriage, many gays and lesbians saw civil union and domestic partnership as respectable ways of their relationships being legally recognized. As Pinello writes, “Before November 2003, most couples would have accepted civil unions without question. Today, however, they are almost universally rejected, condemned as markers of second-class citizenship” (188). The rights discourse used by gay-rights activists in the *Goodridge* suit, and the S.J.C. ruling establishing that nothing short of marriage would be constitutional, solidified the awareness among gays and lesbians that other forms of legal recognition would mean they were second-class citizens. That change in perception can be seen in the opinion expressed by a gay couple from New Mexico in an interview conducted by Daniel R. Pinello:

So then I started thinking to myself about domestic partnerships, civil unions, and all of that, and the ways that can give me a lot of the things I may be looking for. (...) Anything less than marriage really isn't enough. If civil union has all the benefits—every single one—that marriage gives you, it's still a different word. It's a different psychological thing. As gay people, we are not the same. We're different. We're less. (...) And then the Massachusetts court decision was rendered and that language was used

["The history of our nation has demonstrated that separate is seldom, if ever, equal"], I was like, "Yes! That's *it!*" (8)

For many gay and lesbian individuals, only the right to legally marry their partners would now be accepted as a symbol of full equality and full citizenship.

Matthew McTighe provided some insight on the importance of marriage for gays and lesbians, and for gay-rights activists,

I think most people do want marriage equality, because they know that's the only truly equal form of protection. Civil unions, domestic partnerships, they are nice. They are better than nothing, certainly. They are a step in the right direction, but they are not full equal marriage. (...) It doesn't need to be like "if we don't get marriage, we are not going to settle for anything at all; we don't want anything, forget it..." and burn-your-bridges sort of strategy. It's not that; that is certainly not what we are advocating. But you need to aim high for what you really want. (...) And if we get something else in the process, if people look at civil unions as being a compromise, hey, that's a step in the right direction. That's something to build of in the future. You do need really to shoot for... I think it's just ingenuous to settle for something that you know deep down is not equal. (...) I think at this point we are at a stage in our history where we have a chance to really take a significant step forward, and juts make people realize that equal is equal. There is no settling for second-class status. We'll take the steps forward, we'll take the incremental steps upward, but

ultimately we have to keep our eyes on the main goal.

Civil unions and domestic partnerships are now seen as 'less-equal' forms of legal recognition for a large part of the gay and lesbian community. Anything other than marriage equality is seen as a form of second-class citizenship. This change in gays and lesbians' awareness of rights was, undoubtedly, a consequence of same-sex marriage litigation.

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