



FACT SHEET MEMO

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Faith-Based Integrity and Same-Sex Marriage: An Overview

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On November 17, 2003, in the case of *Goodridge v. Department of Public Health*, the Massachusetts Supreme Judicial Court (SJC) directed state authorities to recognize same-sex couples as eligible to marry.¹ On May 17, 2004, city and town clerks began issuing marriage certificates to same-sex couples.

How must the Roman Catholic Church, its institutions, and individual members act with respect to any legal requirement to recognize same-sex marriage? The following overview provides general guidance in a question-and-answer format. The discussion is neither exhaustive nor authoritative in and of itself, but is meant only to introduce the main issues involved by citing other authorities.

Those seeking more specific direction in actual circumstances should consult with someone trained and experienced in offering competent guidance in such cases. That would include a priest or moral theologian familiar with the principles of non-cooperation as applied in a manner faithful to Catholic teaching, and also could require the advice of an attorney.²

Is it morally permissible for Catholic institutions and individuals to recognize same-sex marriage now that it is legal?

No. According to the Vatican's Congregation for the Doctrine of the Faith (CDF), "clear and emphatic opposition is a duty" and thus "all Catholics are obliged to oppose the legal recognition" of same-sex relationships.³ As noted by the Bishops of the United States, "Though [marriage] is regulated by civil laws and Church laws, it did not originate from either the Church or the state, but from God. Therefore, neither Church nor state can alter the basic meaning and structure of marriage."⁴

¹ 798 N.E.2d 941 (Mass. 2003).

² The staff of the National Catholic Bioethics Center (NCBC) is highly competent in providing moral guidance with respect to the cooperation issues, due to its experience with such issues as they arise in the bioethics and healthcare context. See e.g. Peter J. Cataldo, *Compliance with Contraceptive Insurance Mandates*, 4 NAT'L CATHOLIC BIOETHICS Q. 103 (2004). NCBC contact information can be found online at <http://www.ncbcenter.org>.

³ Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*, nos. 5, 10 (June, 2003) [hereinafter CDF, *Considerations*].

⁴ United States Conference of Catholic Bishops, *Between Man and Woman: Questions and Answers About Marriage and Same-Sex Unions*, Conclusion (Nov. 2003).

Should Catholics avoid to the greatest extent possible any involvement with the recognition of same-sex marriage?

Yes. Here is what the CDF says: “In those situations where homosexual unions have been legally recognized or have been given the legal status and rights belonging to marriage, . . . [o]ne must refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws and, as far as possible, from material cooperation on the level of their application.”⁵

What is the meaning of “formal” and “material” cooperation?

These are terms that moral theologians and ethicists use to describe complicity in the wrongdoing of others. Generally speaking, formal cooperation occurs when a person agrees with and willingly assists an immoral act of another person or institution. It is never permissible to willingly get involved with actions that recognize or approve of same-sex marriage.

Recently, a town clerk in Worcester claimed erroneously that “allowing gay and lesbian couples to marry . . . is in line with Catholic teaching”.⁶ The official argued that Catholics serving as clerks could willingly issue marriage licenses to same-sex couples without contradicting their faith. This prompted Worcester Bishop Robert J. McManus to respond: “it must be pointed out that Catholics, especially public officials, who willingly and with approval facilitate the legal sanctioning of same-sex unions are involving themselves in cooperation with evil. Such cooperation is not free from serious moral and spiritual harm.”⁷

Material cooperation occurs when circumstances (such as a legal mandate) pressure a person to get involved with an immoral act of another person or institution which the cooperator does not agree with or intend. Some forms of material cooperation are never permissible. How far an unwilling participant must go to avoid material cooperation with the recognition of same-sex marriage will depend on various factors. In certain cases, extenuating circumstances, such as the need to provide for one’s family or the obligation to provide a necessary service that is in itself good, may excuse material cooperation, especially when measures are taken to minimize the degree of cooperation and the risk of scandal. Again, in individual cases persons should consult with a priest or moral theologian qualified to offer practical guidance consistent with Catholic moral teaching.

Could forced complicity with same-sex marriage really happen?

Unfortunately, such a threat may not be rare, and will create substantial hardships for those who seek to avoid complicity. During the debate in the Massachusetts State House on a proposed constitutional amendment that would require same-sex civil unions to be treated the same as marriage in all but name, a distinguished group of legal experts warned of the coercive impact that such a mandate could inflict on religious entities:

Most significantly, churches and other religious organizations that fail to embrace [same-sex] civil unions as indistinct from marriage may be forced to retreat from

⁵ *Considerations*, no. 5.

⁶ Pamela H. Sacks, *Sense of Fairness Put Rushford in Eye of Storm*, Worcester Telegram, May 16, 2004.

⁷ Bishop Robert J. McManus, Pastoral Note of Clarification, available online at <http://www.catholic.org/featured/headline.php?ID=1005>.

their practices, or else face enormous legal pressure to change their views. Precedent from our own history and that of other nations suggests that religious institutions could even be at risk of losing tax-exempt status, academic accreditation, and media licenses, and could face charges of violating human rights codes or hate speech laws.⁸

Already, town clerks and justices of the peace in Massachusetts, on the front lines in processing same-sex marriage applications, are being confronted with unwilling participation.

The first justice of the peace to resign in Massachusetts rather than participate in the recognition of same-sex marriages, Linda Gray Kelley, told the press that as a Catholic, “I need to take a stand not only for my personal moral beliefs, but also for the fact that this is when marriage is being defined. And, you know, if I go down with the ship, then so be it, but at least I walk away with my integrity.”⁹ Kelley also said that “I’ve never been lonelier in my life. This was a difficult decision. . . It pains me for several reasons. . . Many of my dearest friends over the years have been homosexual. They may never understand. I have felt torn over this, but must be accountable to my own conscience, God, and church. It’s better to resign than to live a lie.”¹⁰

Areas of conflict between faith and wrongful public commands are emerging elsewhere. For example, the superintendent of the Boston public schools issued recently a memorandum to teachers advising them that if they fail to speak favorably about same-sex marriage in the classroom, they will be disciplined for creating “a climate of intolerance” and could be fired. Thomas Payzant warned his teachers that “[i]t behooves us, whatever our position may be on this issue, to use this opportunity to help our students understand it as a vital manifestation of some of the principles that have shaped our system of government—such as the rule of law, balance of powers, and separation of church and state—as well as another step in our continuing efforts to create a more just society for all of our citizens.”¹¹ His reference to “separation of church and state” put Catholic and other teachers with faith-based objections on special notice, and overlooks the negative impact such educational objectives will have on children.

Are Catholic institutions morally obliged to recognize only the marital union between a man and a woman when providing for marital benefits in their policies, plans, and services?

Yes. Catholic institutions cannot willingly recognize any other relationship as a marriage, even for the purpose of extending benefits.

⁸ Memorandum to Massachusetts Catholic Conference from Mary Ann Glendon, Dwight G. Duncan, Scott FitGibbon, Thomas Kohler, Gerard Bradley & Robert Destro at 4 (March 5, 2004). See also Anthony R. Picarello, *Same-Sex Marriage: Other Rights Are At Stake*, NAT’L L. J., July 19, 2004 (available online at <http://www.becketfund.org/other/NLJ%20Opinion%20SSM.pdf>) (discussing areas of potential conflict between the institutional practices of religious entities and public mandates to recognize same-sex relationships as marriage or as the bases of other protectable legal interests).

⁹ Interview: Linda Kelley Explains Resigning as a Justice of the Peace Because of Massachusetts’s Gay Marriage Laws, National Public Radio, Morning Edition (broadcast May 14, 2004).

¹⁰ Tim Kane, *Charlton Justice of the Peace Resigns over Romney Edict*, Southbridge Evening News, April 29, 2004 (available online at <http://www.southbridgeeveningnews.com/042904gay.html>).

¹¹ Memorandum from Superintendent Thomas W. Payzant to Boston Public Schools Staff (May 13, 2004).

Recently, Pope John Paul II reaffirmed the duty of the Church and its many apostolates “to give an important *institutional testimony* before the world.”¹² According to the Holy Father:

[the Church’s] many religious, educational and charitable institutions exist for one reason only: to proclaim the Gospel. Their witness must always proceed *ex corde Ecclesiae*, from the very heart of the Church. It is of utmost importance, therefore, that *the Church’s institutions be genuinely Catholic: Catholic in their self understanding and Catholic in their identity*. All those who share in the apostolates of such institutions, including those who are not of the faith, should show a sincere and respectful appreciation of that mission which is their inspiration and ultimate *raison d’être*.

. . . The Church’s many institutions in the United States – schools, universities, hospitals and charitable agencies – must not only assist the faithful to think and act fully in accordance with the Gospel, overcoming every separation between faith and life (cf. *Christifideles Laici*, 34), but they must themselves embody *a clear corporate testimony* to its saving truth. This will demand constantly re-examining their priorities in the light of their mission and offering a convincing witness, within a pluralistic society, to the Church’s teaching, particularly on respect for human life, marriage and family, and the right ordering of public life.

As stated by the United States Catholic Bishops, “It would be wrong to redefine marriage for the sake of providing benefits to those who cannot rightfully enter into marriage.”¹³ Further, according to the Congregation for the Doctrine of the Faith, “[t]here are absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God’s plan for marriage and family.”¹⁴ Linking eligibility for marital benefits to the existence of such a relationship would be “contrary to right reason”.¹⁵

Thus, a Catholic institution could not willingly change its policies to recognize the legal marriage of a same-sex couple. Nor could it willingly offer marital benefits on the basis of the couple’s legal status. That would be formal cooperation with the judicial or legislative redefinition of marriage. Such endorsement would contradict the Catholic Church’s profound regard for the unique significance of the marital union between a man and a woman. It would conflict with the Catholic institution’s “prophetic mission”.¹⁶

Will unwilling private employers be forced to recognize same-sex marriages in their employee plans, and if so, what about Catholic institutions?

This is a complex area. The *Goodridge* decision ordered public officials to change the marriage licensing procedure in Massachusetts to recognize same-sex couples as eligible to marry. The

¹² Address of John Paul II to the Bishops of the Provinces of Portland in Oregon, Seattle and Anchorage on their “Ad Limina” Visit (June 24, 2004) [hereinafter Pope John Paul II, June 24 Ad Limina Address], available online at http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/june/documents/hf_jp-ii_spe_20040624_usa-bishops_en.html.

¹³ U.S. Bishops, *Between Man and Woman*, no. 7.

¹⁴ CDF, *Considerations*, no. 4.

¹⁵ *Id.* at no. 6.

¹⁶ Pope John Paul II, June 24 Ad Limina Address, no. 2.

court ruled that public officials could no longer use the traditional definition of marriage to define “civil marriage” in public policy. The *Goodridge* case did not address private policies.

Yet there are various state and local laws that require public officials to regulate private policies. Legal experts advise that state and local agencies in Massachusetts will have to insert the court’s new definition of marriage into all of their public policies, including those governing work-related plans of private employers.¹⁷ If, for example, a state agency has a public policy that requires a private employer to extend a work-related benefit to an employee’s spouse, then the definition of spouse in the benefits plan of the private employer will have to match the state’s new public policy definition.

A confusing factor is that certain federal laws may override the state laws.¹⁸ This is significant because Congress passed the Defense of Marriage Act (DOMA), which then-President Bill Clinton signed into law in 1996. DOMA directs that all federal laws define the terms “marriage” and “spouse” to include only the marital union of a man and a woman. Where a federal law controls a particular employee policy, DOMA’s direction to preserve the definition of marriage would override any conflicting state mandate. Thus, federal law would shield the private employer from any state obligation to alter the definition of marriage in the private policy.

To make an already complex situation even more confusing, some federal laws that apply to private policies exempt churches and other religious groups from their requirements. While intended to preserve religious freedom against federal mandates, an exemption also removes the federal shield, leaving churches and religious groups unprotected against any mandates imposed by the states.¹⁹

To navigate the complexities in individual cases, consult a lawyer familiar with the interaction of federal, state and local law. The *Goodridge* mandate to expand “civil marriage” to same-sex partners may apply to and conflict with particular policies of Catholic institutions, depending on a host of legal considerations of a technical nature.

If it turns out that a legal mandate to redefine marriage does actually apply to a particular policy of a Catholic institution, then the institution will face the difficult moral issues that accompany material cooperation with evil. How far must the institution go to avoid a mandate it opposes? Must it give up entirely the policy in question or are there extenuating circumstances that must be weighed in the balance? Can the risk of scandal be avoided? As in the case of individuals, institutions should consult with moral theologians to determine the appropriate moral response.

¹⁷ See, e.g., Goodwin Procter LLP, Client Alert: Same-Sex Marriage in Massachusetts: Employee Benefits and Employment Law Implications (April 6, 2004), available online at http://www.goodwinprocter.com/publications/CA_SameSexMarriage_4_6_04.pdf.

¹⁸ Lawyers refer to this as the preemption doctrine, deeming federal laws superior to state or local laws that attempt to regulate the same subject area. Many private benefits are regulated by the Employment Retirement Income Security Act or ERISA. Other federal mandates are found in the IRS tax code, the Family & Medical Leave Act, and the COBRA requirement to continue temporary coverage for health insurance after an employee’s job loss or change.

¹⁹ It may be that religious institutions can voluntarily comply with ERISA requirements, thus choosing not to be exempted from federal mandates in order to avoid having to follow state or local mandates. *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F. Supp. 2d 77 (D. Maine 2004) (holding that voluntary compliance with ERISA by an otherwise exempt Catholic agency prevented the city of Portland from forcing the Catholic agency to provide same-sex “domestic partner” benefits in its employee plan).

Should the law respect the right of Catholic institutions to maintain their own policies, plans and services consistent with Catholic teaching on marriage?

Yes. The federal and state constitutions guarantee respect for the free exercise of religion.²⁰ Persons and institutions of all religions benefit from this guarantee. The anti-discrimination statute in Massachusetts recognizes that this guarantee extends to religious employers and service providers.²¹

Despite the constitutional promise of protection, citizens of faith and faith-based institutions should expect to be pressured to conform to the new, court-ordered definition of marriage. However, even the justices who issued the majority ruling in *Goodridge* redefining civil marriage in Massachusetts acknowledged “that ‘[m]any people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. . . .’ [W]e reaffirm, that the state may not interfere with these convictions, or with the decision of any religion to refuse to perform religious marriages of same-sex couples. These matters of belief and conviction are properly outside the reach of judicial review or government interference.”²²

Furthermore, in an exchange with the attorney for the state during oral arguments in the *Goodridge* case, Chief Justice Marshall characterized as “fact” that “the state can permit two people to marry and no church need recognize that marriage, correct?” She prefaced this remark by saying that “What we’re talking about here is civil marriage, correct? In other words, the state can authorize a marriage that no religion is required to accept, correct?”²³

The *Goodridge* ruling applies to the conduct of public agencies with respect to the issuance of marriage licenses. *Goodridge* should not be used to force private institutions and individuals to recognize or otherwise approve of same-sex marriage in direct violation of their religious and moral beliefs.

But what about those who argue that a faith-based policy that refuses to recognize same-sex marriage, especially when implemented by employers and service providers, unjustly discriminates against homosexual persons?

The Church’s special regard for the marital union of a man and a woman, shared by the federal government and the 49 other states similarly defining marriage, as well as by other cultures and religions, has nothing to do with an animus against anyone. Nor is any individual’s sexual orientation the defining issue.

Our beliefs about marriage flow from a profound appreciation for the dignity of every human being, created as man or woman. The marital relationship between a man and a woman unites

²⁰ U.S. Const. amend. I; Mass. Const. arts. 2 & 46 § 1.

²¹ Mass. G. L. ch. 151B § 4(18). This statute protects the right of religious organizations to “tak[e] any action with respect to matters of employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are calculated by such organization to promote the religious principles for which it is established or maintained.”

²² Opinions of the Justices to the Senate, 802 N.E. 2d 565 (Mass. 2004) (Marshall, C.J., Greaney, Ireland, Cowin, JJ.).

²³ See the unofficial transcript of the oral argument in *Goodridge* at http://www.massnews.com/2003_Editions/2003_Print_Editions/04_Apr/040103_mn_full_text_oral_argument.shtml (last visited May 25, 2004).

the two in a way that forms the very basis of the family. We cannot acknowledge a design for marriage that is indifferent to the absence of a mother or a father in the home. For people of faith, this union offers a glimpse into the very nature of God as a communion of persons. Thus, on practical, moral, and spiritual grounds, this union deserves special favor, and its preferential status in our policies, plans or services is just.

Every human being is equal in God's eyes, and we embrace every individual, including those with a homosexual orientation, as brother and sister. But equal respect for all persons does not dictate equal endorsement of all personal arrangements, especially those that contradict the will of the very same God that bestows dignity on all human beings.

Our refusal to recognize same-sex marriage is part of a holistic moral vision that calls all persons, regardless of sexual orientation, to be faithful to the Creator's will. We cannot be faithful if we change our missionary practices in the world in ways that contradict the good news that God commands us to proclaim to the world. Ultimately, it is a concern about God's judgment on us, and not any prejudice on our part towards others, that prompts our non-cooperation.

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