

Excerpt – CORRUPT BARGAINS, Chapter 5

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In Massachusetts, “The trail to the ballot box is littered with remains of proposed amendments.”
– Steve LeBlanc, *Associated Press*, 2006

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“Romney’s family members signed the [Pawlick amendment] petition [defining marriage and banning civil unions] to put it on the ballot ‘without reading the fine print,’ [his spokesman] Fehrstrom said, but he has no reason to believe they do not support it. ‘Mitt did not know they signed it, and Mitt does not support it,’ he said. “As far as Mitt is concerned, it goes farther than current law, and therefore it’s unnecessary.”  
– *Boston Globe*, 2002

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“By pushing forward the [Travaglini-Lees] compromise [amendment], in which a vote for traditional marriage also became a vote for civil unions, gay marriage supporters backed their most hardcore opponents – a bloc of Republican legislators working closely with Governor Romney – into a corner. ‘We made them play on our terms’ [said a GLBT lobbyist].”
– *Bay Windows*, on April Fools’ Day, 2004

Chapter 5 Marriage Amendments: Doomed to Fail

Romney’s flawed long-shot strategy: Amend the Constitution

The effort to rein in the out-of-control Massachusetts Supreme Judicial Court never got Governor Mitt Romney’s support. He claimed to have a better plan: Support a constitutional amendment defining marriage, while also appealing to the rogue court for a stay of their marriage ruling to allow the amendment process to run its course.

How likely was it that the governor would even get a hearing before the court to request a stay? Rules allowed him access through the attorney general (who said “No” to his request), or through special appeal to the legislature (which likewise rebuffed him). He could also have gone before the court on his own (but chose not to do so). 1

In the end, Romney's long-shot strategy to halt the same-sex marriage juggernaut was an utter failure. Neither his request for a stay of the ruling nor passage of any constitutional amendment was successful. ²

Governor Romney had allowed the radical idea of four unelected judges to become a reality when he illegally implemented same-sex marriage. For the two and a half years of his term after the marriages began (on May 17, 2004), he continued to tell those wanting to preserve marriage that all their hopes lay in passing a constitutional amendment. But what he never told these citizens (many of whom were political innocents) is that *changing the state constitution was very difficult and highly unlikely to succeed*.

During the frenzy over the various marriage amendment proposals, *AP* reporter Steve LeBlanc noted that "the trail to the ballot box [in Massachusetts] is littered with remains of proposed amendments." ³For example, term limits were buried in 1992 when legislative leaders adjourned without voting. Other proposed amendments on the agenda – relating to abortion, school vouchers, health care, and the 2002 "Pawlick" marriage amendment – have been killed by a legislature unwilling to go on record with a vote – and willing to employ illegitimate maneuvers. The corruption in the Massachusetts Legislature runs deep.

Nevertheless, from the time of the *Goodridge* ruling (November 2003), *Romney proclaimed that a constitutional amendment was the only way to protect traditional marriage*. Meanwhile, one impact of same-sex marriages occurring over the next few years was to help sink the proposed amendments. "The sky had not fallen" after May 2004, same-sex marriage advocates would claim. Even legislators who opposed same-sex marriage were getting accustomed to the idea.

Some pro-family citizens in Massachusetts suspected the hyper-focus on the amendment process was a smokescreen for some other agenda. In the end, the "polite" wing of the pro-family movement was rolled by the ruthless homosexual activists and their allies who were much better (and more devious) political strategists.

The constitutional amendment process required two passing votes in consecutive legislative sessions followed by a popular vote – all accompanied by acrimonious debate. That long timeline gave the homosexual activists a strategic edge. They used it from 2002 to 2007 to continue their public relations assault: emphasizing emotional appeals while characterizing any opposition as "bigotry."

The GLBT lobby's strategy was successful. One way or another, they killed the first round of marriage amendments from 2002 to 2005. They knew that the weak pro-family groups would be back with another amendment proposal, so they readied their next bag of tricks. The legislature's illegitimate recess to avoid a vote on the fourth proposal (the "VoteOnMarriage" amendment) in late 2006 gave Governor Romney a chance to hold his photo-op "Rally for Democracy" on the State House steps. But the same-sex marriage advocates still won the amendment game in the end.

Was Governor Romney unaware of the history of unsuccessful constitutional amendment proposals? Did he really believe an effective marriage amendment could pass? Did he actually trust the legislative leadership to proceed according to the rules? What really motivated him to

put all his eggs in the amendment basket? Was it just a ruse to cover for his promise to promote “full equality” for same-sex couples – and allow same-sex marriage to move forward?

History of Marriage Amendments in Massachusetts

“Protection of Marriage” (Pawlick) amendment

In 1998 (a few years before the first marriage amendment proposal), Democrat State Representative John Rogers filed a bill to prevent Massachusetts from granting legal recognition to same-sex marriages. The bill stated: “a purported marriage contracted between persons of the same sex shall be neither valid nor recognized in the Commonwealth.” In May 1999 the *Boston Globe* reported:

The Massachusetts Legislature this week begins debating a bill [filed by Rogers] to deny legal recognition to same-sex marriages, taking on an issue that has opened a new battle front between gay activists and religious conservatives across the country. Tomorrow, advocates on both sides, including Christian, Jewish, and Muslim leaders, will converge on Beacon Hill for a State House hearing on the state's Defense of Marriage Act. [4](#)

That bill failed to pass. It likely helped spur same-sex marriage advocates to devise their *Goodridge* lawsuit demanding recognition of same-sex marriage.

J. Edward Pawlick, attorney and founder of the Massachusetts journal *Lawyers Weekly*, was closely following the maneuvers of GLAD (Gay & Lesbian Advocates & Defenders) and other GLBT rights groups. Neighboring Vermont had already authorized civil unions – first pushed by its state Supreme Court in 1999, then legalized by its legislature in 2000. Pawlick and other pro-family citizens were concerned that Massachusetts would soon follow Vermont’s example and (at a minimum) allow civil unions for same-sex couples. [5](#)

So in 2000, “Ed” Pawlick and his wife Sally organized the Massachusetts Citizens’ Alliance (later renamed Massachusetts Citizens for Marriage) to devise a campaign for an amendment to block both civil unions and same-sex marriage. Through his new newspaper, *The Massachusetts News*, he got the word out to like-minded citizens.

Pawlick was correct that the sexual radicals were moving swiftly. In April 2001, GLAD filed the *Goodridge* case in Suffolk Superior Court in Boston. It demanded that the seven plaintiff couples’ same-sex marriages be recognized as legal. Pawlick knew this case would end up in the state’s Supreme Judicial Court – and that the SJC would rule in favor of same-sex marriage. The GLAD attorneys shared his certainty that the majority of the court (including Chief Justice Margaret Marshall) was on their side. [6](#)

GLAD’s lead attorney, Mary Bonauto, later claimed:

... the marriage issue was not sprung upon the people of Massachusetts by a conspiring judiciary, but ... has instead come upon the people of Massachusetts gradually, just as they have been getting to know their LGBT family members, neighbors, colleagues, and co-religionists. Casting *Goodridge* as a mandate on an unwilling populace is a caricature, not a reality-based analysis of life in the Commonwealth. Indeed, on Sunday, November 23, 2003, just days after the *Goodridge* ruling, two statewide polls showed that Massachusetts was ready for the decision....

GLAD did not litigate the marriage issue in Massachusetts precipitously. Short of constitutional litigation, we had made concerted efforts to secure rights and protections for LGBT families through other means, but knew those tools could not address the enormous architecture of protections provided by marriage. For example, ... GLAD used statutory construction principles to include LGBT families within the meanings of words like "person" in the adoption context.... GLAD could and did litigate around the edges, but many important protections were simply off-limits to LGBT families without marriage and without the appellation of "spouse." 7

Following GLAD's 2001 court filing, Pawlick responded in *Massachusetts News*. The headline ran: "*Activists File Law Suit for 'Gay Marriage'; Justices Have Already Decided the Case*":

A lawsuit has been filed in Superior Court in Boston to require the state of Massachusetts to recognize homosexual marriage. "This was a smart move by homosexual activists because they know they're losing the battle in public opinion," said Atty. J. Edward Pawlick, Publisher of *Massachusetts News*. They've been shocked to see the legislature poised to pass a Protection of Marriage Act [Pawlick Amendment], which would define as a contract between one man and one woman. The activists are now trying to go around the legislature... 8

But the question was not how willing the population might be – supposedly 76% in favor of civil unions, 49% supporting same-sex marriage in a local (likely manipulated) poll (taken in 2003) 9 – but the constitutionality of the SJC instituting it.

Pawlick organized a *citizens' initiative* petition to put a constitutional amendment before the legislature. It would have had no problem getting 25% of the legislators' votes in two consecutive sessions before going to the voters – *if the rules set forth in the Massachusetts Constitution had been followed*.

From Pawlick's *Massachusetts News*, June 2001:

An organization is being formed to place referendums on the ballot in 2002 and 2004 to allow the citizens of Massachusetts to decide whether the state should have "gay marriage," according to J. Edward Pawlick, one of the incorporators of the new organization and also publisher of *Massachusetts News*.

"This is not about homosexuality," he said. "It doesn't matter whether homosexuality is good or bad. It's about what such a law would do to the mothers and children of Massachusetts.

"When the Vermont Supreme Court approved 'gay marriage' or 'civil unions,' it warned that its actions could 'destabilize' the institution of marriage as we have known it for centuries. It said this could have 'disruptive and unforeseen consequences.'

"It's obvious that those 'disruptive and unforeseen consequences' will fall most heavily on the mothers and children of the Commonwealth because traditional marriage was instituted thousands of years ago to protect them. Now, however, many people are saying it is unfair for society to 'favor' mothers and their children although we have done that ever since this country was founded.

"It is not just homosexuals who are saying that. It's also ultra-feminists, socialists, libertarians and others who are joining in.

"This issue should be decided by the citizens and not by the seven lawyers who sit as the Supreme Judicial Court. The power to make this momentous decision should not be in the hands of any small group, much less only seven of the citizens.

“If this is what the citizens want, then we will all have to live with it, but if all of the polls and other information is correct, it is not what they want. [Pawlick disputed the polls supposedly showing popular support for same-sex marriage.]

“This will be a tough struggle for us because the judges on the SJC have already given many signals that they favor ‘gay marriage.’ They have also made many unfair decisions over the past decade where they have done everything in their power to halt the use of referendums. The judges point to any technicality they can find to stop the use of the referendum, which is the closest form of democracy that we can get on a state level to the old town meetings.

“It’s almost comical that the judges will say that we cannot trivialize the Constitution with amendments but they constantly make major changes to it all the time in order to ‘keep it up-to-date’. Any approval of ‘gay marriage’ by the SJC would also be a ‘Constitutional amendment’ but it would be accomplished by them with a single stroke of the pen. And they have already indicated they are ready to do so anytime they are asked.” 10 [emphasis added]

Here is the text of the proposed amendment:

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**Full Text of (Pawlick) Protection of Marriage Amendment (2002)**

**It being the public policy of this Commonwealth to protect the unique relationship of marriage in order to promote, among other goals, the stability and welfare of society and the best interests of children, only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts. Any other relationship shall not be recognized as a marriage or its legal equivalent, nor shall it receive the benefits or incidents exclusive to marriage from the Commonwealth, its agencies, departments, authorities, commissions, offices, officials and political subdivisions. Nothing herein shall be construed to effect an impairment of a contract in existence as of the effective date of this amendment.**

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The Protection of Marriage (Pawlick) amendment 11 had gathered over 130,000 signatures — and required its first of two votes by the legislature in 2002. Because it was a citizen-filed referendum, *only 25% of the legislature had to approve it in two consecutive sessions* (in contrast to a simple *majority* required for proposals originating in the legislature). *It was almost certain to pass.* But something underhanded was being planned by the legislative leadership, in league with the GLBT activists.

On July 17, 2002, Senate President Tom Birmingham *abruptly adjourned* the legislature (meeting as a constitutional convention) *before it could take a constitutionally required vote* on the Pawlick amendment. Notably, it was Republican Senate Minority Leader Brian Lees, who...

... made the controversial motion to adjourn the ConCon [constitutional convention] without voting on the amendment. The motion passed, but some charged that the move circum-vented the democratic process.... “The fact that the Democratic senate president and the Republican minority leader supported that motion made all the difference in the world to the outcome,” said [Gay and Lesbian Political Caucus lead lobbyist, Arline] Isaacson. 12

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Globe Finally Understands that Feminist Schools Damage Boys

The Boston Globe has finally discovered what MassNews has been saying for years: that boys are getting shortchanged in our schools.

Their lead story on a front page last month reported that "boys get referred [to special ed] because they tend to act out. ... very often they don't necessarily have a disability at all. It's just that they're active." That quote from Mass. Education Comm. David Driscoll was the most important story in the whole world that day, they say.

The Globe didn't say, however, that the damage to boys happens because the women in charge of our schools just do not understand them, as Prof. Christiana Hoff Sommers said in her famous book, *The War Against Boys*, and as MassNews said in its series about the feminists at Harvard's School of Education and at Wellesley College.

The July edition of MassNews had a story last month about the major problems that Wellesley is causing across the nation with its heterophobia that is financed by the federal government.

Nor did the Globe wonder if the large amount of Ritalin that is used in

Vote About Marriage Is Not Over

The politicians believe they have successfully ended the debate and the vote about marriage -- but they are wrong, says Massachusetts Citizens for Marriage.

"Everyone wishes this disgraceful display by the Legislature was over," says the president of the group, Sarah McVay Pawlick.

"But it's obvious we're going to have to send a shock wave through Massachusetts politics before this ends.

"This could cause a seismic change on Beacon Hill. Everyone in the state, regardless of how they feel about the Amendment, is upset with the brazen way the Legislature violates the law and then brags about it."

Pawlick claims the debate is just starting and the vote is yet to happen. She says that no debate or vote was ever allowed by the Legislature even though both are required under the state Constitution.

MCM is planning on contacting all the legislators to determine their feelings about raising children, which MCM says is the purpose of the Amendment.

"We never had that debate about children, because the special interests controlled the media and the politicians," said Pawlick. "But we will have it before this ends."

Pawlick says the extreme feminists at the Globe and other media were deeply involved in keeping the debate from ever talking about the institution of marriage and children.

MCM plans on continuing the fight past the July 31 deadline when the Legislature adjourns if that becomes necessary.

"If they leave without taking a vote on the Amendment, then Gov. Swift is required under

the Constitution to call them back into session," said Pawlick. "It does not give her a choice. It says she 'shall' recall them."

The organization believes they can rally enough public pressure on the Legislature to force it to follow its duties under the state Constitution and not continue to violate the law.

They say they are also contacting prominent lawyers across the country as to what legal action they might bring to force the state to obey the law or to personally sue them for damages for violation of their civil rights.

"This is not the time for us to quit," said Pawlick. "It is the time to act because everyone is on our side about our corrupt legislature. We

will pursue every avenue possible to reverse this egregious and shocking violation of our democracy."

"It was not our intention, when we began, to challenge the foundations of our government," said Pawlick. "It has been thrust upon us by crooked politicians."

The first legislator to be questioned about his vote on the adjournment of the Protection of

continued on page 19

Why Are Mass. Senators and Reps Afraid of this Survey? Try It Yourself. See If It Makes You Fearful! — See Page 18 —

New Vote Is On Children

This time the vote will be centered on the real issue in the debate about the Amendment: children, children, children, says Mass. Citizens for Marriage. "Up until now, the politicians and their friends have cleverly avoided allowing that debate to occur, said Sarah McVay Pawlick, President of MCM. She cited the following:

"Whenever anyone appeared anywhere on a television show in favor of the Amendment, the person on the other side was always, without fail, a homosexual activist -- even though this is not a debate about homosexuality.

"Whenever the media talked about the Amendment, they always said that its purpose is to 'ban gay marriage.'

"The media and the politicians have skillfully frightened everyone, including us, about the health 'benefits' of those children who live with

homosexuals. Our lawyers have prepared clear, detailed reports showing that no one will suffer. But no one in the media cares or reads the reports. They continue the same old lies."

She said that every person understands that the purpose of marriage is not about "partners" and "benefits." It is about children and their need for a mother and a father.

"We will challenge anyone to name a better or cheaper system of raising children than having their parents do it. It may not be perfect, but it beats anything else.

"The vast majority of the politicians who voted to kill the Amendment will not want to debate. They are frightened to death by the powers that control them. They will want to continue

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Front page of the August 2002 print edition of *Massachusetts News*, following the illegal adjournment by the Mass. Senate to shut down the Pawlick amendment. The article expressed hope that something might still be salvaged, but that was not to be. 13

There was tremendous outrage among pro-family voters. 14 The amendment had been *unconstitutionally* killed. *Boston Globe* columnist Jeff Jacoby wrote that Senate President Birmingham's

... **crude sabotage** last week of a proposed constitutional amendment that would have enshrined the traditional definition of marriage -- one man plus one woman -- **was not just illegal, deceitful, and a slap in the face of millions of Bay State voters.... He strangled the proposed marriage amendment by allowing only a vote to adjourn, thereby denying more than 130,000 petitioners the up-or-down vote they were entitled to and wiping his feet on the Constitution he took an oath to uphold.**

Birmingham was not alone in his hypocrisy. **Senate minority leader Brian Lees** complains that Republicans are hurt by rules abuse, yet it was he who **offered the abusive motion to adjourn**. Representative Jay Kaufman, a critic of procedural under-handedness when committed by House Speaker Tom Finneran, supported Birmingham's underhandedness because it suited his views. [Openly lesbian] Senator Cheryl Jacques, normally so passionate about fairness even for unpopular minorities, had **no problem with cheating the amendment's supporters out of a fair vote. "I'll take a victory on this any way I can get it," she gloated.** 15 [emphasis added]

Massachusetts Attorney "Robert Paine" explained:

According to the words of the [Massachusetts] Constitution, there are only five ways of ending a constitutional amendment [process]. Failing to take final action is not one of them. The

legislature has no authority to “accelerate, retard, or affect the submission of the amendment to the people.” See *Opinion of the Justices to the Senate and House of Representatives*, 291 Mass. 578, 587 ... The manifest object of Article 48 is to permit the citizenry to amend the constitution.... The failure of the General Court [Legislature] to act on the Pawlick Amendment [in 2002] thwarts the intention of the Constitution. To regard the intent of the Constitution as something which the legislature may thwart, using any pretext, is to allow our democratic republic to devolve into a tyrannical oligarchy. ... See *Lamson v. Secretary of the Commonwealth*, 341 Mass. 264 (1960)... 16 [emphasis added]

The Massachusetts Supreme Judicial Court (SJC) even issued an opinion in late December 2002 that Acting Governor Jane Swift was *constitutionally required* to call the legislature back into session to vote before the 2001-2002 session ended. 17 At the same time, *the court admitted it had no authority to force the governor to take action.*

But Swift did *not* call the legislature back for a vote before leaving office. In January 2003, less than two weeks later, Mitt Romney would be inaugurated as governor.

In early 2002 as he was running for governor, Romney had expressed ardent opposition to this citizens’ referendum. It was “*too extreme*,” he said. Apparently not in tune with Mitt’s personal political calculations, his wife, son, and daughter-in-law had signed the petition. 18

His spokesman Eric Fehrstrom said Romney “sees no reason to change the current laws, which allow for domestic-partner benefits to public employees.” 19

Romney’s family members signed the petition to put it on the ballot “without reading the fine print,” Fehrstrom said, but he has no reason to believe they do not support it. “Mitt did not know they signed it, and Mitt does not support it,” he said. “As far as Mitt is concerned, it goes farther than current law, and therefore it’s unnecessary.” 20

However, the final sentence of the amendment text read: “Nothing herein shall be construed to effect an impairment of a contract in existence as of the effective date of this amendment.” Thus, it would have kept any existing “partner benefits” for public employees intact. And so Romney’s rationale for his opposition – that it would “change the current laws” on benefits – was invalid.

At this time, Romney was working with the homosexual Log Cabin Republicans (who had endorsed him for governor), as well as homosexual campaign staffers. One prominent member of the Log Cabin club on Romney’s team, Abner Mason, had been the club’s national president and was also chief policy advisor to then Acting Governor Jane Swift. Mason was likely advising Romney to oppose the Pawlick amendment. (He later served on Governor-elect Romney’s transition team.)

Romney wanted to be sure same-sex couples would not be denied the rights he had long committed to promote. Domestic partnership benefits would be a “hallmark” of his leadership as governor, he had promised. 21 The homosexual newspaper, *Bay Windows*, interviewed Romney in 2002 during his campaign for governor – after the legislature refused to vote on the Pawlick amendment:

***Bay Windows*: Do you support the Protection of Marriage Amendment [the 2002 Pawlick amendment]?**

Mitt Romney: No, because it would outlaw domestic partner benefits for same-sex couples.

BW: Do you believe the Protection of Marriage Amendment initiative should be put before voters?

MR: The people have a constitutional right to put questions before the voters. But, if it had been on the ballot, I would have voted no.

BW: Do you believe the Legislature should have voted on the Protection of Marriage Amendment (H. 4840) rather than voting to adjourn, even if that meant that H. 4840 would have passed?

MR: I don't believe in stifling democracy. I believe the Legislature should have had an up or down vote on the merits after listening to arguments on both sides of the issue.

BW: If an initiative petition passed (on the ballot) that prohibited gays and lesbians from enjoying certain rights (like a Protection of Marriage Act or a repeal of the gay and lesbian civil rights law), would you support overturning that decision in the following legislative session? Or would you let the voters' decision stand even if it denied gays and lesbians their rights?

MR: I would do everything in my power as Governor to educate the public on the need to fight discrimination of any kind. 22 [emphasis added]

Romney just wanted the Pawlick amendment to go away. 23 He said nothing more about this attack on democracy by the legislature – either during his campaign, or during his early days as governor.

It could be argued that the Pawlick amendment was then still “alive” and still had to be voted on, even after Romney took office. It did not die just because a legislative session had ended.

So much for the new governor's commitment to upholding the constitution – or “letting the people vote” on marriage. That rallying cry – “*Let the people vote!*” – would later form the core of his rare public pronouncements *after* the SJC *Goodridge* ruling came down.

Shutting down the Pawlick amendment was crucial

Ed Pawlick understood that the shutdown of the Protection of Marriage Amendment in July 2002 (when the legislature refused to take the constitutionally required vote) ended any realistic hope for a pro-family marriage amendment. Once GLAD got its expected ruling from the SJC, same-sex marriages would begin. (Pawlick expected no real resistance from Governor Romney.) There would follow at least several years of *normalization* of same-sex marriage before any amendment could possibly take effect, even if passed. How could those marriages later be overturned?

GLAD attorney Bonauto knew they had timing on their side in the expected fights over any later amendment proposals:

The Supreme Judicial Court did not hear arguments in the *Goodridge* case in a cultural vacuum. **The power of the courts was on the mind of the Supreme Judicial Court at oral argument.** The first question posed to me asked why the courts should step into this matter. Another justice followed up with a realpolitik question: had not the favorable decisions in court cases in Alaska and Hawaii been undone by constitutional amendments? This allowed me to answer that **the earliest a constitutional amendment could go into effect in Massachusetts would be 2006,**

allowing three full years of same-sex marriages in the Commonwealth, at the end of which non-LGBT people would see that nothing had been taken away from their marriages. 24 [emphasis added]



Sally Pawlick of Massachusetts Citizens for Marriage (2nd from right) at Article 8 Alliance demonstration in front of the Supreme Judicial Court in February 2004. She first held this sign during the push for the Pawlick marriage amendment in 2002. (MassResistance photo)

An analysis in *Bay Windows* made clear the strategic advantage that these extended “debates” over marriage amendments gave to their side:

The *Goodridge* ruling forced the Legislature – for better or worse – into action and was the catalyst for many legislators to begin grappling with the issue in a more urgent and personal way....

Ironically, it was the introduction of H4840, a citizen-initiated petition [the Pawlick amendment, 2001-2002] to ban same-sex marriage and any other legal recognition of same-sex couples ... that spurred the formation of MassEquality in 2001. 25

Missing from that analysis is the fact that the Pawlick amendment effort was itself a response to the pending ruling for same-sex marriage. (But pro-family people are not expected to respond to a challenge or take preemptive action – just to accept what the other side dictates.) *Bay Windows* continued:

“In a strange way our opponents did us a favor in 2001 by pushing for [the Pawlick] constitutional amendment because that forced us to get more organized than we would have been as a community,” says [Arline] Isaacson, a MassEquality steering committee member. “And it allowed us an opportunity to talk with legislators about our families and our relationships and the injustices we faced in ways we normally couldn’t. It literally created an opportunity ... that ended up being invaluable this year.”

Emboldened by the defeat [sic] of H4840 [Pawlick amendment] – after legislators voted to [unconstitutionally] adjourn a 2002 constitutional convention without taking up the proposed

amendment – advocates filed civil unions and gay marriage bills ... as a means to continue educating lawmakers on the issue.

Meanwhile, the MassEquality coalition held together to work against a new amendment [MA&PA] also filed this session [2003-2004] by state Rep. Phil Travis, D-Rehoboth [and Mass. Family Institute]. It was that amendment that eventually brought this issue to this year's constitutional convention [March 2004]. Travis' amendment, and the threat it posed to the *Goodridge* decision, spurred an explosion of growth at MassEquality... 26

The only way to avoid looming victory by the gay-marriage forces, then, would be for the incoming governor to refuse to implement the unconstitutional court ruling.

Yet new and hopeless amendment efforts would be undertaken, despite GLAD's and MassEquality's promising strategy.

Romney supported two flawed amendments either establishing or allowing civil unions

If Romney really believed in democracy and took seriously his oath to uphold the constitution, why did he not call the legislature back into session in 2003 to vote on the Pawlick amendment? The Supreme Judicial Court, before which he would later kowtow (on *Goodridge*), had even opined (in late 2002) that Acting Governor Swift *should* call the legislature back to vote. But Romney ignored that opinion because the Pawlick amendment would have banned the “partner benefits” which he favored.

In his promise “to fight discrimination of *any kind*,” perhaps Romney really meant he would somehow defeat any ban on same-sex marriage. That is surely what *Bay Windows* and the Log Cabin Republicans would include in that phrase. Romney was used to talking with them about this, and he knew how they used the language. At a minimum, he was saying he would not support any amendment that would ban civil unions or domestic partner benefits.

On how “civil unions” and “domestic partner benefits” should be defined (or which exactly he supported), Romney was inconsistent. The distinction between the concepts was likely purposely left vague throughout the debates in 2003-2005. He had even implied to his Log Cabin Republican supporters in 2002 that civil unions or partner benefits, in his mind, differed from heterosexual marriage only in name: “*Call it whatever you want. Just don't use the M-word*,” he then said. 27 ...

[See book for more.]

¹ Professor Hadley Arkes, “The Missing Governor: Have Republican leaders lost their confidence on basic moral matters?” *National Review*, May 17, 2004; <https://bit.ly/3wOgekC>.

² Romney's plan was declared “long shot” in the *Washington Times*. Cheryl Wetzstein, “Romney on path to bar same-sex ‘marriage’,” *Washington Times*, April 18, 2004.

³ Steve LeBlanc, “Changing Constitution not easy in Massachusetts,” *AP*, Dec. 2, 2006 (dead link).

The constitution *requires* the Legislators to vote on citizens' referendum petitions. But LeBlanc noted the many recent proposed amendments killed through parliamentary maneuvers:

1982 - Budget debate reform: Legislators adjourn to avoid vote.

1990 - “Right to quality public education”: Legislators adjourn to avoid vote.

1990 - Abortion question: Legislators adjourn to avoid vote.

1992 - Term limits: Legislators adjourn to avoid vote.

1994 - Graduated income tax: Passes legislature twice, but defeated by voters [not noted by LeBlanc].

2002 - Protection of Marriage amendment: Senate president adjourns legislature without taking vote. Supreme Judicial Court says constitution requires governor to call legislature back in session (which Acting Governor Jane Swift never did).

2006 - "Health Care for Massachusetts": Instead of taking second vote, Legislature killed it by sending to "study committee." See also Jeff Jacoby, "From Bulger's playbook: A Travesty on Beacon Hill," *Boston Globe*, July 21, 2002; <https://bit.ly/323KOIB>.

4 Diego Ribadeneira and Tatsha Robertson, "Battle lines form over same-sex marriage bill," *Boston Globe*, May 17, 1999; <https://bit.ly/3d6Regk>.

5 Mary L. Bonauto, "Goodridge in Context," *Harvard Civil Rights-Civil Liberties Law Review*, 2005, pp. 23-25; <https://bit.ly/3wSylpg>.

FindLaw, "1999: Civil Unions Vermont," <https://bit.ly/3d9YLeE>.

The Vermont Supreme Court ruled in 1999 that

...same-sex couples must be granted the same benefits and protections that heterosexual couples received under state law. The court instructed the state legislature to determine how to grant same-sex couples such benefits and protections but didn't require the state to allow same-sex couples to be legally married.

In 2000, the Vermont Legislature created "civil unions" which allowed same-sex couples to receive the same state benefits and legal protections of marriage.

6 *Massachusetts News* publisher and founder of *Mass. Lawyers Weekly*, J. Edward Pawlick, said of Marshall's connections to big media:

The Chief Justice, Margaret Marshall, first came to this country from her native South Africa at age 24 and later made an alliance with the owners of The New York Times Company (the Sulzberger family where five members own all of that company's voting stock) by marrying its premiere columnist and family friend, Anthony Lewis. The Times Company had its subsidiary, the Boston Globe, push for Marshall's appointment without ever revealing its own conflict of interest. Now we see more of the results of the New York Times/Boston Globe power.

"Statement of J. Edward Pawlick, Attorney for Massachusetts Citizens for Marriage," *Massachusetts News*, Nov. 18, 2003; <https://bit.ly/3s9xQ6O>.

7 Bonauto, op. cit. (Note 5). Bonauto mentions Pawlick's "right-wing" newspaper (*Massachusetts News*) and his efforts beginning in 2000 via the Mass. Citizens' Alliance to pass a law or amendment protecting one man/one woman marriage.

8 "Homosexuals File Law Suit for 'Gay Marriage'; Mothers and Children Would Be Damaged," *Massachusetts News*, April 13, 2001; <https://bit.ly/3JYb62D>.

9 Bonauto, op. cit., cited results from two local polls:

David R. Guarino, "Poll Finds Massive Backing for Gay Unions; Narrow Marriage Support," *Boston Herald*, Nov. 23, 2003 (finding 76% supported gay unions, and 49% supported gay marriage, while 38% opposed gay marriage).

Frank Phillips & Rick Klein, "50% in Poll Back SJC Ruling on Gay Marriage," *Boston Globe*, Nov. 23, 2003; <https://bit.ly/2Ru3FdV> (finding 50% agreeing and 38% disagreeing with the decision, and 53% opposing a constitutional amendment).

The *Globe* article notes that the two local Massachusetts polls contrast with a national poll by Pew: "A national poll of 1,515 people released by the Pew Research Center for People and the Press last Tuesday [Nov. 2003] found that Americans surveyed solidly **opposed** legalizing gay marriage by 59 to 32 percent."

A CBS/*New York Times* national poll in December 2003 showed 61% opposed to legal gay marriage: <https://bit.ly/3u4WUhc>. Was Massachusetts really so different from the rest of the country then?

Furthermore, a Massachusetts poll in Feb. 2004 (several months after the *Goodridge* ruling) showed "opposition to gay marriage has jumped 10 percentage points since a *Globe* survey done just days after the Supreme Judicial Court's Nov. 18 ruling legalizing gay marriages." Frank Phillips, *Boston Globe*, Feb. 22, 2004; <https://bit.ly/3vsBnPK>.

10 "Citizen Referendums Planned About 'Gay Marriage'," *Massachusetts News*, June 2000, <https://bit.ly/3wNsSQD>.

11 See *Massachusetts News* archives for numerous articles on the effort, mostly written by J. Edward Pawlick, available at Internet Archive, https://web.archive.org/web/*/massnews.com. (See entries through 2006.) For instance, this page from June 2001: <https://bit.ly/3d6MRSr>.

For more on Pawlick, see tribute by Brian Camenker, "Massachusetts pro-family giant Ed Pawlick dies at 80; Founded *Massachusetts News* and Mass. Citizens for Marriage," *MassResistance*, 2007; <https://massresistance.org/docs/gen/07c/pawlick>.

12 Ethan Jacobs, "Change of Mind; How Senate Minority Leader Brian Lees switched his vote on marriage," *Bay Windows*, Sept. 29, 2005.

See also Jacoby, "From Bulger's Playbook," op. cit. (Note 3).

Deirdre Fulton, "Gay marriage victory; Proposed amendment defeated at Con Con, but the war continues," *Boston Phoenix*, Sept. 15, 2005; <https://bit.ly/3d8OejF>.

13 *Massachusetts News*, August 2002; <https://bit.ly/3vthKbJ>.

14 Ed Oliver, "Birmingham Draws Unusual Wrath of Ordinary Citizens," *Massachusetts*

News, July 2002; <https://bit.ly/3a1t2dB>.

Ed Oliver, "Legislature Denies Citizens a Chance to Vote on Marriage; Pols Vote To Adjourn Joint Session without a Vote on Amendment," *Massachusetts News*, July 18, 2002; <https://bit.ly/3mCDOvP>.

Bruce A. Seibert, "The Death of Marriage: An Institution in Massachusetts Ends as Democracy Fails," *Massachusetts News*, July 24, 2002; <https://bit.ly/3a4sF1L>.

J. Edward Pawlick, "The Vote About Marriage Is Not Over," *Massachusetts News*, July 22, 2002; <https://bit.ly/3fYGzq5>.

15 Jacoby, "From Bulger's playbook," op. cit. (Note 3).

See also "Statement of J. Edward Pawlick, op. cit. (Note 6).

Pawlick, *Massachusetts News*, "Liberals Are Responsible for Illegal Vote Against Marriage, *Bay Windows* Confirms," Sept. 2002; <https://bit.ly/3a2EHJ2>:

AFL-CIO, ACLU, Anti-Defamation League and NOW Are Named. [Senate President] Tom Birmingham Acted on Orders of Union. The Bay Windows editorial emphasized the importance of liberal allies when it wrote the following: "Gays and lesbians cannot win these fights on their own. They must have strong and committed straight allies, such as labor unions and the ACLU." It also listed other organizations and said, "Our hats are off to them." Although Bay Windows did not say so, it is also obvious that the powerful Boston Globe and its owner, The New York Times, are important players in this attempt to increase the power of the state in our lives. Both papers reported about the Amendment only in a negative manner that was an attempt to damage it.

16 Attorney "Robert Paine," <http://robertpaine.blogspot.com>. (Paine is the pen name of a Massachusetts attorney.)

17 J. Edward Pawlick, "Legislature Violated Law, Says SJC; Legislators Who Voted to Adjourn on July 17 Are Liable for Damages," *Massachusetts News*, Dec. 23, 2002; <https://bit.ly/3uBed9g>. "The SJC ruled in an opinion released at 5 p.m. on Friday, Dec. 20" ... *The Court told the Governor that the July 17 vote was not the "final action" required by art. 48 of the Constitution. Therefore, the joint session of July 17 did violate the Constitution...."*

18 Rick Klein, "Romney kin signed petition to ban same-sex marriage; Candidate backs existing laws, spokesman says," *Boston Globe*, March 22, 2002. Image of article at <https://bit.ly/39I9F8Y>.

See also:

Massachusetts News, "Globe Attacks Marriage Amendment and Romney; Is Romney Caving Already?" March 25, 2002; <https://bit.ly/39I9F8Y>.

Kristen Lombardi, "Schiz Romney: Do national aspirations explain the governor's switch from nice guy to anti-gay-marriage activist?" *Boston Phoenix*, May 14-20, 2004; <https://bit.ly/3tavZQu>.

19 Klein, op. cit. (Note 18).

20 Ibid.

21 Rick Klein, "Image on the Line, Romney treads carefully," *Boston Globe*, Nov. 20, 2003; <https://bit.ly/329IAII>.

22 "19 questions for Mitt Romney," *Bay Windows*, Jan. 1, 2002; <https://bit.ly/3mmYacj>. Though dated Jan. 1, 2002, the content indicates the interview was conducted after the July 2002 legislature adjournment (denying the Pawlick amendment a vote).

23 J. Edward Pawlick, "Shannon O'Brien Wants Gay Marriage; Will Settle for Civil Unions as In Vermont; Romney Fails to Respond," *Massachusetts News*, Oct. 16, 2002; <https://bit.ly/2OHAX1O>:

Romney failed to attack or challenge [Democrat opponent] O'Brien about the violation of the law on this issue by most of the Democratic Party on July 17 which has shocked most citizens. At that time, Sen. President Tom Birmingham adjourned a Constitutional Convention without allowing a vote to be taken on the Protection of Marriage Amendment, as required under state law.

24 Bonauto, op. cit. (Note 5).

25 Laura Kiritsy, "Advocates see new signs of gay political power," *Bay Windows*, April 1, 2004.

26 Ibid.

27 See Romney's statements on civil unions in Ch. 2.

END OF Ch. 5 EXCERPT