

440 Mass. 309

1₃₀₉ **Hillary GOODRIDGE & others**¹

v.

**DEPARTMENT OF PUBLIC
HEALTH & another.**²

Supreme Judicial Court of Massachusetts,
Suffolk.

Nov. 18, 2003.

Same-sex couples denied marriage licenses filed action for declaratory judgment against Department and Commissioner of Public Health, alleging that department policy and practice of denying marriage licenses to same-sex couples violated numerous provisions of state constitution. On cross-motions for summary

Present: MARSHALL, C.J.,
GREANEY, IRELAND, SPINA, COWIN,
SOSMAN, & CORDY, JJ.

MARSHALL, C.J.

Marriage is a vital social institution. The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In return it imposes weighty legal, financial, and social obligations. The question before us is whether, consistent with the Massachusetts Constitution, the Commonwealth may deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry.

We are mindful that our decision marks a change in the history of our marriage law. Many 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. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are enti-

tled to be married, and that homosexual persons should be treated no differently than their heterosexual neighbors. Neither view answers the question before us. Our concern is with the Massachusetts Constitution as a charter of governance for every person properly within its reach. “Our obligation is to define the liberty of all, not to mandate our own moral code.” *Lawrence v. Texas*, — U.S. —, —, 123 S.Ct. 2472, 2480, 156 L.Ed.2d 508 (2003) (*Lawrence*), quoting *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

Whether the Commonwealth may use its formidable regulatory³¹³ authority to bar same-sex couples from civil marriage is a question not previously addressed by a Massachusetts appellate court.³ It is a question the United States Supreme Court left open as a matter of Federal law in *Lawrence, supra* at 2484, where it was not an issue. There, the Court affirmed that the core concept of common human dignity protected by the Fourteenth Amendment to the United States Constitution precludes government intrusion into the deeply personal realms of consensual adult expressions of intimacy and one’s choice of an intimate partner. The Court also reaffirmed the central role that decisions whether to marry or have children bear in shaping one’s identity. *Id.* at 2481. The Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution; it

may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life.

Barred access to the protections, benefits, and obligations of civil marriage, a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law.

I

The plaintiffs are fourteen individuals from five Massachusetts counties. As of April 11, 2001, the date they filed their complaint, the plaintiffs Gloria Bailey, sixty years old, and Linda Davies, fifty-five years old, had been in a committed relationship for thirty years; the plaintiffs Maureen Brodoff, forty-nine years old, and Ellen Wade, fifty-two years old, had been in a committed l_{31,4}relationship for twenty years and lived with their twelve year old daughter; the plaintiffs Hillary Goodridge, forty-four years old, and Julie Goodridge, forty-three years old, had been in a committed relationship for thirteen years and lived with their five year old daughter; the plaintiffs Gary Chalmers, thirty-five years old, and Richard Linnell, thirty-seven years old, had been in a committed relationship for thirteen years and lived with their eight year old daughter and Richard's mother; the plaintiffs Heidi Norton, thirty-six years old, and Gina Smith, thirty-six years old, had been in a committed relationship for eleven years and lived with their two sons, ages five years and one year; the plaintiffs Michael Horgan, forty-one years old, and Edward Balmelli, forty-one years old, had been in a committed relationship for seven years; and the

plaintiffs David Wilson, fifty-seven years old, and Robert Compton, fifty-one years old, had been in a committed relationship for four years and had cared for David's mother in their home after a serious illness until she died.

The plaintiffs include business executives, lawyers, an investment banker, educators, therapists, and a computer engineer. Many are active in church, community, and school groups. They have employed such legal means as are available to them—for example, joint adoption, powers of attorney, and joint ownership of real property—to secure aspects of their relationships. Each plaintiff attests a desire to marry his or her partner in order to affirm publicly their commitment to each other and to secure the legal protections and benefits afforded to married couples and their children.

[7] We begin by considering the nature of civil marriage itself. Simply put, the government creates civil marriage. In Massachusetts, civil marriage is, and since pre-Colonial days has been, precisely what its name implies: a wholly secular institution. See *Commonwealth v. Munson*, 127 Mass. 459, 460–466 (1879) (noting that “[i]n Massachusetts, from very early times, the requisites of a valid marriage have been regulated by statutes of the Colony, Province, and Commonwealth,” and surveying marriage statutes from 1639 through 1834). No religious ceremony has ever been required to validate a Massachusetts marriage. *Id.*

[8] In a real sense, there are three partners to every civil marriage: two willing spouses and an approving State. See *DeMatteo v. DeMatteo*, 436 Mass. 18, 31, 762 N.E.2d 797 (2002) (“Marriage is not a mere contract between two parties but a legal status from which certain rights and obligations arise”); *Smith v. Smith*, 171 Mass. 404, 409, 50 N.E. 933 (1898) (on marriage, the parties “assume[] new relations to each other and to the State”). See also *French v. McAnarney*, 290 Mass. 544, 546, 195 N.E. 714 (1935). While only the parties can mutually assent to marriage, the terms of the marriage—who may marry and what obligations, benefits, and liabilities attach to civil marriage—are set by the Commonwealth. Conversely, while only the parties can agree to end the marriage (absent the death of one of them or a marriage void ab initio), the Commonwealth defines the exit terms. See G.L. c. 208.

[9, 10] Civil marriage is created and regulated through exercise of the police power. See *Commonwealth v. Stowell*,

389 Mass. 171, 175, 449 N.E.2d 357 (1983) (regulation of marriage is properly within the scope of the police power). “Police power” (now more commonly termed the State’s regulatory authority) is an old-fashioned term for the Commonwealth’s lawmaking authority, as bounded by the liberty and equality guarantees of the Massachusetts³²² Constitution and its express delegation of power from the people to their government. In broad terms, it is the Legislature’s power to enact rules to regulate conduct, to the extent that such laws are “necessary to secure the health, safety, good order, comfort, or general welfare of the community” (citations omitted). *Opinion of the Justices*, 341 Mass. 760, 785, 168 N.E.2d 858 (1960).¹² See *Commonwealth v. Alger*, 61 Mass. 53, 7 Cush. 53, 85 (1851).

Without question, civil marriage enhances the “welfare of the community.” It is a “social institution of the highest importance.” *French v. McAnarney*, *supra*. Civil marriage anchors an ordered society by encouraging stable relationships over transient ones. It is central to the way the Commonwealth identifies individuals, provides for the orderly distribution of property, ensures that children and adults are cared for and supported whenever possible from private rather than public funds, and tracks important epidemiological and demographic data.

Marriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. “It is

12. “The term public welfare has never been and cannot be precisely defined. Sometimes it has been said to include public convenience, comfort, peace and order, prosperity,

and similar concepts, but not to include ‘mere expediency.’” *Opinion of the Justices*, 333 Mass. 773, 778, 128 N.E.2d 557 (1955).

an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.” *Griswold v. Connecticut*, 381 U.S. 479, 486, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). Because it fulfills yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life’s momentous acts of self-definition.

Tangible as well as intangible benefits flow from marriage. The marriage license grants valuable property rights to those who meet the entry requirements, and who agree to what might otherwise be a burdensome degree of government regulation of their activities.¹³ See *Leduc v. Commonwealth*, 421 Mass. 433, 1323435, 657 N.E.2d 755 (1995), cert. denied, 519 U.S. 827, 117 S.Ct. 91, 136 L.Ed.2d 47 (1996) (“The historical aim of licensure generally is preservation of public health, safety, and welfare by extending the public trust only to those with proven qualifications”). The Legislature has conferred on “each party [in a civil marriage] substantial rights concerning the assets of the other which unmarried cohabitants do not have.” *Wilcox v. Trautz*, 427 Mass. 326, 334, 693 N.E.2d 141 (1998). See *Collins v. Guggenheim*, 417 Mass. 615, 618, 631 N.E.2d 1016 (1994) (rejecting claim for equitable distribution of property where plaintiff cohabited with but did not marry defendant); *Feliciano v. Rosemar Silver Co.*, 401 Mass. 141, 142, 514 N.E.2d 1095 (1987) (government interest in promoting marriage would be “subverted” by recognition of “a right to recover for loss of consortium by a person who has not accepted the correlative responsibilities of marriage”); *Davis v. Misiano*,

373 Mass. 261, 263, 366 N.E.2d 752 (1977) (unmarried partners not entitled to rights of separate support or alimony). See generally *Attorney Gen. v. Desilets*, 418 Mass. 316, 327–328 & nn. 10, 11, 636 N.E.2d 233 (1994).

[11] The benefits accessible only by way of a marriage license are enormous, touching nearly every aspect of life and death. The department states that “hundreds of statutes” are related to marriage and to marital benefits. With no attempt to be comprehensive, we note that some of the statutory benefits conferred by the Legislature on those who enter into civil marriage include, as to property: joint Massachusetts income tax filing (G.L. c. 62C, § 6); tenancy by the entirety (a form of ownership that provides certain protections against creditors and allows for the automatic descent of property to the surviving spouse without probate) (G.L. c. 184, § 7); extension of the benefit of the homestead protection (securing up to \$300,000 in equity from creditors) to one’s spouse and children (G.L. c. 188, § 1); automatic rights to inherit the property of a deceased spouse who does not leave a will (G.L. c. 190, § 1); the rights of elective share and of dower (which allow surviving spouses certain property rights where the decedent spouse has not made adequate provision for the survivor in a will) (G.L. c. 191, 1324§ 15, and G.L. c. 189); entitlement to wages owed to a deceased employee (G.L. c. 149, § 178A [general] and G.L. c. 149, § 178C [public employees]); eligibility to continue certain businesses of a deceased spouse (e.g., G.L. c. 112, § 53 [dentist]); the right to share the medical policy of one’s spouse (e.g., G.L. c.

13. For example, married persons face substantial restrictions, simply because they are married, on their ability freely to dispose of their assets. See, e.g., G.L. c. 208, § 34 (pro-

viding for payment of alimony and the equitable division of property on divorce); G.L. c. 191, § 15, and G.L. c. 189 (rights of elective share and dower).

175, § 108, Second [a] [3] [defining insured's "dependent" to include one's spouse], (see *Connors v. Boston*, 430 Mass. 31, 43, 714 N.E.2d 335 (1999) [domestic partners of city employees not included within term "dependent" as used in G.L. c. 32B, § 2]); thirty-nine week continuation of health coverage for the spouse of a person who is laid off or dies (e.g., G.L. c. 175, § 110G); preferential options under the Commonwealth's pension system (see G.L. c. 32, § 12[2] ["Joint and Last Survivor Allowance"]); preferential benefits in the Commonwealth's medical program, MassHealth (e.g., 130 Code Mass. Regs. § 515.012[A], prohibiting placing lien on long-term care patient's former home if spouse still lives there); access to veterans' spousal benefits and preferences (e.g., G.L. c. 115, § 1 [defining "dependents"] and G.L. c. 31, § 26 [State employment] and § 28 [municipal employees]); financial protections for spouses of certain Commonwealth employees (fire fighters, police officers, and prosecutors, among others) killed in the performance of duty (e.g., G.L. c. 32, §§ 100–103); the equitable division of marital property on divorce (G.L. c. 208, § 34); temporary and permanent alimony rights (G.L. c. 208, §§ 17 and 34); the right to separate support on separation of the parties that does not result in divorce (G.L. c. 209, § 32); and the right to bring claims for wrongful death and loss of consortium, and for funeral and burial expenses and punitive damages resulting from tort actions (G.L. c. 229, §§ 1 and 2; G.L. c. 228, § 1. See *Feliciano v. Rosemar Silver Co.*, *supra*).

[12, 13] Exclusive marital benefits that are not directly tied to property rights include the presumptions of legitimacy and parentage of children born to a married couple (G.L. c. 209C, § 6, and G.L. c. 46, § 4B); and evidentiary rights, such as the prohibition against spouses testifying

against one another about their private conversations, applicable in both civil and criminal cases (G.L. c. 233, § 20). Other statutory benefits of a personal nature available only to married individuals include qualification for ¹³²⁵bereavement or medical leave to care for individuals related by blood or marriage (G.L. c. 149, § 52D); an automatic "family member" preference to make medical decisions for an incompetent or disabled spouse who does not have a contrary health care proxy, see *Shine v. Vega*, 429 Mass. 456, 466, 709 N.E.2d 58 (1999); the application of predictable rules of child custody, visitation, support, and removal out-of-State when married parents divorce (e.g., G.L. c. 208, § 19 [temporary custody], § 20 [temporary support], § 28 [custody and support on judgment of divorce], § 30 [removal from Commonwealth], and § 31 [shared custody plan]); priority rights to administer the estate of a deceased spouse who dies without a will, and the requirement that a surviving spouse must consent to the appointment of any other person as administrator (G.L. c. 38, § 13 [disposition of body], and G.L. c. 113, § 8 [anatomical gifts]); and the right to interment in the lot or tomb owned by one's deceased spouse (G.L. c. 114, §§ 29–33).

[14] Where a married couple has children, their children are also directly or indirectly, but no less auspiciously, the recipients of the special legal and economic protections obtained by civil marriage. Notwithstanding the Commonwealth's strong public policy to abolish legal distinctions between marital and nonmarital children in providing for the support and care of minors, see *Department of Revenue v. Mason M.*, 439 Mass. 665, 790 N.E.2d 671 (2003); *Woodward v. Commissioner of Social Sec.*, 435 Mass. 536, 546, 760 N.E.2d 257 (2002), the fact remains that marital children reap a measure of family stability

and economic security based on their parents' legally privileged status that is largely inaccessible, or not as readily accessible, to nonmarital children. Some of these benefits are social, such as the enhanced approval that still attends the status of being a marital child. Others are material, such as the greater ease of access to family-based State and Federal benefits that attend the presumptions of one's parentage.

[15] It is undoubtedly for these concrete reasons, as well as for its intimately personal significance, that civil marriage has long been termed a "civil right." See, e.g., *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) ("Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival"), quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); *Milford v. Worcester*, 7 Mass. 48, 56 (1810) (referring to "civil rights incident to marriages"). See also *Baehr v. Lewin*, 74 Haw. 530, 561, 852 P.2d 44 (1993) (identifying marriage as "civil right[]"); *Baker v. State*, 170 Vt. 194, 242, 744 A.2d 864 (1999) (Johnson, J., concurring in part and dissenting in part) (same). The United States Supreme Court has described the

right to marry as "of fundamental importance for all individuals" and as "part of the fundamental 'right of privacy' implicit in the Fourteenth Amendment's Due Process Clause." *Zablocki v. Redhail*, 434 U.S. 374, 384, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978). See *Loving v. Virginia*, *supra* ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men").¹⁴

[16, 17] Without the right to marry—or more properly, the right to choose to marry—one is excluded from the full range of human experience and denied full protection of the laws for one's "avowed commitment to an intimate and lasting human relationship." *Baker v. State*, *supra* at 229, 744 A.2d 864. Because civil marriage is central to the lives of individuals and the welfare of the community, our laws assiduously protect the individual's right to marry against undue government incursion. Laws may not "interfere directly and substantially with the right to marry." *Zablocki v. Redhail*, *supra* at 387, 98 S.Ct. 673. See *Perez v. Sharp*, 32 Cal.2d 711, 714 (1948) ("There can be no prohibition of marriage except for an important social objective and reasonable means").¹⁵

14. Civil marriage enjoys a dual and in some sense paradoxical status as both a State-conferred benefit (with its attendant obligations) and a multi-faceted personal interest of "fundamental importance." *Zablocki v. Redhail*, 434 U.S. 374, 383, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978). As a practical matter, the State could not abolish civil marriage without chaotic consequences. The "right to marry," *id.* at 387, 98 S.Ct. 673, is different from rights deemed "fundamental" for equal protection and due process purposes because the State could, in theory, abolish all civil marriage while it cannot, for example, abolish all private property rights.

15. The department argues that this case concerns the rights of couples (same-sex and op-

posite-sex), not the rights of individuals. This is incorrect. The rights implicated in this case are at the core of individual privacy and autonomy. See, e.g., *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) ("Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State"); *Perez v. Sharp*, 32 Cal.2d 711, 716, 198 P.2d 17 (1948) ("The right to marry is the right of individuals, not of racial groups"). See also *A.Z. v. B.Z.*, 431 Mass. 150, 162, 725 N.E.2d 1051 (2000), quoting *Moore v. East Cleveland*, 431 U.S. 494, 499, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (noting "freedom of personal choice in matters of marriage and family life"). While

[18, 19] Unquestionably, the regulatory power of the Commonwealth ¹³²⁷over civil marriage is broad, as is the Commonwealth's discretion to award public benefits. See *Commonwealth v. Stowell*, 389 Mass. 171, 175, 449 N.E.2d 357 (1983) (marriage); *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 652, 417 N.E.2d 387 (1981) (Medicaid benefits). Individuals who have the choice to marry each other and nevertheless choose not to may properly be denied the legal benefits of marriage. See *Wilcox v. Trautz*, 427 Mass. 326, 334, 693 N.E.2d 141 (1998); *Collins v. Guggenheim*, 417 Mass. 615, 618, 631 N.E.2d 1016 (1994); *Feliciano v. Rosemar Silver Co.*, 401 Mass. 141, 142, 514 N.E.2d 1095 (1987). But that same logic cannot hold for a qualified individual who would marry if she or he only could.

B

For decades, indeed centuries, in much of this country (including Massachusetts) no lawful marriage was possible between white and black Americans. That long history availed not when the Supreme Court of California held in 1948 that a legislative prohibition against interracial marriage violated the due process and

two individuals who wish to marry may be equally aggrieved by State action denying them that opportunity, they do not "share" the liberty and equality interests at stake.

16. The department argues that the *Loving* decision did not profoundly alter the by-then common conception of marriage because it was decided at a time when antimiscegenation statutes were in "full-scale retreat." But the relationship the department draws between popular consensus and the constitutionality of a statute oppressive to a minority group ignores the successful constitutional challenges to an antimiscegenation statute, initiated some twenty years earlier. When the Supreme Court of California decided *Perez v. Sharp*, 32 Cal.2d 711, 728 (1948), a precursor to *Loving*, racial inequality was rampant and normative, segregation in public

equality guarantees of the Fourteenth Amendment, *Perez v. Sharp*, 32 Cal.2d 711, 728, 198 P.2d 17 (1948), or when, nineteen years later, the United States Supreme Court also held that a statutory bar to interracial marriage violated the Fourteenth Amendment, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967).¹⁶ As both *Perez* and *Loving* make clear, the right to marry means ¹³²⁸little if it does not include the right to marry the person of one's choice, subject to appropriate government restrictions in the interests of public health, safety, and welfare. See *Perez v. Sharp*, *supra* at 717, 198 P.2d 17 ("the essence of the right to marry is freedom to join in marriage with the person of one's choice"). See also *Loving v. Virginia*, *supra* at 12, 87 S.Ct. 1817. In this case, as in *Perez* and *Loving*, a statute deprives individuals of access to an institution of fundamental legal, personal, and social significance—the institution of marriage—because of a single trait: skin color in *Perez* and *Loving*, sexual orientation here. As it did in *Perez* and *Loving*, history must yield to a more fully developed understanding of the invidious quality of the discrimination.

and private institutions was commonplace, the civil rights movement had not yet been launched, and the "separate but equal" doctrine of *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), was still good law. The lack of popular consensus favoring integration (including interracial marriage) did not deter the Supreme Court of California from holding that that State's antimiscegenation statute violated the plaintiffs' constitutional rights. Neither the *Perez* court nor the *Loving* Court was content to permit an unconstitutional situation to fester because the remedy might not reflect a broad social consensus.

extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit.²⁹

Here, the plaintiffs seek only to be married, not to undermine the institution of civil marriage. They do not want marriage abolished. They do not attack the binary nature of marriage, the consanguinity provisions, or any of the other gatekeeping provisions of the marriage licensing law. Recognizing the right of an individual to marry a person of the same sex will not diminish the validity or dignity of opposite-sex marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race.²⁸ If anything,

28. Justice Cordy suggests that we have “transmuted the ‘right’ to marry into a right to change the institution of marriage itself,” *post* at 365, 798 N.E.2d at 984 (Cordy, J., dissenting), because marriage is intimately tied to the reproductive systems of the marriage partners and to the “optimal” mother and father setting for child rearing. *Id.* That analysis hews perilously close to the argument, long repudiated by the Legislature and the courts, that men and women are so innately and fundamentally different that their respective “proper spheres” can be rigidly and universally delineated. An abundance of legislative enactments and decisions of this court negate any such stereotypical premises.

29. We are concerned only with the withholding of the benefits, protections, and obligations of civil marriage from a certain class of persons for invalid reasons. Our decision in no way limits the rights of individuals to refuse to marry persons of the same sex for religious or any other reasons. It in no way limits the personal freedom to disapprove of,

or to encourage others to disapprove of, same-sex marriage. Our concern, rather, is whether historical, cultural, religious, or other reasons permit the State to impose limits on personal beliefs concerning whom a person should marry.

[40, 41] Here, no one argues that striking down the marriage laws is an appropriate form of relief. Eliminating civil marriage would be wholly inconsistent with the Legislature's deep commitment to fostering stable families and would dismantle a vital organizing principle of our society.³⁴

We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others. This reformulation redresses the plaintiffs' constitutional injury and furthers the aim of marriage to promote stable, exclusive relationships. It advances the two legitimate State interests the department has identified: providing a stable setting for child rearing and conserving State resources. It leaves intact the Legislature's broad discretion to regulate marriage. See *Commonwealth v. Stowell*, 389 Mass. 171, 175, 449 N.E.2d 357 (1983).

[42] In their complaint the plaintiffs request only a declaration that their exclusion and the exclusion of other qualified same-sex couples from access to civil marriage violates Massachusetts law. We declare that barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution.

34. Similarly, no one argues that the restrictions on incestuous or polygamous marriages are so dependent on the marriage restriction that they too should fall if the marriage restriction falls. Nothing in our opinion today should be construed as relaxing or abrogating the consanguinity or polygamy prohibitions of our marriage laws. See G.L. c. 207, §§ 1, 2, and 4. Rather, the statutory provisions concerning consanguinity or polygamous marriages shall be construed in a gender neutral manner. See *Califano v. Westcott*, 443 U.S. 76, 92-93, 99 S.Ct. 2655, 61 L.Ed.2d 382

(1979) (construing word "father" in unconstitutional, underinclusive provision to mean "parent"); *Browne's Case*, 322 Mass. 429, 430, 77 N.E.2d 649 (1948) (construing masculine pronoun "his" to include feminine pronoun "her"). See also G.L. c. 4, § 6, Fourth ("words of one gender may be construed to include the other gender and the neuter unless such construction would be 'inconsistent with the manifest intent of the law-making body or repugnant to the context of the same statute'").