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May 17, 2004

The Honorable Mitt Romney  
Governor  
State House  
Room 360  
Boston, MA 02133

Dear Governor Romney:

I write in response to your letter dated April 29, 2004, and sent to the Governors and Attorneys General of 49 States.

Respectfully, I decline your invitation to provide advice on how Massachusetts law would impact on same sex couples who reside in Connecticut and seek to be married in Massachusetts. Specifically, your question necessarily requires an analysis of Massachusetts law, which I have neither authority nor expertise to interpret as part of my duties.

As you will note, an opinion I have released to local officials in my state concludes that the Legislature has not authorized the issuance of a Connecticut marriage license to a same sex couple, or the performance of a marriage ceremony for a same sex couple, in Connecticut. This State's Legislature has stated "that the current public policy of the state of Connecticut is now limited to a marriage between a man and a woman." Conn. Gen. Stat. § 45a-727a(4). The Connecticut Legislature has also specifically stated that the human rights statutes should not be construed "to authorize the recognition of or the right of marriage between persons of the same sex." Conn. Gen. Stat. § 46a-81r. As you well know from your own experience in Massachusetts, whether a Connecticut court would uphold Connecticut law against any constitutional challenge cannot be predicted with accuracy.

Your letter cites to a Massachusetts statute declaring "null and void" marriages contracted in your Commonwealth by parties residing, and intending to continue to reside, in another jurisdiction "if such marriage would be void if contracted in such other jurisdiction." Mass. G.L. c. 207, § 11. The statute apparently requires an analysis of whether a marriage conducted in Massachusetts would be "void" in Connecticut. Your letter concludes with a statement of your view that same sex marriages are "not permitted" under Connecticut law.

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Under Connecticut law, however, whether a marriage is “void” is a different question from whether the marriage is “permitted” or “authorized.” *Carabetta v. Carabetta*, 182 Conn. 344, 348-49 (1980) (“[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe a statutory requirement, this court has held in an unbroken line of cases . . . that such a marriage, though imperfect, is dissoluble rather than void.”). As stated in our opinion, same sex marriages are not authorized in Connecticut. But that fact does not make them automatically void, because our state has no statute declaring same sex marriages void so. The answer to your question therefore depends on the legal effect and meaning of a provision of your own statute, particularly the term “void,” as interpreted by Massachusetts courts and the Massachusetts Attorney General.

I am neither equipped nor authorized to determine what the Massachusetts Legislature meant when it used the word “void” in your statute. For this, I suggest you rely on your own State’s Attorney General for advice. In my own view, this course would be preferable to relying on the Attorneys General of 49 states to construe the term “void” under Massachusetts law, thereby risking inconsistent and conflicting interpretations.

Very truly yours,

RICHARD BLUMENTHAL

c: The Hon. John G. Rowland  
The Hon. Thomas Reilly