# PR 05840.024 Massachusetts

## A. PR 14-174 Whether Massachusetts Would Extend Intestate Spousal Inheritance Rights as a Result of a Civil Union Entered into by a Same-Sex Couple in the State of Vermont in 2001.

DATE: September 30, 2014

### 1. Syllabus

Massachusetts would have permitted the claimant to inherit as the number holder’s spouse as the result of a civil union entered into by the couple in Vermont in 2001; which is within the dates that Vermont permitted civil unions that conveyed spousal inheritance rights..

### 2. OPINION

**I. QUESTION PRESENTED**  
You asked us whether, at the time of Karen’s’ (the NH) death in 2007, the Commonwealth of Massachusetts would have permitted Cindy (the claimant—the NH’s same-sex civil union partner) to inherit as a spouse if the NH had died without leaving a will (intestate).   
**II. SHORT ANSWER**   
We believe that, at the time of the NH’s death in 2007, Massachusetts would have permitted the claimant to inherit as a spouse had the NH died intestate. As a result, the claimant can be recognized as the NH’s surviving spouse for purposes of determining entitlement to benefits as a surviving spouse.  
**III. BACKGROUND**  
On May 4, 2001, the claimant and the NH entered into a civil union in the State of Vermont. The civil union ended when the NH died on April 22, 2007, in the Commonwealth of Massachusetts. The claimant filed for surviving spouse with child-in-care benefits on July 23, 2013, in Massachusetts.  
**IV. APPLICABLE LAW**   
**A. Federal Law and Agency Guidance**  
In order to decide whether a claimant would be considered the widow or widower (surviving spouse) of an insured number holder, the agency looks to the laws of the state where the insured was domiciled at the time of death. Under the Social Security Act:  
An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this title if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death… would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died. If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.   
42 U.S.C. 416(h)(1)(A). *See also* 20 C.F.R. § 404.345  
Accordingly, a non-marital relationship (such as a civil union) can be treated as a marital relationship for the purposes of determining entitlement to benefits if certain conditions are satisfied. POMS [GN 00210.004A.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#a) Specifically, a claimant is considered married for benefit purposes if the non-marital legal relationship: (1) “was valid in the place it was established”; and (2) “qualifies as a marital relationship using the laws of the state of the [number holder’s] domicile.” POMS [GN 00210.004B.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#b) This second step requires an evaluation of whether the intestacy laws of the number holder’s domicile state would permit the claimant to inherit a spouse’s share of the number holder’s estate if the number holder were to die without leaving a will. POMS [GN 00210.004A.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#a)   
**B. State Law**  
Vermont permitted civil unions, a type of non-marital legal relationship conveying spousal inheritance rights, from July 1, 2000 through September 1, 2009. Vt. Stat. Ann. tit. 15, § 1202 (2000) (portions repealed by Vt. Stat. Ann. tit. 15, § 8 (2009)); *see* Vt. Stat. Ann. tit. 15, § 1204(a) (2000). From its enactment in 2000, Section 1204(a) of the Vermont Statutes has provided that, “[p]arties to a civil union shall have all the same benefits, protections, and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, as are granted to spouses in a civil marriage.” *Id.*   
Same-sex marriages have been valid in Massachusetts since May 17, 2004, as a result of the Supreme Judicial Court’s decision in *Goodridge v. Dep’t of Public Health,* 798 N.E. 2d 941 (Mass. 2003). The Massachusetts General Laws discuss certain requirements for a valid marriage, but do not address whether the Commonwealth would consider a civil union performed out of state to be a marriage under Massachusetts law. *See* Mass. Gen. Laws Ann. ch. 207, § 1-58.   
**V. ANALYSIS**  
**A. The civil union between the claimant and the NH was valid in the State of Vermont in May 2001.**   
When the claimant and the NH entered into a civil union in the State of Vermont on May 4, 2001, such unions had been valid since 2000, and conveyed “all the same benefits, protections, and responsibilities under law … as are granted to spouses in a civil marriage.” Vt. Stat. Ann. tit. 15, § 1202 (2000) (portions repealed by Vt. Stat. Ann. tit. 15, § 8 (2009)); see Vt. Stat. Ann. tit. 15, § 1204(a) (2000). Since the couple’s union was valid, the next question is whether the relationship would “qualif[y] as a marital relationship using the laws of the state of the [the NH’s] domicile.” POMS [GN 00210.004B.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#b)  
**B. Massachusetts likely would have permitted the claimant to inherit as the NH’s spouse if the NH had died intestate.**   
We believe that Massachusetts would have permitted the claimant to inherit as the NH’s spouse — as a result of the civil union entered into by the couple in Vermont in 2001 — if the NH had died intestate.  
As noted above, the agency must evaluate whether the laws of the NH’s state of domicile at death would permit the claimant to inherit a spouse’s share of the number holder’s estate if the number holder were to die intestate. 42 U.S.C. § 416(h)(1)(A); 20 C.F.R. § 404.345; POMS [GN 00210.004A.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#a) At the time of the NH’s death, the couple resided in Massachusetts. Massachusetts inheritance laws, at that time, provided that a “surviving husband or wife” shall be entitled to a share of the deceased’s estate if not disposed of by will. Mass. Gen. Laws Ann. ch.190, § 1 (2007). [1](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024" \l "fn1) As a result, we must determine if the claimant could be recognized as the husband or wife (spouse) of the NH for purposes of Massachusetts inheritance law.   
In 2004, the Supreme Judicial Court of Massachusetts defined marriage as “the voluntary union of two persons as spouses, to the exclusion of all others.” *Goodridge* , 440 Mass. at 343 (internal quotation omitted). As noted above, Massachusetts has permitted same-sex marriage since the *Goodridge* decision took effect on May 17, 2004. *Id*. at 309.  
Although the claimant and the NH entered into a civil union in Vermont in 2001—three years before same-sex marriage was legalized in Massachusetts—a recent decision from the Supreme Judicial Court of Massachusetts strongly suggests that the couple’s Vermont civil union would be considered “functionally identical” to a marriage for purposes of establishing the rights and obligations created by the civil union. *Elia-Warnken v. Elia*, 463 Mass. 29, 33 (2012).  
In *Elia-Warnkin*, the Court acknowledged “the general rule that the validity of a marriage is governed by the law of the State where the marriage is contracted.” 463 Mass. at 32 (quoting *Cote-Whitacre v. Department of Pub. Health*, 446 Mass. 350, 369 (2006) (Spina, J. concurring)). With respect to out-of-state marriages, the Court then explained, “As such, we ordinarily extend recognition to out-of-State marriages under principles of comity, *even if such marriages would be prohibited here*, unless the marriage violates Massachusetts public policy, including polygamy, consanguinity and affinity. G.L. c. 207, §§ 1, 2, 4.” *Elia-Warnkin*, 463 Mass. at 32 (emphasis supplied) (citing *Commonwealth v. Lane*, 113 Mass. 458, 463 (1873). In this case, it is clear that at the time of the NH’s death in 2007, recognition of a legal relationship between a same-sex couples was not contrary to public policy, because Massachusetts has permitted same-sex marriage since the *Goodridge* decision took effect in 2004. *Goodridge,* supra at 309.  
In discussing Vermont civil unions, the *Elia-Warnkin* Court noted the Commonwealth’s definition of marriage as “the voluntary union of two persons as spouses, to the exclusion of all others” (quoting *Goodridge*, supra at 343), continuing, “[t]his is the relationship established by Vermont civil unions” and concluding that, “[b]y that definition alone, *a Vermont civil union is the functional equivalent of a marriage*.” *Elia-Warnkin,* supra at 33 (emphasis supplied). The court then concluded that Massachusetts would “recognize a Vermont civil union as the equivalent of marriage under principles of comity.” *Id.* at 35.  
We believe the analysis in *Elia-Warnkin* would also have applied to the facts of this claim because: (1) as with this claim, the *Elia-Warnkin* Court recognized a civil union that had occurred prior to the legalization of same-sex marriage in Massachusetts as the equivalent of marriage; and (2) rights and obligations afforded by civil unions in Vermont, which conveyed the same benefits, protections, and responsibilities as a civil marriage, had not changed between 2000 and 2009. [2](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024" \l "fn2) As noted above, the *Elia-Warnkin* Court concluded that a Vermont civil union that occurred prior to the legalization of same-sex marriage in Massachusetts was equivalent to marriage. Thus, the fact that the claimant and the NH entered into a civil union in Vermont prior to same-sex marriage legalization in Massachusetts does not alter the application of the analysis to this case.  
Additionally, the nature of the benefits, protections, and responsibilities of a Vermont civil union had not changed from the time of the NH’s civil union to the time of the *Elia-Warnkin* union. The couple in *Elia-Warnkin* entered into a civil union on April 19, 2003. *Elia-Warnkin*, supra at 30. The NH and the claimant entered into a civil union on May 4, 2001. Although the couple’s civil union predates the *Elia-Warnkin* civil union, the laws governing the rights and responsibilities that attach to such unions had not changed. *See* Vt. Stat. Ann. tit. 15, § 1202 (2000) (portions repealed by Vt. Stat. Ann. tit. 15, § 8 (2009)); *see* Vt. Stat. Ann. tit. 15, § 1204(a) (2000) (“Parties to a civil union shall have all the same benefits, protections, and responsibilities under law … as are granted to spouses in a civil marriage.”).   
Based on those factors, we believe the reasoning used by the *Elia-Warnkin* court would apply equally to this claim and that, while the *Elia-Warnkin* case involved a petition for dissolution of marriage, the Commonwealth of Massachusetts would have extended other marital rights and obligations, such as intestate inheritance, to these facts.   
**CONCLUSION**   
We believe that the Commonwealth of Massachusetts would have permitted the claimant to inherit as a spouse had the NH died intestate. As a result, the claimant can be recognized as the NH’s surviving spouse for purposes of determining entitlement to benefits as a surviving spouse.  
Karen Burzycki   
Supervisory Attorney  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Candace H. Lawrence   
Assistant Regional Counsel

#### Footnotes:

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This provision remained in effect until January 15, 2009, the effective date of the Massachusetts Uniform Probate Code (MUPC), which is currently located in Section 190B of the Massachusetts General Laws. Mass. Gen. Laws Ann. ch. 190B, §§ 1-101 to 7-503 (2014).  
[[2]](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024" \l "fnr2)

This conclusion is bolstered by the earlier, lower court decision in *Salucco v. Alldredge,* No. 02E0087GC1, 2004 WL 864459 (Mass. Super. March 19, 2004).. In that case, a petition for dissolution of a Vermont civil union celebrated in 2002 was granted. *Id.* As the court in that case explained, “in accord with the decision in *Goodridge*, and the public policy of Massachusetts, [the parties to the civil union] should be afforded all of the responsibilities and rights that flow from a civil union.” *Id.* at \*4.

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**I. QUESTION PRESENTED**  
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On May 4, 2001, the claimant and the NH entered into a civil union in the State of Vermont. The civil union ended when the NH died on April 22, 2007, in the Commonwealth of Massachusetts. The claimant filed for surviving spouse with child-in-care benefits on July 23, 2013, in Massachusetts.  
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42 U.S.C. 416(h)(1)(A). *See also* 20 C.F.R. § 404.345  
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**B. Massachusetts likely would have permitted the claimant to inherit as the NH’s spouse if the NH had died intestate.**   
We believe that Massachusetts would have permitted the claimant to inherit as the NH’s spouse — as a result of the civil union entered into by the couple in Vermont in 2001 — if the NH had died intestate.  
As noted above, the agency must evaluate whether the laws of the NH’s state of domicile at death would permit the claimant to inherit a spouse’s share of the number holder’s estate if the number holder were to die intestate. 42 U.S.C. § 416(h)(1)(A); 20 C.F.R. § 404.345; POMS [GN 00210.004A.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#a) At the time of the NH’s death, the couple resided in Massachusetts. Massachusetts inheritance laws, at that time, provided that a “surviving husband or wife” shall be entitled to a share of the deceased’s estate if not disposed of by will. Mass. Gen. Laws Ann. ch.190, § 1 (2007). [1](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024#fn1) As a result, we must determine if the claimant could be recognized as the husband or wife (spouse) of the NH for purposes of Massachusetts inheritance law.   
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**V. ANALYSIS**  
**A. The civil union between the claimant and the NH was valid in the State of Vermont in May 2001.**   
When the claimant and the NH entered into a civil union in the State of Vermont on May 4, 2001, such unions had been valid since 2000, and conveyed “all the same benefits, protections, and responsibilities under law … as are granted to spouses in a civil marriage.” Vt. Stat. Ann. tit. 15, § 1202 (2000) (portions repealed by Vt. Stat. Ann. tit. 15, § 8 (2009)); see Vt. Stat. Ann. tit. 15, § 1204(a) (2000). Since the couple’s union was valid, the next question is whether the relationship would “qualif[y] as a marital relationship using the laws of the state of the [the NH’s] domicile.” POMS [GN 00210.004B.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#b)  
**B. Massachusetts likely would have permitted the claimant to inherit as the NH’s spouse if the NH had died intestate.**   
We believe that Massachusetts would have permitted the claimant to inherit as the NH’s spouse — as a result of the civil union entered into by the couple in Vermont in 2001 — if the NH had died intestate.  
As noted above, the agency must evaluate whether the laws of the NH’s state of domicile at death would permit the claimant to inherit a spouse’s share of the number holder’s estate if the number holder were to die intestate. 42 U.S.C. § 416(h)(1)(A); 20 C.F.R. § 404.345; POMS [GN 00210.004A.](http://policynet.ba.ssa.gov/poms.nsf/lnx/0200210004#a) At the time of the NH’s death, the couple resided in Massachusetts. Massachusetts inheritance laws, at that time, provided that a “surviving husband or wife” shall be entitled to a share of the deceased’s estate if not disposed of by will. Mass. Gen. Laws Ann. ch.190, § 1 (2007). [1](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024#fn1) As a result, we must determine if the claimant could be recognized as the husband or wife (spouse) of the NH for purposes of Massachusetts inheritance law.   
In 2004, the Supreme Judicial Court of Massachusetts defined marriage as “the voluntary union of two persons as spouses, to the exclusion of all others.” *Goodridge* , 440 Mass. at 343 (internal quotation omitted). As noted above, Massachusetts has permitted same-sex marriage since the *Goodridge* decision took effect on May 17, 2004. *Id*. at 309.  
Although the claimant and the NH entered into a civil union in Vermont in 2001—three years before same-sex marriage was legalized in Massachusetts—a recent decision from the Supreme Judicial Court of Massachusetts strongly suggests that the couple’s Vermont civil union would be considered “functionally identical” to a marriage for purposes of establishing the rights and obligations created by the civil union. *Elia-Warnken v. Elia*, 463 Mass. 29, 33 (2012).  
In *Elia-Warnkin*, the Court acknowledged “the general rule that the validity of a marriage is governed by the law of the State where the marriage is contracted.” 463 Mass. at 32 (quoting *Cote-Whitacre v. Department of Pub. Health*, 446 Mass. 350, 369 (2006) (Spina, J. concurring)). With respect to out-of-state marriages, the Court then explained, “As such, we ordinarily extend recognition to out-of-State marriages under principles of comity, *even if such marriages would be prohibited here*, unless the marriage violates Massachusetts public policy, including polygamy, consanguinity and affinity. G.L. c. 207, §§ 1, 2, 4.” *Elia-Warnkin*, 463 Mass. at 32 (emphasis supplied) (citing *Commonwealth v. Lane*, 113 Mass. 458, 463 (1873). In this case, it is clear that at the time of the NH’s death in 2007, recognition of a legal relationship between a same-sex couples was not contrary to public policy, because Massachusetts has permitted same-sex marriage since the *Goodridge* decision took effect in 2004. *Goodridge,* supra at 309.  
In discussing Vermont civil unions, the *Elia-Warnkin* Court noted the Commonwealth’s definition of marriage as “the voluntary union of two persons as spouses, to the exclusion of all others” (quoting *Goodridge*, supra at 343), continuing, “[t]his is the relationship established by Vermont civil unions” and concluding that, “[b]y that definition alone, *a Vermont civil union is the functional equivalent of a marriage*.” *Elia-Warnkin,* supra at 33 (emphasis supplied). The court then concluded that Massachusetts would “recognize a Vermont civil union as the equivalent of marriage under principles of comity.” *Id.* at 35.  
We believe the analysis in *Elia-Warnkin* would also have applied to the facts of this claim because: (1) as with this claim, the *Elia-Warnkin* Court recognized a civil union that had occurred prior to the legalization of same-sex marriage in Massachusetts as the equivalent of marriage; and (2) rights and obligations afforded by civil unions in Vermont, which conveyed the same benefits, protections, and responsibilities as a civil marriage, had not changed between 2000 and 2009. [2](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024#fn2) As noted above, the *Elia-Warnkin* Court concluded that a Vermont civil union that occurred prior to the legalization of same-sex marriage in Massachusetts was equivalent to marriage. Thus, the fact that the claimant and the NH entered into a civil union in Vermont prior to same-sex marriage legalization in Massachusetts does not alter the application of the analysis to this case.  
Additionally, the nature of the benefits, protections, and responsibilities of a Vermont civil union had not changed from the time of the NH’s civil union to the time of the *Elia-Warnkin* union. The couple in *Elia-Warnkin* entered into a civil union on April 19, 2003. *Elia-Warnkin*, supra at 30. The NH and the claimant entered into a civil union on May 4, 2001. Although the couple’s civil union predates the *Elia-Warnkin* civil union, the laws governing the rights and responsibilities that attach to such unions had not changed. *See* Vt. Stat. Ann. tit. 15, § 1202 (2000) (portions repealed by Vt. Stat. Ann. tit. 15, § 8 (2009)); *see* Vt. Stat. Ann. tit. 15, § 1204(a) (2000) (“Parties to a civil union shall have all the same benefits, protections, and responsibilities under law … as are granted to spouses in a civil marriage.”).   
Based on those factors, we believe the reasoning used by the *Elia-Warnkin* court would apply equally to this claim and that, while the *Elia-Warnkin* case involved a petition for dissolution of marriage, the Commonwealth of Massachusetts would have extended other marital rights and obligations, such as intestate inheritance, to these facts.   
**CONCLUSION**   
We believe that the Commonwealth of Massachusetts would have permitted the claimant to inherit as a spouse had the NH died intestate. As a result, the claimant can be recognized as the NH’s surviving spouse for purposes of determining entitlement to benefits as a surviving spouse.  
Karen Burzycki   
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By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
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#### Footnotes:

[[1]](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024#fnr1)

This provision remained in effect until January 15, 2009, the effective date of the Massachusetts Uniform Probate Code (MUPC), which is currently located in Section 190B of the Massachusetts General Laws. Mass. Gen. Laws Ann. ch. 190B, §§ 1-101 to 7-503 (2014).  
[[2]](http://policynet.ba.ssa.gov/poms.nsf/lnx/1505840024#fnr2)

This conclusion is bolstered by the earlier, lower court decision in *Salucco v. Alldredge,* No. 02E0087GC1, 2004 WL 864459 (Mass. Super. March 19, 2004).. In that case, a petition for dissolution of a Vermont civil union celebrated in 2002 was granted. *Id.* As the court in that case explained, “in accord with the decision in *Goodridge*, and the public policy of Massachusetts, [the parties to the civil union] should be afforded all of the responsibilities and rights that flow from a civil union.” *Id.* at \*4.

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