STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT OF RHODE ISLAND

MARGARET R. CHAMBERS, Plaintiff, v. **CASSANDRA B. ORMISTON,** Defendant.	No. 2006-340 (FC 06-2583)

ON A CERTIFIED QUESTION OF LAW

REPLY BRIEF OF *AMICI CURIAE* FAMILY RESEARCH COUNCIL AND REVEREND LYLE MOOK

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REPLY BRIEF

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INTRODUCTION

Briefs responding to the arguments made by Family Research Council and Reverend Lyle Mook [hereinafter "*Amici*"] were filed by Cassandra Ormiston (Ormiston), Gay & Lesbian Advocates & Defenders (GLAD), Honorable Patrick C. Lynch (Attorney General). This reply addresses these arguments.

REPLY ARGUMENT

I. THE THRESHHOLD QUESTION FOR THIS COURT IS WHETHER SAME-SEX "MARRIAGE" IS RECOGNIZED IN RHODE ISLAND.

In her Response Brief, Appellant Ormiston states the following:

> First and foremost, it is the question of same sex marriage which has occasioned the necessity of the certification of this question to this Court. It is not the statute in Massachusetts; it is not the fact that Rhode Island residents were married in Massachusetts; it is not the fact that they intended to return to Rhode Island but it is because they are individuals of the same sex. To that end, it is necessary to focus more directly on the question at hand.

(Ormiston Response Brief at 2). As Ormiston admits, the question at hand is whether same-sex "marriage" has somehow become the law of Rhode Island. It has not; it should not; this Court should rule accordingly.

A. Any Relief Sought In This Matter Necessarily Involves The Re-definition Of Marriage.

GLAD posits that "the question is how Rhode Island law deals with a particular marriage." (GLAD Response Brief at 1). But GLAD's characterization ignores the determinative underlying question—how does Rhode Island law address a particular construct Massachusetts calls "marriage?" Unless the term "marriage" is presumptively

given a new, revolutionary definition, GLAD's reference to "a particular marriage" is nonsensical under Rhode Island law.

Appellants' claim of a right to divorce for same-sex couples, rests upon unsubstantiated assumptions: that the terms "marriage" and "spouse" are amorphous enough to encompass same-sex couples, and that there are no substantive differences between same-sex and opposite-sex couples when it comes to marriage. There is no authority in Rhode Island for those assumptions. This Court should not accept the implicit invitation to weave novel marriage laws from whole cloth.

GLAD argues that "it defies reality to simply declaim that the Chambers-Ormiston relationship is legally not a marriage . . . ." (GLAD Response Brief at 9). But when GLAD argues that "the Commonwealth of Massachusetts most assuredly asserts by its sovereign authority that this couple is legally married in the eyes of the Commonwealth,"[1] what they are arguing is that because the Massachusetts Supreme Judicial Court chose to redefine marriage, that redefinition must now be accepted and acknowledged by all other jurisdictions (particularly Rhode Island). This argument defies the reality of the existing law of marriage in Rhode Island. Thus, the "reality" of the Appellants and their supporters is that "marriage" in Rhode Island means whatever they want it to mean.

While Chambers and Ormiston did acquire a same-sex "marriage" license in the State of Massachusetts, they cannot lawfully impose this unique construct on states other than Massachusetts. The point of confusion for the Appellants and their supporters was

[1] (GLAD Response Brief at 9).

that the Massachusetts Supreme Judicial Court extended to same-sex relationships the title of "marriage," although they are not the union of one man and one woman. Unless this Court chooses to adopt the wayward lead of the *Goodridge* court, the Massachusetts redefinition of marriage stops at its borders.

Asking the Appellants and their supporters to define its terms is not, as GLAD accuses, playing "word games."[2] *Amici* and others employ the term "marriage" only as it has been known and understood throughout centuries, and throughout entire civilizations. GLAD cannot dispute this, nor does it attempt to counter the definitions of "marriage" of courts throughout the world, along with those of the seven dictionaries *Amici* cited. (*See* FRC and Mook Initial Brief at 14-15). Rather, GLAD's approach is one of convenient over-simplicity—Massachusetts calls it "marriage," so it must be a "marriage." This approach flatly rejects the sovereignty of Rhode Island and its right to decide what is and is not "marriage" within its borders.

B. The Geographic Proximity Between Rhode Island and Massachusetts Is a Proper Consideration For This Court.

By their fervent attempts to shift this Court's focus from the concept of "marriage," and emphasizing only divorce, Rhode Island is being invited to adopt a public policy that it's citizens and elected representatives have not enacted. For example, GLAD argues that "licensing a marriage in Rhode Island is different from recognizing a marriage from another jurisdiction." (GLAD Response Brief at 1). But that argument simply ignores the logical and legal reality that Rhode Island only establishes, in part, its

[2] (GLAD Response Brief at 16).

policy on marriages by defining those it will license. The remainder of Rhode Island's policy on marriages is regarding what foreign marriages it will recognize. It is hornbook law that states do not have to recognize foreign marriages where, as here, the foreign same-sex "marriage" conflicts with Rhode Island's policy.

With a ruling granting Chambers and Ormiston a "divorce," every Rhode Island citizen seeking a same-sex "marriage" could make the very short trip to Massachusetts, acquire a same-sex "marriage," and then return to Rhode Island with a same-sex "marriage" that they know would be recognized. Chambers and Ormiston already demonstrated the ease of such an effort. Then, when it was time to dissolve that same-sex "marriage," every same-sex couple could easily obtain a Rhode Island same-sex "divorce." The same-sex "marriage" circle for Rhode Island would then be complete without the General Assembly or voters ever having a say.

Moreover, there is no principled distinction for Rhode Island courts, if choosing to recognize Massachusetts same-sex "marriages" for the "limited purpose of divorce," to then refuse recognition of Massachusetts same-sex "marriages" in adjudicating every other incident of same-sex "marriage." Thus, the parties will have successfully imported a policy odious to the laws of Rhode Island if this "divorce" is granted.[3]

[3] GLAD attempts to discount this result by concentrating on the "eligibility for marriage." (GLAD Response Brief at 3). This, of course, ignores the practical result outlined herein even if same-sex "marriage" is not expressly licensed within Rhode Island. The interactions of Rhode Island's citizens with its sister states, along with the potential impact of social policy on state institutions, are valid concerns for this Court in its decision-making process, especially in employing an "interest-weighing" approach. *See Woodward v. Stewart*, 104 R.I. 290, 243 A.2d 917, 923 (1968).

II. THE JURISDICTION OF RHODE ISLAND'S FAMILY COURTS EXTENDS TO MARRIED COUPLES SEEKING THE REMEDY OF DIVORCE, NOT TO SAME-SEX COUPLES.

The responding briefs of Ormiston, GLAD, and the Attorney General continue to use divorce in a vacuum without tying it to marriage. In her responsive brief, Ms. Ormiston seeks a divorce, assuming she has an absolute right to the remedy. Without considering the inextricable link between marriage and divorce, and without considering this state's continuing interest in preserving marriage, the Appellants improperly assume that Rhode Island has an interest in their same-sex relationship or, alternatively, should possess an interest in their same-sex relationship.

A. Rhode Island Has An Interest In Preserving The Marital Contract, Not Adopting Same-Sex "Marriage."

As previously outlined by *Amici*, this state has an express and important interest in preserving the marital contract.[4] Thus, the existence of an underlying valid marriage in an action seeking a divorce is imperative because the State of Rhode Island is a party to the lawsuit. *Berger v. Berger*, 117 A. 361, 362 (R.I. 1922). Yet, the public policy of Rhode Island rejects same-sex "marriages." Absent the legal predicate—a valid marriage that conforms to Rhode Island's public policy—the state has no interest in or reason to be a party to a "divorce" action. Therefore, there is no basis upon which Rhode Island should extend jurisdiction in this matter.

[4] *Rheaume v. Rheaume*, 107 R.I. 500, 268 A.2d 437, 504 (1970); *Carvalho v. Carvalho*, 97 R.I. 132, 138, 196 A.2d 164, 167 (1964); *Castelli v. Castelli*, 82 R.I. 232, 107 A.2d 284, 287 (1954); *Harrington v. Harrington*, 66 R.I. 363, 19 A.2d 315, 316 (1941). Rhode Island has an interest in avoiding the many costs associated with divorce and the dissolution of marriage.

Unlike Nevada, which the Appellants tout so highly in their briefs, Rhode Island takes marriage more seriously. Rhode Island law does not provide for the easy access to marriage and divorce that is available in other locations. Rather, Rhode Island law values the marital institution as demonstrated, in part, by its extending the jurisdiction of its courts to marital contract disputes only after the parties have been Rhode Island residents for at least one full year. *See* R.I. GEN. LAWS § 15-5-12 (1956). Moreover, the argument regarding Nevada falters for the same reasons it fails here—it assumes that Nevada would recognize same-sex "marriage," which is most unlikely in light of its constitutional amendment.[5]

Therefore, the question remains—why would Rhode Island want to expend judicial and other state resources on dissolving a relationship that is contrary to Rhode Island law? It should not. When the Appellants argue that they are not asking this Court to legalize same-sex "marriage," they concede the only basis upon which Rhode Island's courts would hear their case. If this Court has no plans to radically redefine marriage for Rhode Islanders, then this Court has no basis on which to begin dissolving same-sex "marriages." Massachusetts created them. Massachusetts can dissolve them.

Appellant Ormiston, along with her *amici*, continues to present the misleading question of whether this Court, "for purposes of divorce," will recognize her same-sex "marriage." (Ormiston Response Brief at 13). Ms. Ormiston fails to understand that anything "for purposes of divorce" involves "the bond of marriage." R.I. GEN. LAWS §

[5] *See* Nevada Const., Art. I, § 21 (http://www.domawatch.org/stateissues/nevada/index.html).

8-10-3 (1956).[6] There does not exist a limited purpose or second tier of acknowledgement here, contrary to the arguments of the Appellants and their supporters. Divorce in Rhode Island is a legal procedure available only to remedy the failed marriage contract between one man and one woman.

Surely, this Court is not obligated to blindly recognize the "marriage" certificates of other jurisdictions. For example, Malaysia, *inter alia*, currently permits and practices polygamy.[7] If a polygamous "family" were validly "married" under Malaysian law, and then that "family" relocated to Rhode Island and established residency, would Rhode Island courts exercise jurisdiction over that "marriage" if divorce was sought? No, because Rhode Island has no interest in preserving a polygamous relationship. But under the arguments extended by the Appellants and their supporting *amici*, Rhode Island should exercise jurisdiction over any relationship that any other jurisdiction sees fit to call a "marriage"—even one contrary to this state's law prohibiting bigamous marriage. *See* R.I. GEN. LAWS § 15-1-5 (1956). This is not the law of Rhode Island.

Indeed, if Rhode Island is a pure "place of celebration"[8] state, then in Ormiston's view, the courts of Rhode Island must accept, for all purposes under the law, "whatever-arrangement"[9] is imported with a false label of "marriage," whether from Malaysia or

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[6] Even GLAD understands that divorce and marriage go hand-in-hand, calling the difference between a marriage case and a divorce case "a distinction without any material, legal difference." (GLAD Response Brief at 14).

[7] *See* http://www.marriagedebate.com/2007/01/new-study-polygamy-in-malaysia.htm and http://commons.wikimedia.org/wiki/Image:Polygamy_world_map.png.

[8] The arguments presented thusfar which demonstrate the absence of the "place of celebration" rule in Rhode Island are continually put forth without explanation. (Ormiston Response Brief at 11).

[9] (United Families Response Brief at 5).

Massachusetts. But the public policy of Rhode Island controls which arrangements labeled "marriage" are, or are not valid in Rhode Island. And, as clearly outlined herein and in other prior briefs, the public policy of Rhode Island does not support same-sex "marriage."

B. There Is No Such Thing As "A Simple Divorce Case."

The process of dissolving marriage is much more extensive, costly, and cumbersome than the process of entering into marriage. In Rhode Island, the marriage-entry process does not involve the courts or judicial process. The cost to the state of persons entering marriage is minimal, involving a simple application process and a few ministerial duties performed by the clerk.[10] On the other hand, the cost of divorce is vast.

Beyond the judicial resources involved in the divorce process (especially if it is contested), state agencies and other resources are burdened with the extensive process of child custody and placement, supervised visitation, paternity, collecting child support and alimony, and every other aspect associated with the fallout of a marriage.[11] Therefore, contrary to the assertions of the Attorney General, this case is not "a simple divorce case." (Attorney General Response Brief at p. 1).[12]

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[10] The parties must, of course, solemnize the marriage, but this does not place a burden on the state.

[11] As a presumptive test case for Rhode Island, this case is poorly postured with no collateral issues involving children, alimony, or otherwise—things that will likely exist in future cases and demonstrate the burden on Rhode Islands courts.

[12] Appellant Ormiston also echoes the "simple," surface approach, requesting this Court to just recognize that she has a valid "marriage certificate. Recognize it. That is it." (Ormiston Response Brief at 4).

C. Rhode Island Is Not The Las Vegas Of Divorce.

The Attorney General and others contend that § 15-5-1 is some semblance of a relationship trash can—there and available for the disposal and discarding of any and all relationships. Specifically, the Attorney General calls § 15-5-1 a "catch all" which gives the Rhode Island courts "a truly expansive ability to dissolve numerous relationships . . . ." (Attorney General Response Brief at 1-2). In other words, to the Attorney General and others, Rhode Island courts may serve as a relationship guillotine, severing "whatever-arrangement" a jurisdiction labels "marriage," regardless of whether that relationship is contemplated or protected under Rhode Island law.

The Attorney General's mistaken interpretation of § 15-5-1 means that even the Malaysian polygamous marriage (Section II.A., *supra*) would be granted a "divorce" because such a "marriage" is "void or voidable"—the lynchpin of the Attorney General's argument.[13] Yet, in jumping to his conclusion, the Attorney General skips over the most important word in § 15-5-1—"marriage." Like the Appellants and their supporters, the Attorney General postures the term "marriage" as meaning something other than the union of one man and one woman.

Moreover, while § 15-5-1 permits divorces from "marriages" that are "void or voidable," it does not provide that divorce is an available remedy for everything else. A close analysis of *Leckney*[14] and its progeny provides the key for deciphering the full

[13] As discussed in Section IV.A., *infra*, the proper methodology for addressing any relationship labeled "marriage" not involving one man and one woman, under any set of circumstances, is to declare them void *ab initio*.

[14] *Leckney v. Leckney*, 26 R.I. 441, 59 A. 311 (1904).

meaning and intent of § 15-5-1. (*See* FRC and Mook Initial Brief at 30-32). The marriage at issue in *Leckney*, though void because it was bigamous, was still a marriage—a union between one man and one woman. Void marriages of one man and one woman are terminable under § 15-5-1, not "whatever-arrangement" brought forth (even if it is inappropriately labeled a "marriage").[15]

The Attorney General attempts to redefine "marriage" for all of Rhode Island. Throughout his previously-issued opinions, and his briefing before this Court, the Attorney General never once asks the most important question—what is marriage? Of course, marriage is, and has always been, the union of one man and one woman. (*See* FRC and Mook Initial Brief at 14-16).

III. COMITY INVOLVES "MUTUAL" RECOGNITION.

Appellant Ormiston does grasp that the doctrine of comity involves a semblance of "mutual recognition." (Ormiston Response Brief at 10). Yet, Ms. Ormiston fails to explain how this Court can achieve the goal of "mutual recognition" in the realm of same-sex "marriage" when same-sex "marriage" does not exist in Rhode Island.

[15] Moreover, if this Court chose to grant a same-sex "divorce," the court could create an incentive for others with same-sex "marriages" to come to Rhode Island to obtain a divorce because of any existent or perceived favorability in Rhode Island's divorce laws. Forum shopping in the realm of divorce is problematic and results in prosaic litigation. *See Williams v. North Carolina*, 325 U.S. 226 (1945) (struggling to determine if a North Carolina married man and woman could travel to Nevada solely for the purposes of obtaining a divorce where North Carolina law would not allow for the divorce).

A. Appellants And Their Supporting *Amici* Fail To Address The "Golden Rule" And Reciprocal Aspects Of Comity

Amici accurately outlined the historical tenants of comity, including its adoption in Rhode Island. (*See* FRC and Mook Initial Brief at 6-23). The essence of the doctrine is that a jurisdiction will extend comity on an issue where it seeks reciprocal comity on that same matter. None of the responding briefs advocating for the recognition of same-sex "marriage" address this fundamental principle.[16] This principle is ignored because acknowledging its essential facets would lead to the unraveling of Appellants' reliance on *Chace*.[17]

B. *Chace* Cannot Be Properly Considered Exclusive Of The "Interest-Weighing" Approach To Conflicts Of Law

The Appellants and their supporting *amici* never discuss *In re Jenckes*, 6 R.I. 18 (1859), when comity was first recognized by this Court, or *Woodward v. Stewart*, 104 R.I. 290, 243 A.2d 917, 923 (1968), when this Court adopted the "interest-weighing" approach to conflicts of law. Such a discussion would take them out of their self-created "*Chace* Box," where they view comity as they wish it to be. The Appellants argue a strict "place of celebration" rule,[18] though this Court has never once stated that the "place of celebration" rule is the law in Rhode Island. In fact, this Court has never even used the words "place of celebration" in its jurisprudence. Of course, the "place of celebration" rule stems from the theory of vested rights, which this Court rejected long ago. (*See* FRC

[16] GLAD does actually acknowledge *Amici's* comity argument, but summarily dismisses comity's "golden rule" form as illogically vitiating all choice of law questions. (GLAD Response Brief at 25 n.19).
[17] *Ex Parte Chace*, 26 R.I. 351, 58 A. 978 (1904).
[18] (Ormiston Response Brief at 11).

and Mook Initial Brief at 6). Therefore, invoking *Chace* in a vacuum allows the Appellants to manipulate it as they need to support their argument.[19]

Comity in Rhode Island is not a rule of strict application, but one that involves mutual and reciprocal applications in a true "golden rule" spirit. However, as this reality is not helpful to Ormiston and her supporters, it is ignored. *Amici's* outline of the doctrine of comity in Rhode Island, and its potential application to this case,[20] are largely uncontradicted by any party or *amici*.

None of this deters GLAD from arguing that same-sex "marriage" carries the common consent of nations.[21] Since GLAD touts European acceptance as a partial basis for the recognition of the relationship at issue,[22] it is noteworthy that European courts have rejected same-sex "marriage" for their respective societies. Specifically, and even though it follows the "place of celebration" rule for foreign marriages, the English High Court of Justice refused to acknowledge, as a marriage, a same-sex "marriage" licensed by Canada, a sovereign member of its own Commonwealth. *Wilkinson v Kitzinger & Ors*, [2006] EWHC 2022, ¶ 15 (Fam) (31 July 2006).[23] In refusing its invitation to redefine marriage, the High Court of Justice stated:

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[19] True to form, GLAD makes known that it both wants and prefers a "straightforward application of Chace" as the easiest solution and one that will "maintain[] the status quo." (GLAD Response Brief at 27 n.21). However, perhaps understanding that *Chace's* value of authority is weak, GLAD suggests that "[t]his Court can modify Chace." (GLAD Response Brief at 26 n.20). Respectfully, GLAD is correct in that only by "modifying" *Chace* would it then carry any of the precedential value that the Appellants and their supporters claim it to have.

[20] (*See* FRC and Mook Initial Brief at 6-23).

[21] (GLAD Response Brief at 14, 18-23).

[22] (*See* GLAD Initial Brief at 31 n.24).

[23] *See* http://www.bailii.org/ew/cases/EWHC/Fam/2006/2022.html.

> It is apparent that the majority of people, or at least of governments, not only in England but Europe-wide, regard marriage as an age-old institution, valued and valuable, respectable and respected, as a means not only of encouraging monogamy but also the procreation of children and their development and nurture in a family unit (or "nuclear family") in which both maternal and paternal influences are available in respect of their nurture and upbringing.
>
> The belief that this form of relationship is the one which best encourages stability in a well regulated society is not a disreputable or outmoded notion based upon ideas of exclusivity, marginalisation, disapproval or discrimination against homosexuals or any other persons who by reason of their sexual orientation or for other reasons prefer to form a same-sex union.
>
> If marriage, is by longstanding definition and acceptance, a formal relationship between a man and a woman, primarily (though not exclusively) with the aim of producing and rearing children as I have described it, and if that is the institution contemplated and safeguarded by Article 12, then to accord a same-sex relationship the title and status of marriage would be to fly in the face of the Convention as well as to fail to recognise physical reality.

Wilkinson, at ¶ 118-20 (emphasis added). Moreover, in a similar case seeking the recognition of same-sex "marriage," the Ireland High Court declined to recognize same-sex "marriage," observing the following:

> The Plaintiffs referred frequently in the course of this case to the "changing consensus" but I have to say the there is little evidence of that. The consensus around the world does not support a widespread move towards same sex marriage. There has been some limited support for the concept of same sex marriage as in Canada, Massachusetts and South Africa together with the three European countries previously referred to but, in truth, it is difficult to see that as a consensus, changing or otherwise.

Zappone v. Revenue Comm'rs of Ireland et al., IEHC (December 14, 2006).[24] From these European opinions, only recently handed down, it remains clear that same-sex "marriage" is not a trend or accepted standard by the common consent of nations and their judiciaries, especially those in Europe. In the end, because it contravened public policy, the English court would not extend strict comity and the "place of celebration" rule to a Canadian same-sex "marriage," and the Irish court refused to redefine marriage. *Wilkinson*, at ¶ 130; *Zappone*, at p. 125. This case does not warrant a conclusion different from that reached by the English and Irish courts.

Only one of the fifty United States has redefined marriage. Of the 192 member countries of the United Nations, 187 of them (97.4%) do not recognize same-sex "marriage." If a poll of the nations (and states) carries any legal weight, it fulfills GLAD's "dispositive standard" on whether same-sex "marriage" has the common consent of the nations (and states).[25] To the extent that this Court sees fit to address the public policy exception outlined in *Chace*, the exception is clearly satisfied. (*See* FRC and Mook Initial Brief at 16-23).

IV. THE IDEA OF THE APPELLANTS BEING LEFT IN "LEGAL LIMBO" IS BOTH UNTRUE AND BEYOND THIS COURT'S SCOPE OF REVIEW.

In an attempt to convince this Court that it must do something on behalf of Chambers and Ormiston, the Attorney General argues that the failure of this Court to offer the Appellants a Rhode Island remedy will "lock Ms. Chambers and Ms. Ormiston

[24] *See* http://www.ucc.ie/law/irishlaw/blogger/2006/12/same-sex-marriage-high-court-case.html and http://www.ireland.com/newspaper/special/2006/lesbianmarriageruling/index.pdf.
[25] (GLAD Response Brief at 19 n.14).

in a legal limbo for all eternity." (Attorney General Response Brief at 2). Ormiston shares this view, characterizing this case as a "purgatory" which will result in "legal limbo" if she cannot get a divorce in Rhode Island. (Ormiston Response Brief at 15). These dramatizations of the parties' circumstances are inaccurate.

A. This Court Should Declare As Void *Ab Initio* The Appellants Alleged "Marriage."

As outlined in *Amici's* Initial Brief, because the relationship at issue is not a marriage, § 15-5-1 is not an available remedy for the Appellants. (FRC and Mook Initial Brief at 28-33). Thus, this Court's best option is to declare the Appellants' relationship void *ab initio*. This was the approach taken by the California Supreme Court when San Francisco began issuing same-sex "marriage" licenses, and a New York court when a man inadvertently "married" another man. *See Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, 1118 (Cal. 2004) ("we believe it is appropriate to make clear that the same-sex marriages that already have purportedly come into being must be considered void from their inception."); *Anonymous v. Anonymous*, 325 N.Y.S.2d 499, 501 (N.Y. Sup. Ct. 1971) ("Accordingly, the court declares that the so-called marriage ceremony . . . did not in fact or in law create a marriage contract and that the plaintiff and defendant are not and have not ever been 'husband and wife' or parties to a valid marriage").

The Attorney General argues that *Lockyer* and *Anonymous* are inapplicable because the law of each state where the marriage licenses were acquired did not authorize same-sex "marriage." (Attorney General Response Brief at 3). Thus, because

Massachusetts permitted the same-sex "marriage" license issued to Chambers and Ormiston, the Attorney General asserts that *Lockyer* and *Anonymous* are inapplicable authorities. The Attorney General misapprehends the basis of the rulings in *Lockyer* and *Anonymous*.

Both courts in *Lockyer* and *Anonymous* concerned themselves only with the status of the proffered same-sex "marriage" licenses in the state of residence or presentation, not the place where the same-sex "marriage" license was issued. While California was both the place of licensing and residence in *Lockyer*, the California Supreme Court only concerned itself with whether the licensed relationship warranted recognition under California law. *Lockyer*, 33 Cal.4th at 1113. Therefore, because of the court's focus, the *Lockyer* decision would have been the same if the licenses at issue were issued in Massachusetts or Canada.

Likewise, in *Anonymous*, the New York court did not concern itself with the law of Texas (where the "marriage" license was issued). Such was irrelevant to the court's inquiry. Rather, the *Anonymous* court appropriately focused on the invalidity of the relationship presented to that court. Under New York law, the purported relationship was missing "the two basic requirements for a marriage contract, i.e., a man and a woman." *Anonymous*, 325 N.Y.S.2d at 501. Therefore, the purported "marriage" was void *ab initio*.

The instant case presents a circumstance no different than that presented in *Lockyer* and *Anonymous*. Whether the Appellants acquired a same-sex "marriage"

license legally is irrelevant.[26] This Court's focus is appropriately on the absence of any legally-significant status of the Chambers/Ormiston relationship under Rhode Island law. Accordingly, this Court should declare their relationship void *ab initio* and deny any extension of jurisdiction to the matter.

B. The Appellants Have A Clear Legal Remedy.

Though they would need to fulfill a domicile requirement, the Appellants can dissolve their relationship within the State of Massachusetts. Mass. Gen. Laws Ann. Ch. 208, § 1 *et seq*. Moreover, the Massachusetts domicile requirement does not include a fixed timeline. Mass Gen. Laws Ann. Ch. 208, § 4 (1975). Thus, unlike Rhode Island, which requires a definitive showing of residency for at least one year,[27] Massachusetts has domicile requirements which are easier to fulfill.

Interestingly, the Appellants' search for a "divorce" mirrors their prior search for a "marriage." Before traveling to Massachusetts, Chambers and Ormiston possessed true marital rights within Rhode Island. Each had the exact same rights of marriage as every other Rhode Island citizen to enter into the union of one man and one woman. Yet, rather than exercise those rights, they sought different rights than those available to Rhode Islanders. Thus, they went to Massachusetts to get what they could not obtain in Rhode Island. In Massachusetts, they acquired a same-sex "marriage" license.

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[26] Indeed, if this Court rules that the "marriage" was void ab initio, Massachusetts cannot issue further "marriage" licenses to Rhode Island same-sex couples. *See Schulman v. Attorney General*, 850 N.E.2d 505 (Mass. 2006).

[27] *See* R.I. GEN. LAWS § 15-5-12 (1956).

Similarly, Chambers and Ormiston possess the same rights of divorce possessed by any other Rhode Islander. If they had a marriage that was authorized by Rhode Island law (a union between one man and one woman), they could seek a divorce, just like everyone else. However, neither Chambers nor Ormiston are parties to a marriage. They have a same-sex "marriage" license from Massachusetts, but seek rights that are not available to any other Rhode Islanders. If this Court is unwilling to declare their relationship void *ab initio*, the answer to their self-induced "eternal purgatory" is either to reconcile or return to Massachusetts to have their relationship severed.

C. The Appellants Assumed The Risk Of Not Being Able To Acquire A Remedy Within Rhode Island For A Contract That They Could Not Enter In Rhode Island.

Continually, the parties assert that they are somehow being punished for a "marriage" that they pursued in "good faith." (Ormiston Response Brief at 4). However, "good faith" is not part of the jurisdictional equation for this Court. Moreover, it strains credibility to argue "good faith" when the Appellants left Rhode Island to obtain a same-sex "marriage" in Massachusetts—a contract they knew they could not enter in Rhode Island. In so doing, they assumed the risk that their relationship might not be recognized in the 49 states that reject same-sex "marriage."

Appellants present themselves to this Court as victims. These pleas, while emotionally strong, are not justification for this Court to ignore Rhode Island law for the sake of reaching a result sympathetic to the desires of the Appellants. Ultimately, the parties simply ignore that they have a remedy available and waiting for them in Massachusetts. Rather, they seek only maximum convenience, while urging that

rejecting their convenience is inherently harsh. The parties made a conscious choice to leave Rhode Island for the contract they desired. That the parties may now have to follow Massachusetts law to gain relief was a known risk and cannot, therefore, justify their posture as procedural and jurisdictional "victims."

V. PUBLIC POLICY REGARDING MARRIAGE IN RHODE ISLAND APPROPRIATELY EMPHASIZES THE OPPOSITE SEX NATURE OF MARRIAGE.

A. Rhode Island's Marriage Laws Affirm The Opposite Sex Composition of Marriage.

In her Response Brief, Ms. Ormiston asserts that Rhode Island's marriage statutes possess the vagueness required to permit same-sex "marriage." (Ormiston Response Brief at 12). Of course, Ormiston consistently ignores §§ 15-1-1 and 15-1-2 which make clear that marriage in Rhode Island is an institution involving opposite sex couples only.

GLAD likewise argues that § 43-3-3 of Rhode Island's General Laws means that same-sex "marriage" also flows from Rhode Island law. (GLAD Response Brief at p. 22). GLAD ignores the preceding statute which provides:

> In the construction of statutes the provisions of this chapter shall be observed, unless the observance of them would lead to a construction inconsistent with the manifest intent of the general assembly, or be repugnant to some other part of the statute.

R.I. GEN. LAWS § 43-3-2 (1956). It was clearly not the intent of § 43-3-3 to remove the opposite sex nature of marriage from Rhode Island's laws. Rhode Island's laws on marriage (and divorce) are a collective work of rights and responsibilities regarding the union of one man and one woman. (*See* FRC and Mook Initial Brief at 17-20).

Section 43-3-3 was designed to bridge innocuous, not substantive, gaps in legislation where the descriptive terms "men" or "man" are used for all persons. *See, e.g.*, *Pontbriand v. Sundlun*, 699 A.2d 856, 863 (R.I. 1997) (clarifying that the "reasonable man" standard also applied to women). If this Court utilized § 43-3-3 to permit same-sex "marriage," one of the many impermissible results would be to vitiate the necessity of either § 15-1-1 or § 15-1-2, since both statutes would then not be necessary. Not only would such a construction violate the rules of statutory construction,[28] it would also violate § 43-3-2 in creating a result "inconsistent with the manifest intent of the general assembly." Rhode Island's marriage laws (and divorce laws) relate only to the union of one man and one woman.

B. There Is No Gap Or Silence In Rhode Island Law Regarding Same-Sex "Marriage."

As part of her campaign for the redefinition of marriage, Ormiston argues that Rhode Island does not contain "a statute forbidding gay marriage." (Ormiston Response Brief at 12). As explained in *Amici*'s Response Brief, there are various things upon which Rhode Island law is silent. (FRC and Mook Response Brief at 3-4). Yet, a mere silence on any particular issue does not constitute the express acknowledgment or acceptance of the issue. This Court is to avoid the application of mere semantics that will defeat the purpose of a legislative scheme. *State v. Delaurier*, 488 A.2d 688, 693-94 (R.I. 1985).

[28] (*See* FRC and Mook Response Brief at 5-6).

Worse, Appellants and their supporters are deceptively attempting to turn the *defensive* measures of others into *offensive* weapons for themselves. The various Defense of Marriage Acts and constitutional amendments regarding marriage that were enacted by forty-five of our country's fifty states were not done because each state's law permitted same-sex "marriage," or to fill glaring holes in the law. Like Rhode Island, the several states who took *defensive* constitutional and legislative actions already had clear legislative schemes in place that did not require clarification regarding their meaning. However, these states also sought to take *defensive* measures to protect against the radical redefinition of marriage and marital rights through litigation rather than the political process. Hence, the name ***Defense*** of Marriage Act.

The absence of a Defense of Marriage Act in Rhode Island does not alter the context, meaning, or substance of the clear statutory scheme that already exists. There is no question about what marriage is in Rhode Island. The Appellants, however, are arguing that this Court should decide what marriage should be. That is a political question that should be decided through the political process.

CONCLUSION

For the reasons outlined herein, coupled with those arguments presented in these *Amici's* Initial and Response Briefs, this Court should rule that the Family Court cannot exercise jurisdiction over the same-sex "marriage" pleaded by the parties, declaring it void *ab initio* under Rhode Island law.

Respectfully submitted this the 31st day of August, 2007.

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*Motions for Admission *Pro Hac Vice* pending