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

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

ON A CERTIFIED QUESTION OF LAW
FROM THE FAMILY COURT

REPLY BRIEF OF *AMICI CURIAE* UNITED FAMILIES INTERNATIONAL, FAMILY WATCH INTERNATIONAL, and FAMILY LEADER FOUNDATION

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I.

SUMMARY

The responsive briefs of those arguing for Rhode Island recognition of the Chambers-Ormiston Massachusetts marriage make explicit what was only implied in their opening briefs – that the word "marriage" in this State's Family Court jurisdiction statute, R.I. Gen. Laws § 8-10-3, should be interpreted to mean any arrangement that the court or legislature of any other state (and, presumably, any other nation) labels a "marriage." This is the "whatever-arrangement" interpretation of the jurisdiction statute. The arguments made in support of that interpretation, however, are clearly wrong.

Those arguments generally ignore the fact that this State already has settled law for determining when a foreign-sanctioned arrangement will be treated as a "marriage" within the meaning of Rhode Island's laws. That settled law is the general rule of validation, with its public-policy exception. Because the pro-recognition responsive briefs generally ignore that fact, they provide no meaningful discussion of why this Court should now jettison its settled law in favor of the new whatever-arrangement interpretation.

Another error is seen in the Bender Responsive Brief's "judicial convenience" argument made in support of the whatever-arrangement interpretation; it is that it will be much easier for our trial-court judges to determine whether a foreign jurisdiction has labeled an arrangement a "marriage" than for them to determine whether recognition might implicate important Rhode Island public policies. But it is not hard for a judge to

determine whether the two parties to a foreign-sanctioned arrangement are a man and a woman or not. And that, after all, is what *this* case will mean for our trial-court judges if this Court holds for non-recognition. By the same token, if this Court holds for recognition, our trial-court judges will not have to do even that much. As to questionable marriages other than what Massachusetts has recently ordained, many decades of experience with the settled law's public-policy exception has shown no undue burdens on our judiciary.

The Bender Responsive Brief makes another argument, this one quite un-serious. It is that when a Rhode Island court uses the whatever-arrangement interpretation to treat the Chambers-Ormiston Massachusetts marriage as a "marriage" for purposes of the jurisdiction statute, that court and this State are not thereby "recognizing" that arrangement as a "marriage" for any Rhode Island purpose and that, therefore, this Court need not reach the recognition issue. That argument ignores the whole base and substance of what it means for one state to recognize another state's marriage and in the process gravely distorts the law's well-settled meaning of "recognition." And to add to the un-seriousness, the argument expressly relies on a conflict of laws rule designed for the very purpose of resolving no other issue but the recognition issue. (That is the general rule of validation, although, true to the pattern, the Bender Responsive Brief makes that rule absolute by covertly cutting away the public-policy exception always found in the rule's common-law formulation.)

The concept of "recognition" in settled law means simply this: The forum state recognizes a foreign state's juridical act by giving effect to it for one or more purposes *in*

the forum state. Thus, to say that the Chambers-Ormiston Massachusetts marriage is a "marriage" within the meaning of our jurisdiction statute is to recognize that arrangement for at least one important Rhode Island purpose. That is indeed recognition, and whether to do it is the recognition issue. The legally valid way to resolve that recognition issue is to apply the well-settled law developed for that very purpose. That is the common law's general rule of validation, with its public-policy exception. That is Rhode Island's common law.

The Bender Responsive Brief attempts an argument based both on the fact that the Family Court has jurisdiction to grant a divorce in the case of a void marriage, R.I. Gen. Laws § 15-5-1, and on *void's* definition as "a legal nullity." This argument, however, *presupposes* that the Massachusetts marriage of the two women is a "marriage" within the meaning of Rhode Island law, albeit one our law would label a "void marriage." "Void," however, is an adjective and *the real question* in this case centers on the noun: whether (and on what basis) the union of two women will be treated *here* as a "marriage." This responsive brief wants to resolve that question on the basis of a question-begging presupposition ("it is a 'marriage,' so even if it is a 'void marriage' the Family Court has jurisdiction to grant the divorce").

The GLAD and Bender responsive briefs also err badly in their attempts to bolster the whatever-arrangement interpretation by minimizing the large difference between the two possible meanings of "marriage" in the jurisdiction statute. One such attempt is seen in GLAD's efforts to paint as weak the "legal fact" that this State's laws support the man/woman meaning and thereby facilitate the man/woman marriage institution. But the

social fact is that the man/woman meaning is a widely shared public meaning of marriage in this State, and this State's marriage laws are premised on, reflect, and facilitate that strong social fact. It is therefore simply wrong to suggest that this State's laws care little or nothing about the man/woman meaning at the core of and constitutive of Rhode Island's vital social institution of marriage. Another failed attempt at bolstering is seen in the constant refusal to acknowledge this: To treat the Chambers-Ormiston arrangement as a "marriage" for the jurisdiction statute requires that the word then mean, at least in that context, "the union of any two persons." But to ignore these twin facts does not make them go away or render them unimportant: Chambers and Ormiston can have a "marriage" for purposes of this State's divorce jurisdiction statute only if the meaning of that word becomes "the union of any two persons"; if that word continues to mean "the union of a man and a woman," their arrangement cannot qualify. Meanings matter, and institutionalized (because law-supported) meanings matter very much. That reality should not be ignored.

Because the purpose and effect of the whatever-arrangement interpretation is to displace the settled law (the general rule of validation, with its public-policy exception), that interpretation operates to abrogate and alter this State's common law. Yet there continues to be no evidence (let alone the requisite clear evidence) that the Legislature, in enacting the jurisdiction statute, intended such an abrogation. The pro-recognition responsive briefs also fail on this point.

Although the pro-recognition responsive briefs have made considerable and wayward efforts to keep this Court from considering the public policies at stake, the fact

remains that settled law makes such consideration this Court's unavoidable task in this case. That is because this Court (like the Family Court) has a duty to resolve the subject-matter jurisdiction issue, because such resolution requires resolution of the recognition issue, and because the settled law governing resolution of the recognition issue requires this Court to determine whether recognition will adversely affect important Rhode Island public policies. Both *Ex parte Chace* and the Restatement (Second) of Conflict of Laws make all this clear: no recognition if legal sanction of the arrangement "is strongly against the public policy of the jurisdiction"[1] or, stated slightly differently, if it "violates the strong public policy of" the state.[2]

From the outset, we have demonstrated (as does the scholarly literature and key court opinions) that recognition will adversely affect important Rhode Island public policies. But the pro-recognition responsive briefs assiduously refuse to engage that demonstration. Indeed, they ignore or otherwise evade it. Nevertheless, the realities relative to marriage as a vital social institution remain just that, realities, and they underscore the social damage resulting – *as a matter of fact* – from recognition's unavoidable alteration of the man/woman meaning at the core of this State's marriage institution. That damage includes diminution in and ultimately loss of many of that institution's valuable social goods. One is effective protection of a child's right (every child's right) to know and be raised by his or her own mother and father, with exceptions only in the best interests of the child, not those of any adult. Others include provision of the *husband* and *wife* statuses and identities, of society's most effective means of

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[1] *Ex parte* Chace, 26 R.I. 351, 58 A. 978, 980 (1904).
[2] RESTATEMENT (SECOND), CONFLICT OF LAWS § 283(2) (1971).

bridging the male-female divide, and of the optimal child-rearing mode (married mother-father child-rearing). To lose those valuable social goods "is strongly against the public policy of" Rhode Island. The pro-recognition response briefs *nowhere* say otherwise, exactly because they refuse to come to grips with the clear and really uncontroversial social consequences of what they are urging this Court to do – withdraw the law's support, in at least one important context, from the man/woman meaning at the core of and constitutive of this State's vital social institution of marriage and then place the law's imprimatur on the displacing "union of any two persons" meaning.

Meanings matter. Institutionalized meanings matter very much. "[F]or people interested in institutions and social change, public meaning is everything. All the rest flows from it."[3]

II.

THE PRO-RECOGNITION RESPONSIVE BRIEFS MAKE EXPLICIT THEIR "WHATEVER-ARRANGEMENT" INTERPRETATION OF "MARRIAGE" IN THE JURISDICTION STATUTE, BUT THAT INTERPRETATION IS CLEARLY WRONG.

The responsive briefs of those arguing for Rhode Island recognition of the Chambers-Ormiston Massachusetts marriage (collectively "the Recognition Briefs")[4] make explicit what was only implied in their opening briefs – that the word "marriage" in this State's Family Court jurisdiction statute, R.I. Gen. Laws § 8-10-3, must be read as meaning any arrangement that the court or legislature of any other state (and,

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[3] DAVID BLANKENHORN, THE FUTURE OF MARRIAGE 175 (2007).

[4] Those filed by GLAD, the Attorney General, Thomas Bender, and Cassandra Ormiston. The Bender Responsive Brief asserts that it does not argue for or against Rhode Island recognition of the Chambers-Ormiston Massachusetts marriage – but that brief unquestionably does argue for recognition, as shown later – and that this Court need not reach any recognition issue – although this Court clearly must, also as shown later.

presumably, any other nation) labels a "marriage."[5] This is the "whatever-arrangement" interpretation of the jurisdiction statute. All aspects of the argument for the whatever-arrangement interpretation, however, collapse when subjected to even minimal examination.

A. This State already has settled law for determining when a foreign-sanctioned arrangement will be treated as a "marriage" within the meaning of Rhode Island's laws (the general rule of validation, with its public-policy exception), and the whatever-arrangement interpretation is thus an effort to displace that settled law.

The question before this Court is whether Rhode Island will treat the Chambers-Ormiston Massachusetts marriage as a "marriage" within the meaning of the jurisdiction statute; in other words, will this State recognize their arrangement as a marriage, at least for the purpose of divorce. No one expressly denies that this State has settled law designed to answer just that question. That settled law is the general rule of validation, with its public policy exception. That settled law is seen in both *Ex parte Chace*[6] and the Restatement (Second) of Conflict of Laws.[7]

The Bender and GLAD responsive briefs, however, proceed as if there is no settled law in place for that purpose; they present the whatever-arrangement interpretation as what this Court should use, as if the Court were writing on a blank slate.[8] Consequently, the arguments that they make for that interpretation never give good reasons for altering the settled law, and the reasons they give in support of the new approach are uniformly defective. The following sub-sections so show.

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[5] Bender Responsive Brief 6; GLAD Responsive Brief 9-10; Attorney General Responsive Brief 1-2; and Ormiston Responsive Brief 6.

[6] 26 R.I. 351, 58 A. 978, 980 (1904).

[7] RESTATEMENT (SECOND), CONFLICT OF LAWS § 283(2) (1971).

[8] *See, e.g.,* Bender Responsive Brief 6.

B. The "judicial convenience" argument for the whatever-arrangement interpretation is fatally defective.

This State's public and legal (and hence institutionalized) meaning of marriage, for all purposes, has always been "the union of a man and a woman." That such is a reality is hardly surprising; after all, the man/woman marriage institution is both an ancient and a virtually universal social phenomenon.[9]

But for common law conflict-of-laws principles, this State's public and legal meaning of marriage for all other purposes would almost certainly be applied to the word "marriage" in the divorce jurisdiction statute. After all, courts do not without compelling reasons give to a word in one statute a meaning radically different than the meaning given the same word everywhere else.[10] But conflict-of-laws principles do have a role here, and pre-eminent among those principles for purposes of this case is the general rule of validation, with its public-policy exception.

GLAD and Bender, however, do not want this Court to apply that settled law to the Chambers-Ormiston arrangement because to do so would require an honest judicial look at the public policies at jeopardy in the event of recognition. Accordingly, they argue for the whatever-arrangement interpretation of "marriage" in the jurisdiction statute. One leg of the argument is judicial convenience: Because the law now in place requires some public policy analysis, "the burden it would place on Family Court justices whenever a divorce petition involves an out-of-state marriage" is undue, whereas the

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[9] *E.g.*, W. BRADFORD WILCOX ET AL., WHY MARRIAGE MATTERS, SECOND EDITION: TWENTY-SIX CONCLUSIONS FROM THE SOCIAL SCIENCES 15 (2005); BLANKENHORN, *supra* note 3, at 9, 105-106.

[10] *See, e.g.*, In re Adoption of Marlene, 822 N.E.2d 714, 719 (Mass. 2005); Minuteman, LLC v. Microsoft Corp., 795 A.2d 833, 836 (N.H. 2002).

whatever-arrangement interpretation eliminates altogether any consideration of adverse impacts on important Rhode Island public policies.[11]

This "judicial convenience" argument does not work, for a simple reason. We respectfully suggest that it is not hard for a judge to determine whether the two parties to a foreign-sanctioned arrangement are a man and a woman or not. And that, after all, is what *this* case will mean for our trial-court judges if this Court holds for non-recognition. By the same token, if this Court holds for recognition, our trial-court judges will not have to do even that much. As to questionable marriages other than what Massachusetts has recently ordained, many decades of experience with the settled law's public-policy exception has shown no undue burdens on our judiciary. (So why are GLAD and Bender now of a sudden so concerned about judicial workload?) Thus, the Bender Responsive Brief's parade of horrible burdens relative to public policy and "a bigamous marriage, consanguineous marriage, marriage of mentally incompetent persons, a fraudulent marriage," etc.[12] is both not applicable to *this* case and simply bogus as a matter of fact anyway.

C. The "no-recognition-involved" argument for the whatever-arrangement interpretation is wrong.

The Bender Responsive Brief tries another tack in its effort to get this Court to apply the whatever-arrangement interpretation to "marriage" in the jurisdiction statute and thereby not use the settled law devised for resolving the scope of that word (the general rule of validation, with its public-policy exception). The tack is to assert that,

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[11] Bender Responsive Brief 5.
[12] *Id.* at 6.

when a court uses the whatever-arrangement interpretation to treat the Chambers-Ormiston Massachusetts marriage as a "marriage" for purposes of the jurisdiction statute, the court and this State are not thereby "recognizing" that arrangement as a "marriage" for any Rhode Island purpose, that, therefore, this Court need not reach the recognition issue, and that, accordingly, this Court need not apply the settled law devised to resolve the recognition issue.[13]

This argument is not serious. It ignores the whole base and substance of what it means for one state to recognize another state's marriage; in the process, the argument gravely distorts the law's well-settled meaning of "recognition." In the conflict-of-laws area of the common law, the forum state "recognizes" a foreign state's juridical act by giving effect to it for one or more purposes *in* the forum state.[14] Thus, to say that the Chambers-Ormiston Massachusetts marriage is a "marriage" within the meaning of our jurisdiction statute is to recognize that arrangement for at least one important Rhode Island purpose. That is indeed recognition. And whether to do so is indeed the recognition issue. Of course, the right way to resolve that recognition issue is to apply the well-settled law developed for that very purpose. That is the common law's general rule of validation, with its public-policy exception. That is Rhode Island's common law.

To further add to its un-seriousness, the "no-recognition-involved" argument expressly relies on a conflict of laws rule designed for the very purpose of resolving no other issue but the recognition issue.[15] That is the general rule of validation, although,

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[13] Bender Responsive Brief 2-4.
[14] *See, e.g.,* AmJur2d, Conflict of Laws § 9.
[15] *See* Bender Responsive Brief 6.

true to the pattern, the Bender Responsive Brief makes that rule absolute by covertly cutting away the public-policy exception always found in the rule's common-law formulation.[16]

D. The Bender Responsive Brief's "void marriage" argument does not wash because, in wholly circular fashion, it presupposes the conclusion and otherwise refuses to address the real issue.

The Bender Responsive Brief attempts an argument based both on the fact that the Family Court has jurisdiction to grant a divorce in the case of a void marriage, R.I. Gen. Laws § 15-5-1, and on *void's* definition as "a legal nullity."[17] This argument, however, *presupposes* that the Massachusetts marriage of the two women is a "marriage" within the meaning of Rhode Island law, albeit one our law would label a "void marriage." "Void," however, is an adjective and *the real question* in this case centers on the noun: whether (and on what basis) the union of two women will be treated *here* as a "marriage." This responsive brief want to resolve that question on the basis of a question-begging presupposition ("it is a 'marriage,' so even if it is a 'void marriage' the Family Court has jurisdiction to grant the divorce").

Indeed, the Bender and GLAD briefs quite consistently presuppose that the Chambers-Ormiston arrangement is a "marriage."[18] Of course, to always presuppose that it is a "marriage" for some or all Rhode Island purposes is to make it quite easy to reach the conclusion that this Court should recognize it as a "marriage" for some or all Rhode Island purposes. Indeed, we see the GLAD Responsive Brief opening with that very

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[16] *Id.*

[17] *Id.* at 7-9.

[18] *See, e.g.*, GLAD Responsive Brief 1. It has been interesting to us that the GLAD and Bender briefs seem so very well coordinated.

presupposition tactic: "In short, the question is how Rhode Island law deals with a particular marriage."[19] But this presupposition tactic is profoundly unhelpful in resolving *the real issue*: whether this Court will recognize the Chambers-Ormiston arrangement as a "marriage" for some or all Rhode Island purposes. Like all arguments that presuppose the conclusion, the GLAD and Bender presupposition tactic is profoundly unhelpful exactly because it initiates circular reasoning: "Because Chambers and Ormiston are married, their marriage should be treated as a marriage for purposes of the jurisdiction statute."

The "void marriage" argument provides no support to the whatever-arrangement interpretation.

E. In attempting to bolster the whatever-arrangement interpretation by minimizing the large difference between the two possible meanings of "marriage" in the jurisdiction statute, the GLAD and Bender responsive briefs err badly.

The GLAD and Bender responsive briefs use several related tactics to bolster the whatever-arrangement interpretation. Each, however, has a quicksand foundation in the law and the facts.

The first tactic is seen in GLAD's attempt to minimize the strength of the man/woman meaning that has always been, for all purposes, the public and legal meaning of marriage in this State. As noted, that meaning is not surprising given that man/woman marriage is an ancient and virtually universal social institution. What would be surprising, indeed shocking, would be for folks to wake up one morning and be told that, without the force of judicial or legislative action, the core public meaning of marriage in

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[19] *Id.* at 1.

this State had somehow changed from "the union of a man and a woman" to "the union of any two persons." Yet the GLAD responsive brief does suggest that such has indeed happened; that brief both minimizes this State's laws that make clear the man/woman meaning of marriage and, at the same time, maximizes the fact that the Legislature has recently had before it but not enacted bills saying that marriage in this state does not encompass the union of a same-sex couple.[20] In this way, the brief paints as weak the "legal fact" that this State's laws support the man/woman meaning and thereby facilitate the man/woman marriage institution.

This whole tactic, however, ignores the large and strong social fact undergirding the supposedly weak legal fact. It is that the widely shared public meaning at the core of and constitutive of this State's social institution of marriage is "the union of a man and a woman."[21] When the laws that GLAD belittles are accurately seen as facilitating that vital social institution,[22] those laws are rightly perceived as very strong indeed.

The second and related tactic is seen in the constant refusal to acknowledge this: To treat the Chambers-Ormiston arrangement as a "marriage" for the jurisdiction statute requires that the word then mean, at least in that context, "the union of any two persons." But to ignore these twin facts does not make them go away or render them unimportant: Chambers and Ormiston can have a "marriage" for purposes of this State's divorce jurisdiction statute only if the meaning of that word becomes "the union of any two

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[20] GLAD Responsive Brief 21-22.

[21] *See* Monte Neil Stewart, *Marriage Facts and Critical Morality* 45-49 (2007), *available at* http://www.marriagelawfoundation.org/mlf/publications/Facts.pdf.

[22] The notion that the law "creates" marriage, rather than facilitates the social institution, has been rather thoroughly debunked. *See, e.g.*, Monte Neil Stewart, *Eliding in Washington and California*, 42 GONZAGA L. REV. 501, 536-37 (2007).

persons"; if that word continues to mean "the union of a man and a woman," their arrangement cannot qualify. Again, meanings matter, and institutionalized (because law-supported) meanings matter very much. That reality should not be ignored, nor should any thoughtful person involved in this case refuse to consider (as GLAD and Bender have) the ways in which the two possible and radically different meanings of "marriage" in this State's law matter for our society. That work is at the heart of the requisite public-policy analysis, which we address in a moment.

F. Because the whatever-arrangement interpretation operates to abrogate and alter this State's common law, and because there is no evidence (let alone the requisite clear evidence) that the Legislature, in enacting the jurisdiction statute, intended such an abrogation, that interpretation must fail.

In our responsive brief, we demonstrated how the whatever-interpretation of the jurisdiction statute operates to abrogate and alter the common law.[23] The interpretation does that by eliminating the public-policy exception in the law developed to determine when a foreign-sanctioned arrangement is a "marriage" for Rhode Island purposes.[24] We also demonstrated that, because there is no evidence (let alone the requisite clear evidence) of legislative intent for such an abrogation, the interpretation cannot stand.[25] That continues to be so.

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[23] UFI Responsive Brief 7-8.
[24] *Id.*
[25] *Id.*

III.

THE GLAD RESPONSIVE BRIEF'S PUBLIC-POLICY ARGUMENTS FAIL TO COUNTER THIS REALITY: RECOGNITION OF THE CHAMBERS-ORMISTON ARRANGEMENT AS A "MARRIAGE" FOR ANY PURPOSE WILL SEVERELY AND ADVERSELY AFFECT IMPORTANT RHODE ISLAND PUBLIC POLICIES.

Our earlier briefs demonstrated how recognition of the Chambers-Ormiston arrangement as a "marriage" for any purpose will severely and adversely affect this State's important public policies. The GLAD Responsive Brief fails to counter that reality, fundamentally because it is a reality but also because GLAD both refuses to engage what we have set forth and distorts in an important way our argument.

A. The GLAD Responsive Brief ignores and thereby refuses to engage the social realities central to the public-policy issue.

The GLAD Responsive Brief ignores this reality: In *this* case, this Court is being asked to recognize as a "marriage" an arrangement so very much more different – in a profound way – than anything presented to it (or any other American appellate court) ever before. Never before has an American appellate court been asked to recognize as a "marriage" an arrangement that *can* be recognized as such *only if* a core meaning constitutive of the jurisdiction's vital social institution of marriage is radically altered in the law.[26] These simple facts remain:

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[26] The bigamy and polygamy cases do not qualify for reasons that David Blankenhorn has explained:

> [I]n societies that permit polygyny, a man with three wives marries each of his wives separately, never as a group. Legally, economically, and practically, he has a distinct marital relationship with each of his wives. Under the existing marriage rules of his society, he has gotten married three different times, while each of his wives has gotten married only once. Each child of a polygynous marriage is legally as well as in other respects the child of one mother and one father. … [C]onceptually, a

- Chambers and Ormiston can have a "marriage" for purposes of this State's divorce jurisdiction statute only if that word's meaning is altered to "the union of any two persons"; if that word continues to mean "the union of a man and a woman," their arrangement cannot qualify;
- to say to the people of this State that Chambers and Ormiston can get a Rhode Island divorce is therefore to say, unavoidably, that those two are now married in the eyes of this State, even if only for that important and highly visible purpose;
- to say that is to begin the withdrawal of the law's support for the man/woman meaning and hence to begin the de-institutionalization of man/woman marriage in this State, leading to this State having either genderless marriage or no normative marriage institution at all (because of the absence of a crucial widely shared public meaning);
- a society with the man/woman marriage institution is a very different society from one with either genderless marriage or no normative marriage institution at all, as serious scholars of social institutions acknowledge (regardless of their own political or sexual orientation).[27]

Because of these realities, which GLAD ignores, its briefs' analysis of *Ex parte Chace*[28] is profoundly misguided – other than the acknowledgement that, yes, adverse

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> polygynous marriage conforms to the principal that each marriage unites one woman with one man.

BLANKENORN, supra note 3, at 255.

[27] A partial list of the authorities appears at Stewart, *Washington and California*, *supra* note 21, at 507 n. 28.

[28] That analysis is set forth in GLAD Opening Brief 16-29; GLAD Responsive Brief 11-23.

impacts on important public policies must be considered in the recognition context. The GLAD analysis would have this Court conclude that *Ex parte Chace* does not allow non-recognition when recognition would require radical alteration, in at least one important and highly visible context, of a core meaning constitutive of this State's vital social institution of marriage; when that alteration will begin the erosion of that publicly shared meaning and therefore ultimately the de-institutionalization of this State's marriage institution; when the erosion of that core meaning will diminish the valuable social goods that it materially and even uniquely produces; and when the primary beneficiaries of those to-be-lost social goods are this State's children, now and through the generations.

We respectfully submit that GLAD's reading of *Ex parte Chace*, in light of these realities, eliminates as a practical matter for all purposes and all cases the public-policy exception clearly acknowledged in that case. That GLAD's reading does this should not be surprising given that GLAD elsewhere asks, in a much more straight-forward way, for just such an elimination.[29] Nor should GLAD's reading be surprising in light of the fact that GLAD simply has no way to counter the strong social institutional (and therefore public policy) reasons for non-recognition.

B. The GLAD Responsive Brief also refuses to engage the social realities central to the public-policy issue by distorting our argument.

The GLAD Responsive Brief distorts what we are saying in the public-policy context. That brief tells this Court that for us the issue in this case is whether this Court will perpetuate man/woman marriage or rather will redefine marriage in this State from

[29] GLAD Opening Brief 28-29.

"the union of a man and a woman" to "the union of any two persons," in other words, judicially mandate genderless marriage.[30] Of course, if this Court recognizes the Chambers-Ormiston arrangement as a "marriage" for all Rhode Island purposes, then the issue really is that big – exactly because at that point the meaning of "marriage" whenever the concept appears in Rhode Island law must be "the union of any two persons." But with respect to a limited recognition, that is, recognition of the arrangement as a "marriage" only for purposes of the divorce jurisdiction statute, what we have consistently and clearly said is exactly what we say in the bullet points in the previous sub-section. That is, in a nutshell, that limited recognition must operate to begin the erosion of the man/woman meaning as a widely shared public meaning and therefore begin the de-institutionalization of this State's marriage institution.

We respectfully submit that GLAD is spreading a misunderstanding of what is really at stake in this case. Here is a typical example from GLAD's Responsive Brief: "A forum's recognition of a marriage from another jurisdiction as a valid marriage says *absolutely nothing* about the eligibility for marriage in the forum under forum law."[31] This is profoundly misleading. In this case, to say that these two Rhode Island women are married for all purposes under Rhode Island law is to say that "marriage" under this State's laws means "the union of any two persons."[32] And that new meaning says *very*

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[30] GLAD Responsive Brief 2 (the UFI Opening Brief "suggest[s] that recognizing a Massachusetts marriage of a same-sex couple for the purpose of entertaining a divorce action would mean that marriage for same-sex couples has become the law of Rhode Island as well.").

[31] GLAD Responsive Brief 3 (emphasis added).

[32] It could not be otherwise, both because of sense and nonsense in the realm of words and because of social institutional realities. *See* UFI Opening Brief 3-4.

much indeed about eligibility to marry in this State. That is especially so in light of GLAD's assertion elsewhere that laws limiting Rhode Island marriage to man/woman couples are weak, express no strong public policy, and must be read in light of the statute that says, "Every word importing the masculine gender only may be construed to extend to and include females as well as males,"[33] which means, according to GLAD, that "any gendered limitations in state law can be read as gender neutral when required."[34]

GLAD's approach of ignoring the social effects of recognition and of distorting what we say about those effects is not just unhelpful, it is hurtful – exactly because that approach's purpose and effect is to keep all eyes off the profound social institutional realities implicated by, and the concomitant and important public policies at stake, in this case.

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[33] R.I. Gen. Laws § 43-3-3.
[34] GLAD Responsive Brief 22.

CONCLUSION

This Court should hold that the Family Court may not recognize, for the purpose of entertaining the Chambers-Ormiston divorce petitions, the Massachusetts marriage of these two Rhode Island women.

Respectfully submitted,

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The undersigned hereby certifies that a true copy of the within has been sent to the above persons by regular mail, postage prepaid, on August 30, 2007.