

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

**No. 2006-340
(F.C. 06-2583)**

Margaret Chambers

v.

Cassandra Ormiston.

ON A CERTIFIED QUESTION FROM THE FAMILY COURT

**BRIEF OF AMICI CURIAE
THE AMERICAN CIVIL LIBERTIES UNION AND
THE RHODE ISLAND AFFILIATE, AMERICAN CIVIL LIBERTIES UNION**

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STATEMENT OF INTEREST OF AMICI CURIAE

The American Civil Liberties Union (“ACLU”) is a nonprofit, nonpartisan membership organization founded in 1920 to protect and advance civil liberties throughout the United States. The ACLU has more than 500,000 members nationwide. The Rhode Island Affiliate, American Civil Liberties Union (“ACLU/RI”) is the state affiliate of the ACLU. The ACLU and the ACLU/RI have been involved extensively in litigation and other advocacy to protect the rights of same-sex couples and their families. The ACLU and the ACLU/RI are also deeply committed to preserving the fundamental constitutional right of access to the courts and of equal treatment under law. Because the question certified in this case potentially implicates all these issues, the ACLU and the ACLU/RI have a particularly strong interest in this action.

STATEMENT OF FACTS¹

Petitioners here, Margaret Chambers and Cassandra Ormiston, are residents of Rhode Island. They applied for a Certificate of Marriage in Massachusetts, which was issued on May 26, 2004, and their marriage was solemnized at One Government Center, Fall River, Massachusetts, by Carol Valcourt. At that time, the parties were residents of Rhode Island, and had lived there for approximately two years. The completed Certificate of Marriage and Certificate of Solemnization were returned to the Registry of Vital Records and Statistics of the Massachusetts Department of Health.

Since marrying in 2004, neither party has ceased to reside in Rhode Island at any time. As such, both Chambers and Ormiston have been domiciled inhabitants and

¹ The following statement of facts is taken from the factual findings of the Family Court, dated February 21, 2007.

residents in Rhode Island for at least a year before the complaint for divorce was filed, and as the Family Court found, “the domicile and residency requirements of G.L. 1956 § 15-5-12 have been satisfied.”

QUESTION PRESENTED

1. The question certified to this Court is:

May the Family Court properly recognize, for the purpose of entertaining the divorce petition, the marriage of two persons of the same sex who were purportedly married in another state?

SUMMARY OF ARGUMENT

Chambers and Ormiston sought access to the Family Court to dissolve their marriage on the grounds of irreconcilable differences. *See* R.I Gen. Laws § 15-5-3.1(a) (“[a] divorce from the bonds of matrimony shall be decreed, irrespective of the fault of either party, on the ground of irreconcilable differences which have caused the irreparable breakdown of the marriage”). Rhode Island courts generally will grant divorces to Rhode Island couples with out-of-state marriages, and this couple was validly married in Massachusetts. Accordingly, in the absence of any limiting language in the divorce statutes excluding same-sex couples with valid marriages from accessing the remedy of divorce, the statutes should be interpreted consistent with their plain language and the broad policy of this state favoring access to the courts to obtain a divorce, and the Court should find that the Family Court may hear this divorce petition. *See* Part I, *infra*. Further, because a construction of the divorce statutes that would deny access to this legal remedy only for one class of Rhode Island domiciliaries would pose very serious

constitutional concerns, this Court should adopt a construction of the divorce statutes that grants such access and avoids unconstitutionality. *See* Part II, *infra*.

DISCUSSION

I. Rhode Island Policy Favors Allowing Its Married Domiciliaries Access to the Remedy of Divorce.

The General Laws of Rhode Island provide a broad grant of jurisdiction to the Family Court of this state

to hear and determine all petitions for divorce from the bond of marriage and from bed and board; all motions for allowance, alimony, support and custody of children, allowance of counsel and witness fees, and other matters arising out of petitions and motions relative to real and personal property in aid thereof, including, but not limited to, partitions, accountings, receiverships, sequestration of assets, resulting and constructive trust, impressions of trust, and such other equitable matters arising out of the family relationship, wherein jurisdiction is acquired by the court by the filing of petitions for divorce, bed and board and separate maintenance.

R.I. Gen. Laws § 8-10-3.

“Jurisdiction of the family court to grant a divorce is created and defined by the legislature.” *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968); *see also* *Crow v. Crow*, 103 A. 739, 739 (R.I. 1918) (“all divorce jurisdiction is statutory”). When the language of a statute is unambiguous and expresses a clear meaning, this Court must interpret the statute literally and must give the words of the statute their plain and obvious meaning. *See, e.g., Wayne Distributing Co. v. Rhode Island Comm’n for Human Rights*, 673 A.2d 457, 460 (R.I. 1996). Accordingly, the divorce statutes must be construed consistently with their terms and purpose.

This Court has previously recognized that the legal remedy of divorce allows married parties whose relationships have broken down irreparably to adjudicate their status and obligations, and to “provide a fair and just assignment of the marital assets, on the basis of the joint contribution of the spouses to the marital enterprise.” *Stanzler v. Stanzler*, 560 A.2d 342, 345 (R.I. 1989) (citing *D’Agostino v. D’Agostino*, 463 A.2d 200, 203 (R.I. 1983); *Wordell v. Wordell*, 470 A.2d 665, 667 (R.I. 1984)).

Consistent with Rhode Island’s broad policy favoring access to divorce for its residents when necessary, this Court has held that the Family Court has jurisdiction over divorce petitions filed by Rhode Island domiciliaries, whether they were married in Rhode Island or in another state or country. As a general matter, anyone validly married out of state who satisfies the Rhode Island jurisdictional statutes may petition for divorce in the Family Court. *See, e.g., Ditson v. Diston*, 4 R.I. 87 (1856) (holding that the courts of Rhode Island have jurisdiction over divorces for Rhode Island residents who were married out of state and rejecting the argument that only the state where the marriage was performed has jurisdiction to hear the divorce). As the Court noted in *Diston*, marriage is not an executory contract between the parties, but a relationship between two people that is “deeply affecting their *status*, or legal and social condition, and for that reason, properly dissoluble according to the law of the country in which they are domiciled” *Id.* at 96 (emphasis in original).

Rhode Island also follows the general rule that the validity of a marriage contract is determined by the law of the place where the marriage was contracted. *See Ex Parte Chace*, 58 A. 978, 979 (R.I. 1904) (“we think that, even assuming that the marriage [of two Rhode Island residents in Massachusetts] would have been void in this state, yet as,

so far as appears, it was lawfully celebrated in Massachusetts, it must be considered valid here”). This rule of recognition is consistent with the holdings from many other states. See, e.g., *Loughran v. Loughran*, 292 U.S. 216, 223 (1934) (“Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the State where entered into, be recognized as valid in every other jurisdiction.”); *McDonald v. McDonald*, 58 P.2d 163, 164 (Cal. 1936) (citing the “well-settled rule that a marriage which is contrary to the policies of the laws of one state is yet valid therein if celebrated within and according to the laws of another state” and upholding the valid Nevada marriage of two California residents who were under the legal age of consent to marry in California, but who satisfied the Nevada age limitations); *Noble v. Noble*, 300 N.W. 885, 887 (Mich. 1941) (upholding the Indiana marriage of two Michigan residents who were under the age of consent to marry for Michigan but who satisfied the Indiana age of consent laws because “[i]f the marriage was valid in the State of Indiana it was valid here”); *State v. Graves*, 307 S.W.2d 545 (Ark. 1957) (upholding the Mississippi marriage of two Arkansas residents who were under the age of consent to marry in Arkansas but whose marriage was valid in Mississippi, in the absence of any state law expressly declaring such valid out of state marriages void or a strong public policy against such marriages); *Jewett v. Jewett*, 175 A.2d 141, 142 (Pa. Super. 1961) (“The law of the state in which a marriage is celebrated governs the validity of the marriage in regard to the capacity of the parties to enter into the contract of marriage.”; denying petition to annul as void the parties’ marriage entered into in Maryland because the marriage was valid under Maryland law, even though it would be void under Pennsylvania law).

Moreover, unlike a number of other states, Rhode Island’s policy in favor of allowing people who have married to access divorce upon the dissolution of the marital relationship extends even to those marriages that are deemed void or voidable. *See* R.I. Gen. Laws § 15-5-1 (providing that “[d]ivorces from the bond of marriage shall be decreed in case of any marriage originally void or voidable by law . . .”). Indeed, in several cases, this Court has approved grants of divorce to bigamous marriages which are absolutely void under Rhode Island law. *See Cavanagh v. Cavanagh*, 118 R.I. 608 (1977); *Leckney v. Leckney*, 59 A. 311 (R.I. 1904). Here, the marriage of the parties does not meet the statutory definition of void or voidable marriages under Rhode Island law as this state does not forbid the marriage of people of the same sex, or declare such marriages void.² However, this legislative determination that the remedy of divorce should be available even for void marriages starkly illustrates the policy favoring access to divorce.

Here, the parties seeking to divorce were validly married under the laws of Massachusetts. In *Cote-Whitacre v. Department of Public Health*, 2006 WL 3208758, *4 (Mass. Super. Sept. 29, 2006), the Massachusetts superior court held in the absence of “a constitutional amendment, statute, or controlling appellate decision from Rhode Island

² Under Rhode Island law, the following marriages are void from the outset: bigamous marriages, R.I. Gen. Laws § 15-1-5; consanguineous marriages, R.I. Gen. Laws § 15-1-1 to -3; and “marriages of persons who are mentally incompetent,” R.I. Gen. Laws § 15-1-5; *see also* Ronald J. Resmini, *The Law of Domestic Relations in Rhode Island*, 29 Suffolk U. L. Rev. 379, 389-90 (1995). This Court also has found marriages to be voidable for fraud. *See, e.g., Santos v. Santos*, 90 A.2d 771, 772-73 (R.I. 1952); *Mace v. Mace*, 23 A.2d 185, 186 (R.I. 1941). Notably, both parties here agree that they were validly married under Massachusetts law; their need for a divorce stems from the fact that this valid marriage creates legal duties and obligations which the parties no longer wish to share.

that explicitly deems void or otherwise expressly forbids same-sex marriage,” same-sex couples who reside in Rhode Island are permitted to marry in Massachusetts. *Id.*

Regardless of whether or not same-sex couples can marry under Rhode Island law – a question this Court need not resolve in this case³ – in the absence of any express ban on such marriages at the time Chambers and Ormiston were married in 2004, these parties are married, just as an opposite sex couple from Rhode Island who celebrated a marriage in Massachusetts would be married. As with any other valid out-of-state marriage of Rhode Island domiciliaries, the parties here, who satisfy the jurisdictional prerequisites for divorce, are thus entitled to access the statutory remedy of divorce.

Nothing in the Rhode Island divorce statutes or marriage laws excludes validly married same-sex couples from accessing the remedy of divorce, and, as noted above, this couple was validly married under the laws of Massachusetts. *Amici* submit that there is no basis in the statute or policies of this state to interpret the references to marriage in the divorce statutes to exclude valid marriages by same-sex couples.⁴ Not only is an interpretation holding that the Family Court has jurisdiction to hear this petition for divorce consistent with the plain terms of the divorce statutes, but, as discussed below, this is also the only statutory construction that avoids serious constitutional questions that would be posed by denying this couple the legal remedy of divorce.

³ Nor should this Court decide the question whether same-sex couples have the right to marry under Rhode Island law because it is a complicated legal question that has not been briefed in this case.

⁴ Because the certified question here relates to whether or not this couple’s marriage should be recognized for purposes of access to divorce, this Court need not now resolve whether Rhode Island would recognize this marriage for all purposes. *Cf. Horn v. Southern Union Co.*, ___ A.2d ___, 2007 WL 1858979, *1, n.2 (R.I. 2007).

II. A Construction of the Divorce Statutes to Deny Access to the Legal Remedy of Divorce for Same-Sex Couples Who Are Validly Married Out of State Would Pose Serious Constitutional Concerns and Should Be Avoided by this Court.

“It is well settled that this court will presume a legislative enactment of the General Assembly to be constitutional and valid and will so construe the enactment whenever such a construction is reasonably possible.” *State v. Fonseca*, 670 A.2d 1237, 1240 (R.I. 1996) (citing *Kass v. Retirement Board of the Employees' Retirement System*, 567 A.2d 358, 360 (R.I. 1989)). Accordingly, “when a statute can be interpreted as having two meanings, only one of which is constitutional, we will construe the statute under its constitutional meaning.” *Smiler v. Napolitano*, 911 A.2d 1035, 1038 (R.I. 2006) (citing *Rhode Island State Police v. Madison*, 508 A.2d 678, 683 (R.I. 1986)). Under the doctrine of constitutional avoidance, “if a serious doubt of constitutionality is raised, it is a cardinal principle that [a] Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *Hometown Properties v. Fleming*, 680 A.2d 56, 60 (R.I. 1996) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). If a statutory construction that avoids a finding of unconstitutionality is possible, this Court will adopt that interpretation. *See Op. to the Governor (DEPCO)*, 593 A.2d 943, 946 (R.I. 1991). Because the exclusion of validly-married same-sex couples from access to the remedy of divorce would raise serious constitutional concerns, this Court should adopt the statutory construction discussed above, *see Part I, supra*, which would treat this marriage like any other out-of-state marriage by Rhode Island residents, and allow the divorce.

As noted above, the Rhode Island legislature has created the remedy of divorce to permit married people to dissolve their legal obligations to each other as a married couple and to adjudicate the disposition of any marital property. Indeed, a petition for divorce to the Family Court is the *sole* means of exiting the status of marriage in this state. *See, e.g., Op. to the Governor*, 172 A.2d 596, 597 (R.I. 1961) (“the legislature intended to divest the superior court of all existing jurisdiction over divorces and all matters of domestic relations generally and to vest that jurisdiction exclusively in the family court on and after September 1, 1961”). Moreover, marriage is unique among contractual relationships because it cannot be rescinded by the parties, but instead requires approval from the state through the mechanism of divorce. *See Boddie v. Connecticut*, 401 U.S. 371, 376 (1971) (“[W]e know of no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and more fundamentally the prohibition against remarriage, without invoking the State’s judicial machinery.”); *Silva v. Merritt Chapman & Scott Corp.*, 156 A. 512, 513 (1931) (“Although marriage is of the nature of a civil contract, it is a contract which is subject to the regulation of the State, in which in its inception or its dissolution the State has a vital interest.”).

In the absence of access to divorce, therefore, Rhode Island domiciliaries like the parties here (who do not satisfy the jurisdictional requirements to divorce in another state because they are domiciliaries of *this* state), would be left without any legal means to end their marital rights and obligations. The Rhode Island Constitution forbids such an unequal denial of access to a legal remedy.

Article 1, § 5 of the Rhode Island State Constitution provides that:

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

R.I Const., Art. 1, § 5. This constitutional guarantee “forbids the total denial of access to the courts for the adjudication of a recognized claim.” *Bandoni v. State*, 715 A.2d 580, 595 (R.I. 1998). While Article 1, § 5 does not create new rights, it protects access to the state courts for existing remedies and rights. *Smiler*, 911 A.2d at 1039 n.5.

In *Kennedy v. Cumberland Engineering*, 471 A.2d 195 (R.I. 1984), this Court struck down a statute of limitations that barred products liability tort claims for products that had been purchased over ten years before the claim was filed, regardless of when the injury occurred, on the grounds that it impermissibly extinguished the right to bring tort claims. *Id.* The Court noted that while Article 1, § 5 does not prevent the legislature from enacting some statutes that may limit the ability to bring a claim, it does not permit the legislature to exclude people from bringing claims by extinguishing the right to sue before the claim even arises. Similarly, in *Lemoine v. Martineau*, 342 A.2d 616, 621 (R.I. 1975), the Court held that a statute that granted legislators the right to decline to appear at the trial of any civil or criminal action at any time while the Legislature was in session violated the right to justice guaranteed to all persons within this state by Article 1, § 5 of the Rhode Island Constitution because “the rights of litigants could be destroyed or materially impaired by the interposition of the statute.”

Denying all access to divorce would prohibit married parties from voluntarily and mutually nullifying a contractual relationship that potentially injures their property rights and impairs their legal ability to marry again. “[B]ecause resort to the state courts is the

only avenue to dissolution of their marriages, [being denied access to divorce] is akin to that of defendants faced with exclusion from the only forum effectively empowered to settle their disputes.” *Boddie*, 401 U.S. at 376.

Moreover, as divorce is the sole remedy available to married people to resolve their status, this case is fundamentally different from others where this Court has upheld statutes of limitations or other restrictions on liability that do not leave individuals entirely without a remedy. *Cf., e.g., Walsh v. Gowing*, 494 A.2d 543 (R.I. 1985) (upholding statute of limitations for suit against improvers of real property that left individuals with claims against the owner of the property after the limitations period expired); *Fournier v. Miriam Hospital*, 175 A.2d 298 (R.I. 1961) (upholding statute that granted immunity to charitable hospitals from liability for the negligent actions of officers, agents or employees of the hospital in the management, care or supervision of patients that left plaintiffs with a remedy against agents or employees of the hospital who were the initial tortfeasors). Thus, denying Rhode Island residents access to the remedy of divorce would violate Article 1, § 5 of the Rhode Island Constitution. *See also Boddie*, 401 U.S. at 380-81 (holding that the imposition of filing fees that rendered indigent people unable to afford to file for divorce violated due process by withholding the right to access the courts to divorce).

Here, of course, the issue is not the wholesale denial of access to divorce to all Rhode Island residents, but rather the possibility of discriminatory access to this remedy. If the divorce statutes are construed to bar validly married same-sex couples from divorce, they would be the only group of married Rhode Island domiciliaries who have no access to the remedy of divorce and thus have no way to exit their marriage. Indeed,

even parties with *void marriages* would be granted preferential access to the remedy of divorce over couples with valid same-sex marriages. The guarantee of equal protection in Article 1, § 2 of this State’s constitution forbids such differential access to the fundamental right of access to the courts without a compelling justification.⁵

Under the Rhode Island Constitution’s equal protection clause, “[t]he critical question is whether there exists an appropriate governmental interest suitably furthered by the differential treatment.” *Boucher v. Sayeed*, 459 A.2d 87, 91 (R.I. 1983). “When deciding if a statute complies with equal protection standards, we must examine both the nature of the classification established by the act and the individual rights that may be violated by the act.” *Rhode Island Depositors Economic Protection Corp. v. Brown*, 659 A.2d 95, 100 (R.I. 1995) (citing *Boucher*, 459 A.2d at 91). “If a statute . . . infringes upon fundamental rights. . . , the statute must be examined with strict scrutiny.” *Id.* On the other hand, legislation that neither implicates a suspect class nor infringes upon a fundamental right is subject to rational-basis review. *Newport Court Club Assocs. v. Town Council of the Town of Middletown*, 800 A.2d 405, 415 (R.I. 2002).

Like the federal guarantee of equal protection, which requires heightened judicial scrutiny for those classifications that infringe upon a federal fundamental right, the Rhode Island equal protection clause similarly requires heightened scrutiny for those classifications that violate fundamental rights protected by the state constitution. Because

⁵ Although Article 1, § 2, of the Rhode Island Constitution parallels the Equal Protection guarantee of Fourteenth Amendment, this Court has recognized the “autonomous character of [Rhode Island’s] equal protection clause.” *Providence Teachers’ Union Local 958, AFL-CIO, AFT v. City Council of Providence*, 888 A.2d 948, 956 (R.I. 2005); see also Rhode Island Constitution, Article 1, Section 24 (providing that the rights guaranteed by the Rhode Island Constitution are not dependent on those guaranteed by the Constitution of the United States).

the Rhode Island Constitution explicitly guarantees access to the courts in Article 1, § 5, any construction of the divorce statutes that would exclude one class of married couples from the ability to access the remedy of divorce would impair a fundamental right and thus must satisfy strict scrutiny. *Cf. Kennedy*, 471 A.2d 195 (striking down as unconstitutional a products liability statute of limitations that distinguished between claims that arose within ten years of the date of purchase and those that arose more than ten years after the date of purchase, even though such differential treatment might have been able to survive rational basis scrutiny).

Amici cannot imagine any justification for denying only same-sex couples access to the remedy of divorce that would satisfy strict scrutiny, when all other married couples in Rhode Island can access this remedy.⁶ First, such exclusion would be contrary to the policy of this state that favors allowing access to divorce in the state courts to adjudicate their legal status, even for marriages that *expressly* violate the public policy of this state, such as bigamous or consanguineous marriages. *See* Part I, *supra*. Nor has the state offered any reason whatsoever to justify excluding same-sex couples from access to the remedy of divorce. Finally, even if recognizing these parties' valid out of state marriage for other purposes were not deemed fully consistent with Rhode Island public policy, there could be no justification for requiring them to *stay* legally married, rather than allowing them to separate legally, and with certainty.

Accordingly, this Court should follow the plain language of the divorce statutes and allow the parties here, like any other couple validly married out of state, access to the

⁶ This case does not present the question whether or not Rhode Island could constitutionally deny same-sex couples the right to marry; denying the right to divorce to couples who are already validly married implicates different state interests.

legal remedy of divorce. Such a construction of the divorce statutes is not only fully consistent with the language and purpose of the divorce statutes, but it avoids the serious constitutional questions that would be posed by a construction of the divorce statutes that denies access to divorce to only one class of Rhode Island domiciliaries. Creating a differential status for this group of people would violate the fundamental right of access to the courts protected by Article 1, § 5 of the Rhode Island Constitution and the state guarantee of equal protection in Article 1, § 2.

CONCLUSION

For the reasons set forth above, *amici* respectfully submit that this Court should answer the certified question in the affirmative and hold that the Family Court has jurisdiction to hear the petition for divorce.

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CERTIFICATE OF SERVICE

I certify that on this 31st day of July, 2007, I served copies of the foregoing brief of amici curiae by overnight delivery, postage pre-paid, to: Louis Pulner, 369 South Main Street, Providence, RI 02903, and to Nancy Palmisciano, 665 Smith Street, Providence, RI 02908.

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