STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

MARGARET CHAMBERS Plaintiff,	: :	
	:	Case No. 06-340-M.P.
v.	:	(Family Court 06-2583)
	:	
CASSANDRA ORMISTON Defendant.	: :	
	:	

ON A CERTIFIED QUESTION OF LAW FROM THE FAMILY COURT

RESPONSIVE BRIEF OF AMICUS CURIAE GAY & LESBIAN ADVOCATES & DEFENDERS

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I. CERTAIN AMICI MISCONCEIVE THE ISSUE BEFORE THE COURT AND IMPROPERLY ARGUE THE QUESTION OF THE ELIGIBILITY OF SAME-SEX COUPLES TO MARRY UNDER RHODE ISLAND LAW.

The focus of the present matter before this Court is crystal clear. A Rhode Island couple, lawfully married in Massachusetts with a Massachusetts marriage license, now seeks a divorce in the Rhode Island Family Court. A question has been certified concerning that action for divorce, and that question solely concerns whether the fact that the marriage in issue involved a Rhode Island same-sex couple somehow affects the ability of the Family Court to adjudicate the divorce. In short, the question is how Rhode Island law deals with a particular marriage.

Put another way, this case has nothing to do with whether same-sex couples can marry in Rhode Island and obtain a Rhode Island marriage license as a matter of Rhode Island marriage law. No party has raised that issue, and that issue is not in any way encompassed within the certified question accepted and pending before the Court.[1] Simply put, licensing a marriage in Rhode Island is different from recognizing a marriage from another jurisdiction.

Nonetheless, certain amici attempt to make this a case about Rhode Island's marriage laws and the licensing of marriages of same-sex couples. See, e.g., Brief of Amici Curiae United Families International, Family Watch International and Family

[1] The marriage laws of Rhode Island are only conceivably relevant in this context to the extent that the Rhode Island legislature has expressly declared a particular marriage to be void and expressly intended that declaration to have extraterritorial effect. Since all parties and amici agree that the Rhode Island legislature has not taken such action vis-à-vis the marriages of same-sex couples, Rhode Island marriage law is simply not before this Court in this matter.

Leader Foundation ["United Families Brief"], pp. 43-44 (urging the Court to "maintain the common-law meaning of marriage"; "this Court should not mandate the radical change from man/woman marriage to genderless marriage, for any purpose")[2]; Brief of Amicus Curiae Governor Donald L. Carcieri ["Governor's Brief"], p. 18 ("[r]ecognizing a same-sex marriage in Rhode Island would not just allow entry of same-sex couples into marriage but would be a wholesale redefinition of marriage"); id., p. 9 (comparing this case to other courts' decisions "regarding the legitimacy of same-sex marriage"); Brief of Amici Curiae Law Professors, Lynn Wardle, et al. ["Wardle Brief"], p. 17 (noting that Massachusetts allows same-sex couples to marry and stating "it would be an egregious error for a Rhode Island court to mimic that mistake").

What this Court should avoid "mimicking" is the distortions of amici who conflate issues that are doctrinally distinct in Rhode Island and every state's law, a distortion particularly surprising by law professors who assert expertise in this area of the law. See, e.g., Joel Prentiss Bishop, NEW COMMENTARIES ON MARRIAGE, DIVORCE AND SEPARATION (T.H. Flood & Co.1891) (hereafter "Bishop"), v. 1 at § 834 (acknowledging difficult posed by differing "local regulation of marriage") and id. at § 856 (endorsing validation rule).

In a similar vein, some amici suggest 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. See, e.g., United Families Br., pp. 31-32 (Rhode Island cannot recognize this marriage for purposes

[2] Indeed, the United Families Brief is essentially one long paean to what those amici and their principal drafter, Monte Neil Stewart, believe about the nature of marriage. Id. at pp. 7-19, 39-44.

of divorce without "changing in one important context this state's public and legal meaning of marriage from the union of a man and a woman to the union of any two persons. That much is inescapable."); id., p. 35 (same); Brief of Amici Curiae Family Research Council and Reverend Lyle Mook ["FRC Brief"], p. 3 (extending comity is "effectively legaliz[ing] same-sex 'marriage' in this state, redefining marriage without appropriate legislative action"); id., p. 4 (recognition "would be a revolutionary redefinition of the institution …"); id., p. 16 (asking this Court to "resist redefining the term 'marriage' to a meaning not previously recognized in Rhode Island's history").

What is "inescapable" here is how egregiously incorrect these statements are as a matter of law. 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. Indeed, the question of comity, or choice-of-law, only comes up because the law of the forum and the law of the state of celebration of the marriage are not transparently identical. And nothing about granting recognition suddenly makes the two jurisdictions' laws identical.

To perhaps state the obvious, although Ex parte Chace, 26 R.I. 351, 58 A. 978 (1904), held that the marriage in Massachusetts of a Rhode Island ward to a Rhode Island woman without the guardian's consent was to be recognized as valid in Rhode Island, no one would suggest that Chace changed the law of Rhode Island so that a ward no longer needed consent of his/her guardian to legally marry in Rhode Island. The Rhode Island law of marriage eligibility remained unchanged by the Chace decision.

Finally in this regard, this amicus agrees with the FRC Brief that this Court should absolutely not be opining in any way on the question of whether same-sex couples

can or cannot legally marry under Rhode Island law. Any comment on this issue is beyond the scope of the certified question; beyond the scope of G.L. 1956 §9-24-27 governing certified questions; and beyond the scope of the underlying action in its entirety. In addition, as this Court is well aware, comments from the Court could operate to the detriment of same-sex couples in Rhode Island. See generally Brief of Amicus Curiae Marriage Equality Rhode Island ["MERI Brief"], pp. 15-20.[3]

II. CERTAIN AMICI ARE CONFUSED ABOUT THE STATE OF MASSACHUSETTS LAW IN RELATION TO THE MATTER BEFORE THIS COURT.

A. The Parties' Massachusetts Marriage Was Valid.

The parties in the present case were married in Massachusetts on May 26, 2004; and the record contains a certified copy of their Certificate of Marriage from the Commonwealth. See Family Court Decision, 2/21/07, p. 2. Despite this clarity, certain amici assert either that the parties' marriage was void under Massachusetts law or only might be valid under Massachusetts law. See Brief of Amicus Curiae National Legal Foundation ["NLF Brief"], p. 18 ("marriages entered into in Massachusetts by same-sex couples from Rhode Island are void ab initio in Rhode Island because of the

[3] The Wardle Brief is the most transparent in directly asking this Court to reach beyond the certified question and to "clarify[] that same-sex marriage is prohibited in Rhode Island." Wardle Br., p. 48. This is nothing more than an attempt to get this Court to weigh in on a matter not before this Court, i.e., to make a statement as a matter of Rhode Island's positive law that marriage for same-sex couples is expressly forbidden under Rhode Island law. The clear hope is that this would then trigger the law of Massachusetts to foreclose Rhode Island same-sex couples from the ability to obtain marriage licenses in Massachusetts. See Cote-Whitacre v. Dep't of Pub. Health, 446 Mass. 350, 384-385, 844 N.E.2d 623, 653 (2006)(Marshall, C.J., concurring). It is ironic that Professor Wardle, a tireless warrior against the Massachusetts marriage decision and the asserted "judicial overreaching" by "activist courts" "misusing judicial authority," see, e.g., Lynn D. Wardle, Goodridge and "The Justiciary" of Massachusetts, 14 B.U. Pub. Interest L. J. 57, 62-63, 83-84 (2004), would urge this Court to reach outside the confines of this case to declare the law where the legislature has consistently refused to do so.

Massachusetts Evasion of Marriage Act"); Governor's Br., pp. 5-6 ("this Court could find the marriage void in Massachusetts"; "The marriage before this Court would be invalid under Massachusetts law"); Wardle Br., p. 8 ("Massachusetts today might conclude that the parties' evasive same-sex marriage is valid under Massachusetts law" (emphasis added)).

It is difficult to understand how the lawyers and institutions that submitted these briefs could be so inaccurate about the state of Massachusetts law in carrying out their obligations to this Court. The parties were legally and validly married in Massachusetts, and the Massachusetts statute restricting the ability of certain out-of-state residents to marry in Massachusetts is not applicable to Rhode Island same-sex couples. Cote-Whitacre, 446 Mass. 350, 352, 844 N.E.2d 623, 631 (2006); Cote-Whitacre v. Dep't of Pub. Health, 21 Mass. L. Rptr. 513, 516, 2006 WL 3208758, *4 (Mass. Super. Sept. 29, 2006).[4] It is not legally possible for the parties' marriage to be declared void as a matter of Massachusetts law.

B. Massachusetts Did Not, Could Not, and Did Not Attempt To, Alter Or Construe Rhode Island Law.

Certain amici also misconceive what the Massachusetts courts decided in the Cote-Whitacre litigation. The NLF Brief rather injudiciously attacks the Massachusetts court's decision as a "power grab," "exporting that particular product [marriage for same-sex couples]." NLF Br., p. 17. The Wardle Brief asserts that the Massachusetts court "misconstrues Rhode Island law" and ruled that marriage for same-sex couples is "not

[4] For a more detailed explication of the litigation in Massachusetts concerning marriage and out-of-state couples and the relevant Massachusetts statutes, G.L. c. 207, §§11-12, see MERI Br., pp. 4-15; see also Brief of Amicus Curiae Gay & Lesbian Advocates & Defenders ["GLAD Brief"], pp. 5-7.

sufficiently 'prohibited'" in Rhode Island. Wardle Br., p. 9. The Massachusetts court did no such thing.

Again, it is hoped that these amici were simply writing in haste and not attempting to deliberately mislead this Court with these clear misstatements of the law. Beginning at the most basic level, the Massachusetts courts in the Cote-Whitacre litigation were interpreting a Massachusetts statute, G.L. c. 207, §12, that erects a barrier forbidding certain out-of-state residents from marrying in Massachusetts. That statutory section provides that those Massachusetts officials issuing licenses to marry must satisfy themselves that any out-of-state resident applying for a license "is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides." G.L. c. 207, §12.

As a result, the Massachusetts Court's role was to interpret the meaning of this statutory language where the central question is what does "prohibited" mean in this statute – not in any other statute and not under Rhode Island law. In her controlling concurring opinion, Chief Justice Marshall carefully laid out her analysis – both as a matter of plain meaning and legislative history – as to why "prohibited" in this statute "refers only to marriages that are expressly forbidden by another State's positive law – that is, by constitutional amendment, statute, or controlling appellate decision." Cote-Whitacre, 844 N.E.2d at 652-656.

As Chief Justice Marshall makes clear, the Massachusetts Court was not attempting to construe any Rhode Island law. Rather, it was simply deciding what the Massachusetts legislature intended to look for in another state's law in order to prevent what is otherwise the rule everywhere in the states of the United States, i.e., that there is no residency requirement to marry such that anyone can generally marry anywhere

provided they meet the marrying state's requirements to obtain a license. Put another way, Massachusetts is not deciding who can and cannot marry in Rhode Island; but it is deciding the test Massachusetts officials will use to determine who from out-of-state will be refused a marriage license in Massachusetts. Whether or not same-sex couples can or cannot marry in Rhode Island is simply wholly irrelevant to what was decided by the Massachusetts court in the Cote-Whitacre litigation.

It is not even sensible to argue that Massachusetts has "misconstrued" Rhode Island law. Massachusetts has adopted a test under its law and that test will allow an out-of-state same-sex couple to marry in Massachusetts if such a marriage is not expressly forbidden by a statute, constitutional amendment or a controlling appellate decision. That test requires searching Rhode Island law but not construing it. Conceivably, the Massachusetts Court could have been incorrect in failing to discover an express prohibition in Rhode Island's constitution, statutes or this Court's decisions; but certainly none of these amici takes that position – most obviously because they cannot. In sum, the Massachusetts courts have not intruded on Rhode Island law.[5]

Finally in this regard, how can it be a "power grab" for the Massachusetts court to exercise its proper role, when asked in litigation, to interpret a Massachusetts statute that has been put in issue. To suggest, as NLF does, that the Massachusetts court's view is somehow tainted or suspect because the court came to a slightly different conclusion on interpretation than then-Governor Romney is an insult to the Massachusetts court and indeed to every court – the institution in our system of government with the indisputable

[5] Assuming, arguendo, that the Wardle Brief could somehow be correct that Massachusetts misconstrued Rhode Island law, the Rhode Island legislature was aware of the Massachusetts decision and could have changed the law if it had wished to do so. See MERI Br., pp. 20-22.

role of stating what the law is. The injudicious rhetoric of the NLF Brief suggests an inability to see beyond a blind distaste for the Massachusetts courts and to apply a neutral analysis of legal principles.[6]

III. OF THE AMICI WHO ADDRESS THE ISSUE, MOST AGREE THAT THE FAMILY COURT HAS SUBJECT MATTER JURISDICTION TO ENTERTAIN THIS DIVORCE ACTION; AND THOSE WHO DISAGREE RELY ON ANALYSES THAT CANNOT BE ACCEPTED.

A large majority of the briefs filed with the Court either agree that the Family Court has subject matter jurisdiction over this divorce action or simply do not address the issue. For those that argue for jurisdiction, see GLAD Br., pp. 5-15; Governor's Br., pp. 3-6; Brief of Amicus Curiae State of Rhode Island ["AG's Brief"], pp. 6-9; MERI Br., pp. 15-16; Brief of Amici Curiae The American Civil Liberties Union and the Rhode Island Affiliate, American Civil Liberties Union ["ACLU Brief"], pp. 3-7; Brief of Amicus Curiae Thomas R. Bender, Esq., pp. 15-16.[7] The parties to this divorce action give less attention to the jurisdictional issue but nonetheless still speak to it and, of course, both did invoke the jurisdiction of the Family Court and pled all the juridical requirements for obtaining a divorce. See Brief of Cassandra Ormiston ["Ormiston Brief"], pp. 2-5; Brief of Margaret Chambers ["Chambers Brief"], pp. 3-4.

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[6] The NLF Brief urges this Court to simply reject the Massachusetts Supreme Judicial Court's interpretation of the Massachusetts statute, G.L. c. 207, §12, and read §12 differently. NLF Br., p. 15. Unsurprisingly, the NLF Brief cites no support for the proposition that a state high court can simply substitute its interpretation of another state's statute in the face of an authoritative construction by the highest court of the jurisdiction that enacted the statute.

[7] For those not addressing the issue, see NLF Br.; Brief of Amicus Curiae of the Becket Fund for Religious Liberty ["Becket Brief"]; Brief Amicus Curiae for the Most Reverend Thomas J. Tobin, D.D. Bishop of Providence ["Bishop's Brief"]; and Brief Amicus Curiae of Professors of Conflict of Laws and Family Law ["Conflict Professors' Brief"].

Two of the remaining amici have argued that jurisdiction does not exist in the Family Court. See Wardle Br., pp. 26-42; FRC Br., pp. 28-31. However, their basis for arguing the lack of jurisdiction relies on changing the basic facts of this case and is legally untenable. In their view, faced with acknowledging that Rhode Island grants jurisdiction for divorce as to all valid, voidable and void marriages, the only recourse is the ipse dixit that the parties' relationship is simply not a marriage. Wardle Br., p. 42 ("However, if, in fact, the domestic relationship that exists is *not* a marriage, then the Family Court would lack jurisdiction"); FRC Br., p. 31 ("Two persons of the same sex cannot have a 'marriage'").[8]

In defense of this position, Professor Wardle asserts that "[m]erely entering into a relationship and calling it a marriage does not make it a marriage." Wardle Br., p. 31. That may be true for Professor Wardle or others sharing his views, but it defies reality to simply declaim that the Chambers-Ormiston relationship is legally not a marriage, particularly when the legal government of the Commonwealth of Massachusetts most assuredly asserts by its sovereign authority that this couple is legally married in the eyes of the Commonwealth.[9] While this Court is certainly not bound to agree with the Commonwealth of Massachusetts, it cannot do what Professor Wardle would have it do, i.e., simply blithely wipe away the fact that Massachusetts has created a legally binding marriage under Massachusetts law. In this scenario, this Court has doctrine to guide its

[8] The FRC Brief also says, "There is a difference between a marriage (a union between one man and one woman), even if void (for timing, incest, or other reasons), and a non-marriage. What Chambers and Ormiston have is not a 'marriage.' Therefore, it is not subject to divorce, annulment, or any other form of official recognition or remedy in Rhode Island." Id., pp. 31-32.

[9] One might ask what the Massachusetts marriage of Chambers and Ormiston is if it is not either valid, void or voidable. These amici address that question by denying a marriage exists at all. See infra at IV.B. (citing briefs for idea that nothing exists).

path of decision, i.e., the rules of statutory construction and the common law of comity and choice of law.

The Wardle Brief's analysis is flawed in another way. The brief asserts the following:

> If Rhode Island law applies, and if, under Rhode Island law, two women may not marry each other, then the relationship the parties had was not a "marriage" and their petitions for divorce must be dismissed as outside the jurisdiction of the Family Court.

Wardle Br., p. 42.

This analysis assumes that the jurisdictional statute, G.L. 1956 §8-10-3, uses "marriage" to mean a marriage that could be entered into in Rhode Island, and if the marriage is prohibited in Rhode Island, then there is no jurisdiction for divorce. This is simply legal nonsense. First, the plain language of the divorce statute speaks to void and voidable marriages. Second, Wardle's reading suggests there is jurisdiction if the void or voidable marriage was entered into outside Rhode Island but not within Rhode Island. Given that Rhode Island has recognized out-of-state marriages that could not have been entered into in Rhode Island, e.g., Ex parte Chace, 58 A. at 979-980, is it then not possible for that couple to divorce in Rhode Island? In sum, it seems difficult to find support for such a reading of §8-10-3 to limit divorce jurisdiction strictly to marriages clearly permitted under Rhode Island law.

For these reasons, this Court should reject the arguments that the Family Court lacks subject matter jurisdiction to entertain this divorce action.[10]

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[10] There are two remaining amicus briefs that have not been addressed in this Section III. The United Families Brief does not make a straightforward argument on the jurisdiction question, asserting that "jurisdiction is not the truly fundamental issue here…." United Families Br., p. 28. At the same time, the brief does rely on an assertion that divorce

IV. CERTAIN AMICI'S EFFORTS TO DISTINGUISH EX PARTE CHACE ARE UNAVAILING.

While a number of amici, including this amicus, see generally GLAD Br., pp. 15-38, rely squarely on Ex parte Chace, 26 R.I. 351, 58 A. 978 (1904), as direct support for the proposition that the Family Court may properly entertain the parties' cross petitions for divorce and while some amici do not even discuss the case, see, e.g., Bishop's Brief, it is fair to say that even those amici who most strongly argue that this Court should not recognize this Massachusetts marriage do acknowledge that Ex parte Chace states the governing law. See Governor's Br., pp. 9-10; Wardle Br., p. 8; United Families Br., pp. 32-33; NLF Br., p. 6 ("Chace is still good law, we agree …"); see also FRC Br., pp. 20-21. These latter amici simply believe that Ex parte Chace is "precedent only for subsequent cases having comparable facts" and "[t]his case is not one of them." NLF Br., p. 6.

A. The Effort To Distinguish Ex Parte Chace Generally.

Although these amici work mightily to distinguish Chace, this amicus submits that their efforts are unavailing. The NLF Brief makes the most comprehensive effort to chart the alleged distinguishing features between Chace and the present action and, therefore, provides a central focus for exploring the merits of their arguments.

"presupposes the existence of a valid marriage," citing Leckney v. Leckney, 26 R.I. 441, 59 A. 311, 311-312 (1904), while failing to note that Leckney held that Rhode Island law is broader and that "divorce" is applied "to a proceeding like the one before us [for annulment] by our statute." Id. at 12.

The final amicus brief was submitted by Christopher F. Young. Mr. Young's amicus brief essentially repeats large sections of the United Families Brief mostly without attribution, including the section of the United Families Brief discussed immediately above. See Young Br., pp. 15-21. Mr. Young does add a discussion of Santos v. Santos, 80 R.I. 5, 90 A.2d 771 (1952); but that discussion does not aid any argument against jurisdiction. Santos ordered a decree "granting the petition [for divorce] on the ground of an originally void marriage." Santos, 90 A.2d at 774.

First, NLF asserts there was a marriage in Chace and no marriage here since both parties are women. NLF Br., p. 8; see also Wardle Br., p. 11; FRC Br., p. 21. This "definitional" argument will be addressed in Section IV.B., below.

Second, according to NLF, the parties in Chace did not "purposely evade the laws of Rhode Island" while the present couple certainly did. NLF Br., p. 8; Wardle Br., pp. 10-11. Where this Court in Chace refused to find evasion in the absence of "pleadings or proof" where marriage "has the aid of all the presumptions," Chace, 58 A. at 979, there is no legal reason to come to any different conclusion in the present case on its pleadings and proof.[11] Furthermore, neither this Court nor the Legislature has ever adopted an evasion principle when determining whether to recognize a foreign marriage.

Third, NLF states that the Chace couple's marriage was not contrary to Rhode Island public policy while the contrary is true for the current parties' marriage where "R.I.'s law and practice are against it." NLF Br., p. 8; see also Wardle Br., pp. 11-12. The public policy exception to the celebration rule is discussed in detail in Section IV.C., below. Suffice it to say at this point "R.I.'s law and practice" were expressly against the ward's marriage without his guardian's consent in Chace. Therefore, even if that were the standard to be applied in a recognition case, it does not dictate a contrary result in the present case.

[11] The Wardle Brief clearly misstates and misapplies Chace on this point. First, that brief says that Chace "accepted the proposition" that an evasive marriage will not be recognized. Wardle Br., p. 10. However, it is crystal clear that the Chace court is citing that proposition as "said by counsel for the guardian" and not as the Court's own view. Chace, 58 A. at 979. Second, given the "aid of all the presumptions, both of law and fact," which this Court directed to be applied to any marriage put in issue in this way, Professor Wardle's assertions of evasion miss the point. Wardle Br., p. 11.

Fourth, NLF argues that the couple in Chace faced only a "statutory disability" while the present couple "face a legal impossibility." NLF Br., p. 8. This is, again, a version of the "definitional" argument discussed in Section IV.B., below. However, as a matter of fact, the present couple did not face a legal impossibility – they were actually married in Massachusetts and have a Certificate of Marriage to prove it. Moreover, NLF acknowledges that statutory disabilities to marriage – like that in Chace – can be legislatively removed. Likewise, same-sex couples may well find themselves expressly authorized legislatively to marry in Rhode Island at some point in the future.

Fifth, it is asserted that the Chace marriage would not have been void if the couple had been married in Rhode Island while these parties' marriage would be "void and impossible, both." NLF Br., p. 8. Even assuming for the sake of argument that this is an accurate statement of the law, it is irrelevant. Chace stands squarely for the proposition that the fact that a marriage would be void in the state of domicile does not change the rule that a marriage valid where celebrated is valid in Rhode Island unless it comes within the public policy exception. Chace, 58 A. at 979-980.[12]

Sixth, NLF argues that Chace was decided before Massachusetts enacted its Marriage Evasion Act, G.L. c. 207, §§11-12. NLF Br., p. 8. Again, this point is legally irrelevant. The Massachusetts courts have ruled that G.L. c. 207, §§11-12 have no applicability to Rhode Island same-sex couples seeking marriage licenses in Massachusetts. Therefore, whether or not the Massachusetts law existed at the time of

[12] Like the NLF Brief, the Wardle Brief seems to believe that it is enough, on the void marriage issue, to simply assert that the pairing of a man and a woman in marriage is "a substantive marriage essential." Wardle Br., p. 11. Again, accepting this as accurate solely for the sake of argument, it does not make Chace inapplicable to the present case.

Chace is wholly immaterial. Moreover, the question both here and in Chace is one of Rhode Island law and not Massachusetts statutory law.

Seventh, NLF maintains the Chace marriage was lawfully performed in Massachusetts while "[t]he MA evasion-of-marriage act casts strong doubt on the legality" of these parties' marriage. NLF Br., p. 9. As demonstrated in Section II.A., above, there is no doubt as to parties' lawful marriage in Massachusetts.

Eighth, NLF argues that the Chace marriage is of a type universally recognized while the Chambers-Ormiston marriage is "not a marriage" in most places and thus not "common to all nations." NLF Br., p. 9; see also Wardle Br., p. 11. Again, this attempt to distinguish Chace is primarily a "definitional" argument and is discussed in Section IV.B., below. At the same time, the fundamental flaw in this argument is that it attempts to make what it calls "man/woman marriage" the relationship that is universally recognized and therefore subject to the celebration rule. However, pointing to this level of specificity must be wrong. Rather, the rule developed knowing that different countries allowed different marriages and, therefore, respect was to be given to legal marriages as the celebrating country defined those legal marriages (subject always to the public policy exception). That is the relevant juris gentium.

Ninth, NLF notes its view that Chace was a marriage case and this is a divorce case. NLF Br., p. 9. However, to be precise, Chace was a habeas case while this is a divorce case. This seems to be a distinction without any material, legal difference.

Tenth, NLF maintains that Chace did not involve another state interpreting Rhode Island law while "[c]entral" to the present case is "a MA interpretation of R.I. law." NLF Br., p. 9. This is, of course, totally misleading. Exactly as in Chace, this Court in this

case will decide the significance, under Rhode Island law, of a Massachusetts marriage of Rhode Island residents. It is immaterial that the couple in Chace faced no potential legal hurdle to marriage in Massachusetts while the present couple theoretically had to be declared free of G.L. c. 207, §12, which never applied to them in any event except as incorrectly administered for a time by then-Massachusetts Governor Romney.

Lastly, Professor Wardle adds a few additional efforts to distinguish Chace which can be addressed quickly. First, he argues that Chace presented a "sympathetic litigation context" that "influenced the analysis." Wardle Br., p. 12. Not surprisingly, Professor Wardle has no legal citation to support such a novel ground for maintaining that case law on point should not be applied. Moreover, it seems sympathy is in the eye of the beholder as it seems to this amicus that the present parties face a legal limbo and no forum to obtain relief and return to a legal status they desire if Professor Wardle's view prevails.

Second, the Wardle Brief says Chace has "not been cited by this Court in over eighty years." Wardle Br., p. 12. Putting aside the factual error – Chace was cited and discussed by this Court in 1962 in Pearce v. Cochrane, 95 R.I. 207, 186 A.2d 68 (1962) – it is, again, a novel proposition that age – and nothing more – undermines a decision of this Court.[13]

For the reasons stated, certain amici's efforts to distinguish the present case from Chace are unavailing.

[13] Professor Wardle never agues that this Court has altered the applicable analysis for marriage recognition as set down in Chace. The FRC Brief suggests this very possibility, an argument discussed in Section IV.D., below.

B. The "Definitional" Argument Has To Be Rejected.

As noted in the preceding section IV.A., certain amici would like to take Chace out of the picture by simply saying that Chace was about a marriage – meaning strictly one man/one woman marriage – and that there is no marriage whatsoever in the present case. NLF Br., pp. 5, 10-15; FRC Br., pp. 2, 19-21, 28, 31; Wardle Br., pp. 11, 17, 40, 42. As noted in Sections II.A. and III, above, the fundamental difficulty with this argument is that the parties here have an actual lawful marriage, in fact, from the Commonwealth of Massachusetts. That res, or legal status, exists despite how much these amici dislike and disapprove of it. They cannot will it out of existence. Although as private individuals they are certainly free to hold these views, this amicus submits that it is difficult to see on what authority Rhode Island law can adopt this view and maintain that no marriage ever was entered (putting aside whether Rhode Island must recognize any given marriage). The parties are actual human beings with a legal status as married that they wish to dissolve in order to return to the legal status of single. While these amici's clever word games might constitute for them some type of airtight logic, it is the logic that Lewis Carroll made so popular in "Alice in Wonderland" and that leads to absurdity while also leaving behind the living, breathing people that the law is designed to support and protect.

Moreover, there is no legal support for amici's position. The Wardle Brief cites a series of cases in support of the view that "attempted same-sex marriages" are "legal nullities." Wardle Br., pp. 37-40. However, none of these involved a marriage of a same-sex couple expressly authorized by the relevant jurisdiction and entered into validly

under that jurisdiction's laws – as was the case here. Those cases simply cannot lend any support to these amici's argument.

Resorting to a kind of "slippery-slope" argument, the Wardle Brief maintains that there must be legal marriages in the world that Rhode Island would not see as "marriages" in any circumstances, highlighting Islamic "temporary marriages," "inter-species" marriages and necrophilic marriages. Wardle Br., pp. 31-33. Again, whether one agrees with Professor Wardle's essential premise that "marriage" has some intrinsic boundaries and whatever one thinks of other cultures' various arrangements called "marriages," this amicus submits that it is beyond the time when it is acceptable in American law to analogize the legal marriages of same-sex couples to "inter-species" marriages, prostitution and "marrying dead bodies" and expect that argument to carry the day to obliterate these parties' marriage.

The NLF Brief makes even less of an effort to find legal support for this definitional argument. In essence, NLF looks to the authorities relied upon in Chace, i.e., the Bishop and Story treatises and the concept of juris gentium, and attempts to show that they understood that a "Christian marriage is the union of one man and one woman." NLF Br., p. 11, quoting Bishop. Everyone would agree that this is not a startling find, and that only rarely will the law in one century correspond in all particulars to that in another century. See Bishop, v. 1, § 683 (acknowledging "the policy of many of our states" to "inhibit by statutes" interracial marriage). The real question is does it make Chace inapplicable as the operative law to guide the Court's decision in this case. NLF certainly does not explain why the answer to that question should be "Yes."

This amicus submits that the Court should reject any argument premised on the notion that the parties here do not have a lawful marriage.

C. Certain Amici Misconceive The Proper Public Policy Analysis.

Ex parte Chace enunciated both the celebration rule and the then "well-recognized exception" to the general rule to the effect that a marriage would not be recognized if "odious by the common consent of nations, or if its influence is thought dangerous to the fabric of society" or it is "so subversive of goods morals" that it is "strongly against the public policy of the jurisdiction." Id. 58 A. at 980-981.

This amicus has argued that this Court should abolish any common law public policy exception in favor of strictly express legislative enactments purposefully designed to alter the common law rule of recognition. See GLAD Br., pp. 28-29. Nonetheless, assuming the Chace public policy exception remains the law of Rhode Island, it has no application in the present case for the reasons set out by various amici, see, e.g., GLAD Br., pp. 29-35; AG's Br., pp. 12-14; Chambers Br., pp. 10-13; Ormiston Br., pp. 8-9; Conflict Professors' Br., pp. 34-35.

Certain amici attempt to invoke the public policy exception to argue against the recognition of this marriage, but they misconceive what is required to show that a marriage violates a strong public policy of Rhode Island.

2. The proper contours of the public policy exception.

As quoted immediately above, the public policy exception under Chace requires a showing that an out-of-state marriage is "odious by the common consent of nations," "dangerous to the fabric of society" and "subversive of good morals." Certain amici simply do not acknowledge that they must satisfy this test. Rather, they simply assume

that it is sufficient if they can point to something in Rhode Island law, policy or practice that supports the notion that marriage for different-sex couples is a good thing or simply what Rhode Island has traditionally accepted as marriage. See generally Governor's Br., pp. 10, 19 (defining public policy and noting state interest in "stable families and children"); Becket Br., p. vi (suggesting "likely impact" on religious liberty); Bishop's Br., p. 12 (Rhode Island's public policy "regarding the nature of marriage is clearly and unambiguously set forth in the General Laws"); NLF Br., p. 8 ("R.I.'s law and practice are against [marriage for same-sex couples]"); United Families Br., pp. 32-37 (simply asserting that the public policy case for non-recognition of the Chambers/Ormiston marriage "is at least as strong as" the case for non-recognition of father-daughter marriage); FRC Br., pp. 21-23 (Rhode Island "affirms only one concept of marriage – one man and one woman"; therefore, a marriage of a same-sex couples must "run[] afoul of Rhode Island public policy"); Wardle Br., pp. 9-10 (Rhode Island policy is violated because Rhode Island preserves "marriage as a unique legal institution for conjugal couples, to protect children and families").[14]

[14] Although these amici may cite the correct public policy exception from Chace, only the FRC Brief even attempts to apply it and then, apparently recognizing the weakness of its argument, assigns it to a footnote. FRC Br., p. 21 n.29 (noting that the countries that do not currently allow same-sex couples to marry far outnumber the countries that do). It should go without saying that "odious by the common consent of nations" has always meant what the words suggest, i.e., essential unanimity of a particular view. See generally Chace, 58 A. at 980. As to the particulars of the growing legal recognition of the relationships of same-sex couples both in the United States and throughout the world as well as the inability to ground non-recognition in any disapproval of adult, same-sex sexual intimacy, see GLAD Br., pp. 31-32. See also Bishop, v. 1 § 865 (noting that "the matrimonial unions between blacks and whites are good by the international marriage law" because, despite some states' hostile policies, such marriages are not "odious to all Christendom").

However, it is not, and cannot be, the law that the marriage recognition question is answered by forum law simply by identifying some policy of the forum that is contrary to the marriage being presented for recognition. Such a view would quite literally end all conflicts analysis; would mandate application of forum law if foreign law was at all dissimilar; and would effectively overturn the celebration rule. See generally Andrew Koppelman, SAME SEX, DIFFERENT STATES, pp. 20-22 (Yale U. Press 2006).[15] As then-Judge Cardozo famously wrote in Loucks v. Standard Oil Co. of N.Y., 224 N.Y. 99, 120 N.E. 198 (1918), on this question:

> Our own scheme of legislation may be different. We may even have no legislation on the subject. That is not enough to show that public policy forbids us to enforce the foreign right. … We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home. Similarity of legislation has indeed this importance: its presence shows beyond question that the foreign statute does not offend the local policy. But its absence does not prove the contrary. It is not to be exalted into an indispensable condition. … The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close the doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal.

Loucks, 120 N.E. at 201-202.

This Court actually preceded Cardozo by nearly 15 years in setting out a nearly identical test for a public policy exception in Chace. If a public policy exception is still

[15] See also, e.g., Cooney v. Osgood Machinery, Inc., 81 N.Y.2d 66, 79, 612 N.E.2d 277 (1993)("plainly not every difference between foreign and New York law threatens our public policy. Indeed, if New York statutes or court opinions were routinely read to express fundamental policy, choice of law principles would be meaningless. Courts invariably would be forced to prefer New York law over conflicting foreign law on public policy grounds").

to apply in this area of the law, the settled and wisest approach calls for a careful application of Chace. [16]

2. None of the specifics asserted by amici are adequate to invoke Chace's exception.

When certain amici attempt to be specific as to indicia of Rhode Island public policy that prohibit application of the celebration rule, they point to: (1) the gendered terms in Rhode Island's marriage and divorce statutes, Governor's Br., pp. 12-15; United Families Br., pp. 19-20; FRC Br., pp. 17-20; (2) the creation of the non-marital status of domestic partnership, Governor's Br., p. 17; (3) the failure of the legislature to pass bills "legaliz[ing] same sex marriage," Governor's Br., pp. 17-18; and (4) the absence of an

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[16] FRC states that comity is the correct mode of analysis, but cites several cases in which Canadian marriages between same-sex couples have not been recognized. FRC Br., p. 22 (citing In re Kandu, 315 B.R. 123 (Bankr. W.D. Wash. 2004), Hennefeld v. Township of Montclair, 22 N.J. Tax. 166 (2005), Bishop v. Oklahoma, 447 F. Supp. 2d 1239 (N.D. Okla. 2006) and Funderburke v. N.Y. State Dep't of Civil Serv., 13 Misc.3d 284, 822 N.Y.S.2d 393 (N.Y.Sup.Ct. 2006) (appeal pending).

But as FRC must concede, the comity analysis turns on "the statutory scheme" and the "facts" that are different here. The cases are inapposite and unpersuasive. In Kandu, a bankruptcy judge found that the definition of marriage in federal law "directly conflict[s]" with the definition in Canadian law, and under the Defense of Marriage Act ("DOMA"), the judge was required not to recognize the marriage. 315 B.R. at 134. In Hennefeld, a New Jersey tax court denied respect both because it believed the effect of a foreign country's laws end at its borders, 22 N.J. Tax at 178, and because of specific language in the state Domestic Partnership Act that militated against respect of marriages. Id. at 183-184. Bishop simply denies standing to the couple to challenge any portion of the federal marriage limitations because that statute applies to states and not foreign countries. 447 F.Supp. 2d at 1249. As to Funderburke, a case in which a retired teacher sought medical and dental insurance for his spouse, the trial court conflated New York's law on eligibility to marry under New York law with its state law on recognition of marriages validly entered into elsewhere, 822 N.Y.S.2d at 394, a point recognized by the State in reversing its position and adopting the analysis previously set forth by the State Attorney General. See Conflict Professors' Br., p.16 & n. 7. Another New York court disagreed with the mode of analysis and result in Funderburke, see Godfrey v. Spano, 15 Misc.3d 809, 816-817, 836 N.Y.S.2d 813, 818-819 (Sup. Ct. 2007), and amicus believes the State has moved to dismiss the Funderburke case as moot and is not objecting to plaintiff's cross-motion to vacate the decision below.

explicit legislative statement on the marriage of same-sex couples, Governor's Br., p. 11; FRC Br., pp. 19-20.

This amicus submits that none of these indicia of Rhode Island policy can satisfy Chace. First, Rhode Island General Laws also include a rule of statutory construction that "Every word importing the masculine gender only may be construed to extend to and include females as well as males." G.L. 1956 §43-3-3. Accordingly, any gendered limitations in state law can be read as gender neutral when required. Second, the statutes that extend certain benefits to "domestic partners" rely upon a definition of "domestic partner" that includes both same-sex and different-sex couples, thereby defeating the argument that the domestic partner statute creates an alternative legal framework for same-sex couples alone. See G.L. 1956 §36-12-1. Third, although the Legislature has failed to pass any law expressly allowing same-sex couples to marry, it has repeatedly refused to pass legislation that, in many cases, would have explicitly addressed the precise issue presented here by precluding recognition of marriages of same-sex couples in another jurisdiction. See generally MERI Br., pp. 20-24 (providing details of all legislative activity on the issue since 1997).

Not only is it weak to rely on these indicia, but on substance, it is difficult to discern how any of these indicia show that marriages of same-sex couples are odious in the eyes of Rhode Island law or are immoral and threatening to the fabric of society. At best, they reflect that Rhode Island has a different policy vis-à-vis the relationships of

same-sex couples than does Massachusetts. But, again, simple difference in policy is not enough to invoke Chace's public policy exception. [17]

V. CHACE – AND COMITY - ARE STILL GOOD LAW IN RHODE ISLAND AND, IN ANY EVENT, CHACE IS CONSISTENT WITH RECENT PRINCIPLES OF CONFLICT OF LAWS.

As this amicus and the Attorney General have submitted, Chace's view of the law remains vital today and squarely applies to the present case. GLAD Br., pp. 15-35; AG's Br., pp. 10-14. Moreover, as this amicus and the Conflict Professors have demonstrated, Chace is wholly consistent with the interest analysis of the Restatement (Second) of Conflict of Laws and with Professor Leflar's "choice-influencing" factors as well as other choice-of-law theories. GLAD's Br., pp. 21-25, 29-35; Conflict Professors' Br., pp. 5-14.

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[17] The curiosity of relying on legislative silence should not go unnoted. The Governor suggests that the lack of any "explicit statutory ban … could also indicate that the public policy against same sex marriage is so strong that a statutory ban is not thought necessary" although he does acknowledge that it "might indicate the lack of a public policy against same sex marriage." Governor's Br., p. 11. The FRC Brief ponders the absence of an express statutory declaration that marriages of same-sex couples are void and concludes, not surprisingly given the general theme of that brief, that "no express exclusion of that union is required" because they are "not 'marriages'." FRC Br., pp. 19-20. If silence can trigger the public policy exception, how is the Court supposed to apply the exception consistently and with reasonable certainty that it is discerning policy correctly? It is rather surprising that these amici, who regularly invoke the specter of "activist judges," would invite courts to such open-ended policymaking. It also seems particularly ironic that the Family Research Council (FRC) and its legal arm, the Alliance Defense Fund (ADF), would be minimizing the significance of express legislative enactments on the "defense of marriage" so-called as they are the sponsors of the website, www.domawatch.org, which provides a meticulous chronicle of all things related to legislation and constitutional amendments on this subject. As noted in a piece on the FRC website, their view is that "The intent of doma [a "defense of marriage act"] is to provide legal protection to states in danger of having these counterfeit marriages forced upon them by Massachusetts-wed same-sex 'spouses' moving into their state." Gerald Bradley and William Saunders, "DOMA Won't Do It: Why the Constitution Must Be Amended to Save Marriage," http://www.frc.org/get.cfm?i=BC04D03&v=PRINT (last visited August 14, 2007). Curious and convenient then that FRC and ADF would see no need for a "doma" in Rhode Island since Rhode Island does not have such a law.

Nonetheless, one amicus has at least raised the question of the ongoing vitality of Chace and comity; and it merits a brief comment.[18] FRC Br., pp. 23-28. Substantively, FRC suggests that this Court has moved to an "interest-weighing" approach and away from comity. Even assuming this were a correct statement of Rhode Island law in the specific context of the recognition of foreign marriages, as noted immediately above, the "interest-weighing" approach in this specific area of the law favors validation of the marriage and leads to the same result. See GLAD's Br., pp. 21-25, 29-35.

Moreover, the FRC Brief never explains how "interest-weighing" leads to a conclusion of non-recognition in this case. Rather, the brief simply cites to and discusses two cases, Wilkins v. Zelichowski, 26 N.J. 370, 140 A.2d 65 (1958) and Cunningham v. Cunningham, 206 N.Y. 341, 99 N.E. 845 (1912). Perhaps the greatest difficulty with

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[18] The Wardle Brief does not challenge the application of Chace and comity but does raise an alternative "governmental interest" analysis. Wardle Br., pp. 13-14. Although the brief does not mention him, the governmental interest approach was developed by Brainerd Currie. While the Wardle Brief suggests that this type of analysis would lead to a contrary result from Chace and comity (as submitted by this amicus), that is by no means a foregone conclusion. See Conflict Professors' Br., p. 11 (discussing Currie). Also, this Court has never adopted the Currie "governmental interest" approach. This amicus discovered only one arguably relevant case from this Court citing Currie, and there this Court was applying an "interest analysis" in a tort case to the thorny question of "guest statutes" and merely cited Currie as one authority supporting its conclusion. Labree v. Major, 111 R.I. 657, 673, 306 A.2d 808, 818 (1973).

It is also worth noting that, in this context, Professor Wardle makes the startling assertion that application of Massachusetts law in this case "would appear to violate the Full Faith and Credit clause." Wardle Br., p. 14; see also id., p. 21 ("In this case, application of Massachusetts law would violate this minimal constitutional requirement!") (emphasis in original). Under controlling Supreme Court precedents, state choice of-law rules are largely free of constitutional compulsion. Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981); id. at 308 & n. 10 (noting court has abandoned interest weighing approach between states). See also, Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 823 (1985) ("[I]in many situations a state court may be free to apply one of several choices of law.") It is patently ludicrous to suggest that a forum might violate Full Faith and Credit by actually applying foreign law.

attempting to use these cases in support is that neither applies an "interest-weighing" analysis in the contemporary sense. Cunningham is a 1912 decision that even predates the First Restatement of Conflicts, and Wilkins (of 1958, 11 years prior to the Second Restatement) primarily relies on Cunningham while making one reference to the First Restatement. Wilkins, 140 A.2d at 68-69. In addition, both cases involve actions for the annulment of a marriage involving participants not being of proper age to marry. In this context, the New Jersey Supreme Court relied very heavily on the fact that the New Jersey legislature had adopted a very specific statutory procedure for an underage spouse to obtain an annulment in a certain timeframe shortly after the marriage. Id. at 66, 69. In Cunningham, the Court applied a comity analysis and determined that the underage marriage without parental consent was "repugnant to our public policy and legislation." Cunningham, 99 N.E. at 848.[19]

Here, there is no reason for this Court to fail to apply Chace and the principles of comity.

VI. CERTAIN AMICI MISCONCEIVE THE PROPER ROLES OF THE LEGISLATURE AND THE COURTS.

It should be axiomatic that recognition of foreign marriages is, and has always been, a matter of common law for disposition by the courts. At the same time, it is equally clear that the legislature has the power to abrogate the common law providing that it does so clearly and explicitly. As a result, the Court's role here is the consistent

[19] The FRC Brief also argues that comity is "exclusively premised on the availability of reciprocal benefits." FRC Br., p. 12. Thus, in FRC's view, unless Rhode Island seeks reciprocity for recognition of marriages of same-sex couples performed in Rhode Island, comity does not apply because there is no exact reciprocity. FRC Br., p. 13. Suffice it to say again that this is one of those arguments that totally would eliminate any choice-of-law questions. Where comity generally assumes some disparity in the law of two jurisdictions, FRC's argument simply removes that ingredient completely.

application of Rhode Island's common law of choice-of-law, currently most carefully laid out in Chace.[20]

As just noted, the legislature's role is as the ultimate voice, subject only to applicable constitutional constraints and the clear statement rule, of what marriages should not be recognized as a matter of public policy.

Despite those clear roles, certain amici misconceive the Court's and the legislature's role when it concerns the topic of the marriage of same-sex couples. For example, the NLF Brief makes an impassioned plea to this Court that, in the face of the Massachusetts decision that its law does not bar Rhode Island same-sex couples from coming to Massachusetts to marry, Rhode Island "must respond affirmatively, explicitly, and promptly." NLF Br., p. 18. As a result, NLF wants this Court to reach out and declare that same-sex couples cannot marry in Rhode Island; that marriage in Rhode Island "requires a man and a woman"; and that "[a]ny other combination" is not a marriage. Id. However, that is clearly not this Court's role, which is to consistently apply the common law on the question of marriage recognition. NLF's plea should go to the legislature which could, in fact, take the steps that NLF seeks but which, to date, it has refused to do.

Similarly, as noted in fn. 17 in Section IV.C.2., above, the Governor and FRC would read legislative silence as adequate justification for this Court to declare that Rhode Island will not recognize these parties' marriage. To repeat, following that counsel would tend to give the Court rather more power and more unbridled discretion than is appropriate in this area of the law.

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[20] This Court can modify Chace. Indeed, this amicus has argued for abolishing the common law public policy exception. GLAD Br., pp. 28-29.

For his part, the Bishop simply misunderstands the process such that his worst fears are truly illusions. He wants the legislature to resolve the issues before this Court, Bishop's Br., p. 14; and he argues that a decision for recognition in this case will undercut the policy of the legislature and "also its power over the issue in the future," id., p. 13. That is simply incorrect. Regardless of what this Court does in this case, the legislature retains the power to abrogate the common law rule of recognition to provide that the marriages of Rhode Island same-sex couples in Massachusetts will not be recognized under Rhode Island law. This Court will not, and cannot, effect that legislative role regardless of what it does in this particular case.[21]

Finally, the United Families Brief makes the argument that the common law (the Court's domain) grows slowly while the legislative arena is where "radical" and "revolutionary" change must be made. United Families Br., pp. 43-44. Even accepting that formulation as a workable frame of reference, this Court is doing the "slow work" of the common law when it applies settled principles of comity to the marriage recognition question currently before the Court. It is only by misperceiving this case as about the substantive marriage law of Rhode Island, "mandat[ing] the radical change from man/woman marriage to genderless marriage," that United Families can somehow characterize the Court as treading into legislative territory.

[21] The Bishop also suggests that recognition would be a radical change. Bishop's Br., p. 8. However, the reverse is actually true. The simple, straightforward application of Chace is what maintains the status quo. Conversely, having the Court declare the marriage policy of Rhode Island in this particular context could be seen as usurping the proper role of the legislature.

VII. THE WARDLE BRIEF, FEDERAL DOMA AND FULL FAITH & CREDIT.

The Wardle Brief speaks to federal DOMA and the Full Faith & Credit Clause in its Sections III, VI and VII. Wardle Br., pp. 18-24, 43-48. This amicus is in agreement with Professor Wardle on certain fundamental points in these areas of the law, e.g., DOMA "does not forbid any state to recognize same-sex marriage, nor does it require any state to recognize same-sex marriage" and "on its face DOMA protect[s] the right of Rhode Island to decide for itself whether it will or will not recognize Massachusetts same-sex marriages …." Wardle Br., pp. 18-19. At the same time, two points are worth noting.

First, the Wardle Brief states:

> Under DOMA a state can decline to recognize a same-sex marriage from another state (or a claim or right derived therefrom) for any valid policy reason – whether based in constitutional, statutory, administrative, common law, choice of law rule, public policy exception, criminal law, civil law, family law, jurisdictional law, etc.

Wardle Br., p. 19.

To the extent this passage is simply meant to restate the proposition that federal DOMA leaves each state free to deal with the marriages of same-sex couples under its own, independent state law, it is unobjectionable. However, to the extent Professor Wardle is insinuating that DOMA somehow is intended to direct or invite states to deny any claim of, or provide any forum to, gay people in relationship "for any valid policy reason," he is simply overreaching and deliberately misreading DOMA. The section of the federal DOMA law that potentially involves marriage recognition is Section 2 of that law, denominated "Powers Reserved to the States" and codified at 28 U.S.C. §1738C. It is intended to address solely issues of full, faith and credit and the federal Constitution

and nothing more. See Chambers Br., pp. 13-15 (detailing the relevant Congressional legislative history). As all the parties and amici agree, the Full Faith and Credit Clause is not really implicated in the matter before this Court. Therefore, DOMA is not implicated as well.

The matter before this Court implicates state law, i.e., what Family Court jurisdiction did the Rhode Island legislature create and what is required under Rhode Island common law in the consistent application of principles of comity and choice-of-law. The federal DOMA law does not provide any guidance or direction as to those central questions.

Second, the Wardle Brief seeks to dissuade this Court from recognizing the Chambers/Ormiston marriage by asserting that "interstate recognition of that [divorce] judgment will be seriously problematic" because the vast majority of the other states and the federal government will "resist[] the enforcement of and declining recognition of the Rhode Island same-sex marriage 'divorce' judgment." Wardle Br., pp. 46-48.[22]

This argument is a red herring. Will the states that have DOMA laws truly refuse to honor the Rhode Island divorce judgment because they prefer the alternative, i.e., that Chambers and Ormiston are, in fact, still married? Secondarily, Rhode Island owes an obligation to its own residents, Margaret Chambers and Cassandra Ormiston, to allow them to attain the status of single persons that they desire. It would do a terrible injustice

[22] While DOMA might conceivably be on solid constitutional footing with respect to full faith and credit and marriage licenses, the question becomes much more difficult when the question is whether full faith and credit must be accorded to an actual court judgment. Whether DOMA reaches so far and, if so, whether that construction places DOMA's constitutionality in serious doubt is a subject explored at some length by Professor Andrew Koppelman. See Andrew Koppelman, SAME SEX, DIFFERENT STATES, pp. 120-136 (Yale U. Press 2006).

to leave them in an indeterminate state by refusing them a forum to obtain a divorce. Surely, it cannot be justified to inflict that harm on Rhode Island citizens because of a few law professors' notions of "angry litigation" and a "legal war." Wardle Br., p. 46.

VIII. CONCLUSION

For all of the foregoing reasons and the reasons set forth in its original brief, the amicus, Gay & Lesbian Advocates & Defenders (GLAD), respectfully requests that this Court answer the certified question in the affirmative.

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