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 *AMICUS CURIAE* CHRISTOPHER F. YOUNG

Christopher F. Young
Rhode Island Political Candidate
25 MacArthur Blvd.
Wakefield, RI 02879

Pro-Se for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

CONSTITUTIONS AND STATUTES

OTHER

I. INTRODUCTION

This, again, is not a divorce case. This court need only decide the statutory language in Rhode Island general laws does not provide for unlawfully married same-sex unions from Massachusetts. Margaret Chambers and Cassandra Ormiston, two Rhode Island women and residents did not enter into a legal Marriage by Rhode Island law, and now cannot have a Rhode Island divorce, in part because the Family Court is without statutory jurisdiction. If the statutory argument is not addressed, then this court may not violate the United States Constitution under the First Amendment's Establishment clause and Free Expression clause protections to the religious term "marriage." The answer is no to this certified question: "May the Family Court properly recognize, for the purpose of entertaining a divorce petition, the marriage of two persons of the same-sex who were purportedly married in another state?"[1]

I. DISCUSSION

A. THIS COURT Has Before It A GENUINE CASE OR CONTROVERSY EXACTLY BECAUSE RESOLUTION OF THE UNAVOIDABLE JURISDICTION ISSUE DEPENDS ENTIRELY ON RESOLUTION OF THE RECOGNITION OF THE SAME-SEX MARRIAGE ISSUE

To begin with, how do we enter the arena to make the jurisdiction argument, quoting United Families International "subject matter jurisdiction is an indispensable requisite in any judicial proceeding; it can be raised at any stage thereof either by the parties or by the court sua sponte..."[2]

---

[1]Supreme Court, Order of May 21, 2007, at 1.

[2] Zarrella v. Minnesota Mut. Life Ins. Co. 824 A.2d 1249, 1256(R.I. 2003). *See* also State v. Sivo, 925 A. 2d 901, 916(R.I. 2007)("Challenges to a court's subject-matter jurisdiction can be raised at any point in the proceedings..."; Pine v. Clark, 636 A.2d

The lack of the response briefs addressing the constitutional violations of the Establishment clause and Free Expression clause to the United States Constitution that same-sex marriage will cause, that I addressed in my Initial Brief, points to the validity of my arguments.[3] The very foundation of the Catholic faith as well as Christian faiths, the Jewish faith, and numerous other religions, places marriage as the union between a man and a woman as part of the bedrock to their faith. Altering this religious term jeopardizes their essential involvement in society. This requires this court to make a preliminary determination as to the validity of this non existent marriage by denying the above question that has been brought to this court by the Family Court, in no doubt, in order to enter a divorce decree.

The New American Bible Chapter 2 Verse 18:

> "The Lord God said: "It is not good for the man to be alone. I will make a suitable partner for him." 19 So the LORD GOD formed out of the ground various wild animals and various birds of the air, and he brought them to the man to see what he would call them; whatever the man called each of them would be it's name. 20 The man gave names to all the cattle, all the birds of the air, and all the wild animals; but none proved to be the suitable partner for the man.
>
> So the LORD GOD cast a deep sleep on the man, and while he was asleep, he took out one of his ribs and closed up its place with flesh. 22 The LORD GOD then built up into a woman the rib that he had taken from the man. When he brought her to the man, 23 the man said:
>
> "This one, at last, is bone of my
> bones and flesh of my flesh;
> This one shall be called 'woman,'
> For out of 'her man' this one has been
> taken."
>
> 24 That is why a man leaves his
> Father and mother and clings to

1319, 1321 (R.I. 1994)("A challenge to subject-matter jurisdiction questions the very power of the court to hear the case. It is an axiomatic rule of civil procedure that such a claim... may be raised at any time in the proceedings").

[3] Brief of Amicus Curiae Christopher F. Young passim.

His wife, and the two of them become one body.[4]

Matrimony is defined in the Encyclopedic Dictionary of the New American Bible as:

> "Matrimony is the sacrament of the church through which a Christian man and woman are united as husband and wife."[5]

The courts must not violate the first amendment. An example of this is the court's recognizing a black man as a man with all the same and equal rights to get married. Accordingly, this is justified because this is supported by case law, history, context and constitutional protections. A black man is a man and therefore the religious term marriage was not changed from the union of a man and woman. However, the court had a basis in reality to make such a decision. No basis can be formed for such an allowance to same-sex marriage. The court does have case law and a constitutional basis for a female to be equal in rights to a male from the very moment of creation of her life and for governmental purposes, from the acknowledgement of life. Yet women are still distinct from a man. Again, to change the definition of marriage, which is protected under religious freedom, a woman would have to be a man and a man would have to be a woman. This will never be. We are all connected by our humanity and, in my faith, with God. Just because we have similar characteristics does not mean we are identical; what is sad is this uniqueness is not recognized universally. Unlike Massachusetts, I can only hope this court's judges can see the difference between a woman and a man.

---

[4] The New American Bible, 2:18-2:24, Fireside Bible Publishers, Copyright, 1987 and 1981, by Devore & Sons, Inc. Wichita, Kansas.
[5] *Id.* at p.71 of Encyclopedic Dictionary.

It is well understood that this Court will not reach a constitutional question unless it has to.[6] However, those Amici Curiae briefs that state no constitutional questions have been addressed by the parties to this action are incorrect. The constitutional stage was set by the actors in the Initial Brief of Cassandra Ormiston on pages 5, 7 and most specifically 10.

> "....to even consider it in the analysis of the issue, is to raise all matters of constitutional issues."

Also see the brief in reply of Cassandra Ormistion on pages 7 and 9. In those pages and briefs U.S. Const. art. IV, § 1 and U.S. Const. art. III, § 1 were both argued in detail citing both state and federal cases.

This court is very knowledgeable and of course knows it cannot evade the U.S. Supreme Court's review by failing to discuss federal questions in its opinion. *Chapman v. Goodnow's Adm'r.*, 123 U.S. 540, 548 (1887) ("If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects a claim, but avoids all reference to it, is as much against the right . . . as if it has been specifically referred to and the right directly refused.").

In this case, if the court does not address the lack of legislative intent in the statutory language to allow for jurisdiction for same-sex marriage, the constitutional questions must be answered. This court is required to make every effort to effectuate the legislative intent, while avoiding construing statutes to reach absurd results.[7] This again requires this court to make a preliminary determination of statutory jurisdiction for the Family Court by the statutory intent of Rhode Island laws governing the term "marriage."

---

[6] *See* Supreme Court, Order of January 17, 2007, at 1.
[7] State v. Menard, 888 A.2d 57, 60 (R.I. 2005).

This preliminary determination must conclude this is a non existent marriage, in that Rhode Island statutes do not include same-sex marriage. This is well argued in the Response brief of Amicus Curiae Family Research Council and Reverend Lyle Mook.[8] The basic outline of that argument is Rhode Island courts must look at the gendered terms in its marriage laws, like "bride," "groom," "husband," "wife" "mother," and "father," and conclude, as all other state courts considering the same question of statutory interpretation have done, that same-sex couples cannot marry in Rhode Island. One example among many in the R.I.G.L § 15, 33 and other Rhode Island laws, is the example of "man" to be defined as "father." To begin considering surrounding statute language let's look at R.I.G.L. § 15-8-3 (man rebuttably presumed to be father of child if married to child's mother at the time of conception). This issue also poses a real problem for the assignment of property. The Family Court has no jurisdiction over property distribution if both parties to a divorce action are husbands or both are wives.[9] There is no statutory or other citation forming the basis for marriage to be of parties of the same-sex.

When the state judiciary interprets law that is not supported by its fair reading, they create law, making judicial legislation that in this case will co-op federal congressional and/or legislative and executive powers. This is cognizable under the separation of powers principle. The right of a legislative body to exercise its legislative powers will not be invaded by the judicial branch of government. The separation of

---

[8] *See* Response brief of Amicus Curiae Family Research Council and Reverend Lyle Mook, pg.5

[9] *See* R.I.G.L. § 15-5-16.1

powers doctrine is so fundamental that it needs no discussion. See *Household Finance Corp. v. State*, 40 Wn. (2d) 451, 244 P. (2d) 260 (1952.)

United States v. Brown, 381 U.S. 437, 443 (1965) ("[I]f a given policy can be implemented only by a combination of legislative enactment, judicial application, and executive implementation, no man or group of men will be able to impose its unchecked will").

This court's decision must not fail in its statutory interpretation of Rhode Island laws governing marriage, in that the fundamental principle of statutory interpretation "is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Hanlon v. Rollins*, 286 Mass. 444, 447, 190 N.E. 606 (1934). *See Sullivan v. Brookline*, 435 Mass. 353, 360, 758 N.E.2d 110 (2001). Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense. *See Champigny v. Commonwealth*, 422 Mass. 249, 251, 661 N.E.2d 931 (1996); *Pentucket Manor Chronic Hosp., Inc. v. Rate Setting Comm'n*, 394 Mass. 233, 240, 475 N.E.2d 1201 (1985); *Tilton v. Haverhill*, 311 Mass. 572, 577-578, 42 N.E.2d 588 (1942). A properly promulgated regulation is to be construed in the same manner as a statute. *See Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 769, 407 N.E.2d 297 (1980).

The plain language of the statute and the legislative history make clear that the phrase "....man," modifies "father" as well as "husband" in surrounding statutes of R.I.G.L. § 15-8-3 above See H.R. Rep. No. 90-1956 (1968), reprinted in 1968 U.S.C.C.A.N. 4426, 4427, "generally recognized as particularly suitable for sporting purposes," modifies "shotgun," as well as "shotgun shell." Moreover, the doctrine of the last antecedent "must yield to the most logical meaning of a statute that emerges from its plain language and legislative history." *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 833 (9th Cir. 1996).

In this case the court cannot interpret marriage too broadly, to expand its meaning to include same-sex parties through divorce recognition. *See Foster v. Geller*, 449 S.E.2d 802, 806 (Va. 1994) ("doctrine of implied authority . . . should never be applied to create a power that does not exist"). The Massachusetts Court decisions cited by the State of Rhode Island Amicus Curiae response brief,[10] *Goodridge v. Dep't of Pub Health*, 798 N.E.2d 941(Mass. 2003). and *Cote-Whitacre v. Dep't of Pub. Health*, 2006 WL 3208758 (Mass. 2006), are cases where the issues cited do not grant statutory power by the Massachusetts Courts over Rhode Island statutory language. This case is a Rhode Island statutory interpretation case as well as a religious freedom case because "we do not ... construe statutory phrases in isolation; we read statutes as a whole." *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769, 81 L. Ed. 2d 680 (1984). In fulfilling this requirement, we find particularly applicable the ejusdem generis and noscitur a sociis canons of statutory construction. These related canons remove the phrase from the abstract and give it the meaning the context demands. *Cf. Wash. State Dep't of Soc. and*

[10] *See* Response Brief of Amicus Curiae State of Rhode Island pg. 2

Health Servs. v. Keffeler, 537 U.S. 371, 383-84, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003) (concluding after applying the canons of ejusdem generis and noscitur a sociis that the contextual meaning of the term "other legal process" is more restrictive than the meaning the term would have in the abstract). Applying these canons, one can conclude that the meaning of "…..father" in the context of R.I.G.L. § 15-8-3 is narrower than its meaning in the abstract.

According to the ejusdem generis canon, "[a] general word or phrase [that] follows a list of specifics ... will be interpreted to include only items of the same type as those listed." Black's Law Dictionary 556 (8th ed. 2004). In other words, we apply the ejusdem generis canon to determine the meaning of a catch-all phrase by looking to the common elements among the specific things mentioned in the list. For example, "if a statute lists 'fishing rods, nets, hooks, bobbers, sinkers and other equipment,' 'other equipment' might mean plastic worms and fishing line, but not snow shovels or baseball bats." *Bazuaye v. United States*, 317 U.S. App. D.C. 370, 83 F.3d 482, 484 (D.C. Cir. 1996) (internal citation omitted); *See* also *Reiche v. Smythe*, 80 U.S. 162, 20 L. Ed. 566 (1871) (applying the ejusdem generis canon to conclude that "birds" are not "other live animals" for the purpose of a statute establishing customs duties for "all horses, mules, cattle, sheep, hogs, and other live animals"). In these examples, isolating the general phrase from the specific things mentioned would result in the statute encompassing far more than the context of the statute suggests the legislature intended.

R.I.G.L. § 15-8-3 presents a textbook ejusdem generis scenario. It contains a general phrase -- "….man" -- that follows a recitation of specific things -- "father" -- whose similar characteristic is that authority of the Family Court is charged with the

function of enforcing laws on marriage. *See* e.g., *Formula One Motors, Ltd. v. United States*, 777 F.2d 822, 824 (2d Cir. 1985).

Similar to the canon of ejusdem generis is the canon of noscitur a sociis. According to the noscitur a sociis canon, the meaning of an undefined word or phrase "should be determined by the words immediately surrounding it." Black's Law Dictionary 1087 (8th ed. 2004). This canon infuses into "groom," "husband," "father" a "meaning [gathered] from the words around it."[11] No place is Rhode Island law is marriage defined to include two people of the same-sex or is "father" defined as both man and woman. A more recent example of the application of the noscitur a sociis canon is found in *Gutierrez v. Ada*, 528 U.S. 250, 120 S. Ct. 740, 145 L. Ed. 2d 747 (2000), in which the Supreme Court examined the meaning of the phrase "in any election" as used in the Guam Organic Act.[12]. Despite the unqualified language of the phrase, the Court instructed that "the key to understanding ... the phrase" is to look at the references surrounding it in the statute.[13] Because the other words in the statute related solely to gubernatorial elections, the Court determined that Congress did not "shift its attention" from the context of gubernatorial elections when using the unqualified general phrase "in any election" but instead intended for the phrase to refer only to gubernatorial elections.

Applying the noscitur a sociis canon here, it is obvious that R.I.G.L. § 15's specific references to marriage as to the Family Court's enforcement authority indicates

---

[11] Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307, 81 S. Ct. 1579, 6 L. Ed. 2d 859, 1961-2 C.B. 254 (1961) (concluding that in a statute referring to "income resulting from exploration, discovery, or prospecting" the word "discovery" is limited to only drilling and mining activities because the other words "strongly suggest that a precise and narrow application [of the word 'discovery'] was intended").
[12] Organic Act of Guam, 48 U.S.C. *Id.* at 254-258
[13] *Id.* At 254

that the "marriage" referenced therein should be limited to man and woman marriage to each other.

The plain words cannot be divorced from their context. *See Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000) (" It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (emphasis added and internal quotation marks omitted)).

The response brief of Amicus Curiae the State of Rhode Island states:

> "the Chamber-Ormiston marriage was validly performed in a co-equal sovereign state."[14]

However, there is precedent from another state for refusal to recognize same-sex domestic partnerships or civil unions granted by another state. In *Rosengarten v. Downes*, 71 Conn. App. 372, 802 A.2d 170 (2002), the Connecticut Appellate Court held that a foreign same-sex civil union was not a "marriage" under Connecticut law for purposes of obtaining rights and privileges provided by marriage. Thus, state courts with subject matter jurisdiction over matters affecting or involving dissolution of marriages lacked authority over an action seeking to dissolve a same-sex civil union. As Connecticut does not recognize the validity of same-sex marriages, the Court held that there was no *res* to address and dissolve. 71 Conn. App. at 380, 802 A.2d at 175.

I would like to address the jurisdiction argument addressed in the Response brief of Amicus Curiae the State of Rhode Island on pg.1 of that brief.

> "This court need only decide....Because R.I. Gen. Laws 15-5-1 et seq. vest the Family Court with the authority to enter divorce decrees with respect to marriages..."

---

[14] *See* Response brief of Amicus Curiae the State of Rhode Island pg.3

Here, the State of Rhode Island is stating the Family Court has "authority" or jurisdiction to enter divorce decrees with respect to same-sex "marriages." No place in Rhode Island law does it say a "marriage" can be made up of same-sex partners. This jurisdictional authority argument is well argued in my fellow Amicus Curiae brief by the Untied Families International, Family Watch International, and Family Leader Foundation pg. 5-8, 10.

In addition, this court may review the jurisdiction question because it is essential for this court to review the statutory intent in Rhode Island marriage laws to answer the question "May the Family Court properly recognize, for the purpose of entertaining a divorce petition, the marriage of two persons of the same-sex who were purportedly married in another state?"[15]

The question is, how does Rhode Island statutory language define the term marriage? The Rhode Island statutory intent establishing the Family Court grants the court jurisdiction "to hear and determine all petitions for divorce from the bond of marriage."[16] There are numerous Rhode Island statutes establishing marriage jurisdiction, over a husband and wife, to the Family Court. Debt statutes for marriage are some of the most relevant. Under Rhode Island law, married persons are responsible for their spouse's debts such as medical bills, rent and the purchases of items that support the family or benefit the couple.[17] Under Rhode Island law, a spouse cannot completely disinherit a spouse by leaving the spouse out of his or her will unless the couple signed a

---

[15] Supreme Court, Order of May 21, 2007, at 1.
[16] R.I.G.L § 8-10-3(a).
[17] *See* Landmark Medical Center v. Gauthier, 635 A.2d 1145 (R.I. 1994) (recognizing reciprocal obligations of support between spouses).

valid pre-nuptial agreement.[18] In Rhode Island, marriage automatically revokes an existing will.[19]

In the responsive brief of Amicus Curiae Gay & Lesbian Advocates & Defenders, pg. 11, my Initial Brief was falsely attacked for lack of a jurisdiction argument.

> "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."[20]

Santos clearly states on pg. 8-9 of my initial Amicus Curiae brief that the court considered the same-sex relationship of the wife in *Santos* as:

> "repugnant to and in violation of the marriage covenant, in that she has illicitly associated with other women."[21]

In *Santos* this same-sex relationship is clearly defined:

> "There is also testimony concerning a letter which apparently was written by respondent in which she professed and preferred love for one of these girl friends."

If the court considers same-sex relationships "repugnant" or a negative to the marriage contract between a man and a woman (one can only conclude) then the term "marriage" must not be inclusive of same-sex relationships when considering statutory interpretation. The focus here is on the statutory interpretation of the term "marriage covenant" not to be inclusive of same-sex marriage, instead of the argument that this same-sex marriage is void or voidable by law for divorce.[22] Statutory interpretation is more relevant to this court for statutory jurisdictional power or authority of the Family

---

[18] *See* R.I.G.L. § 33-10-1, R.I.G.L. § 33-10-3, R.I.G.L. § 33-1-10, R.I.G.L. § 33-1-5.
[19] *See* R.I.G.L. § 33-5-9.
[20] Santos v. Santos, [NO NUMBER IN ORIGINAL], SUPREME COURT OF RHODE ISLAND, 80 R.I. 5; 90 A.2d 771; 1952 R.I. LEXIS 2, July 30, 1952, Decided.
[21] *Id.*
[22] *See* Initial Brief of Amicus Curiae the State of Rhode Island pg.7

Carolyn A. Mannis
Rhode Island ACLU
128 Dorrance Street, Suite 220
Providence, RI 02903

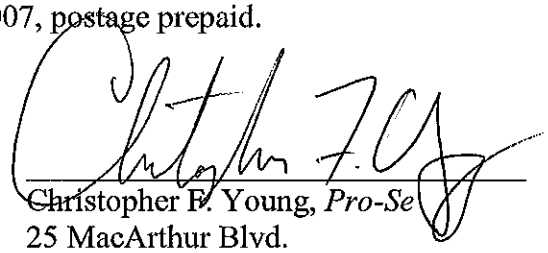
Gerald C. DeMaria, Esq.
The Hay Building
123 Dyer Street
Providence, RI 02903

Lynn D. Wardle
Bruce C. Halen Professor of Law
J. Rueben Clark Law School, Room 518
Brigham Young University
Provo, UT 84602

William L. Saunders
Family Research Council
801 G Street N.W.
Washington, DC 20001

Lincoln C. Oliphant
Marriage Law Project
Columbus School of Law
3600 John MacCormick Street, N.E.
Washington, DC 20064

The undersigned hereby certifies that a true copy of the within has been sent to the above persons by regular mail, on August 31st, 2007, postage prepaid.



Christopher F. Young, *Pro-Se*
25 MacArthur Blvd.
Wakefield, RI 02879
401-477-6178