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## ARTICLES

### **Marriage in the Time of Internet Ministers: I Now Pronounce You Married, But Who Am I To Do So?**

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During the colonial period and the early years of the Republic, the school had accepted only those students with great family names. But the old families, ruined by Independence, had to submit to the realities of a new time, and the Academy opened its doors to all applicants who could pay the tuition, regardless of the color of their blood, on the essential condition that they were legitimate daughters of Catholic marriages.

—Gabriel García Márquez\*

So, oft in theologic wars  
The disputants, I ween,  
Rail on in utter ignorance  
Of what each other mean,  
*And prate about an Elephant*  
*Not one of them has seen!*

—John Godfrey Saxe‡

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† Professor of Law, The Dickinson School of Law of the Pennsylvania State University. The author wishes to express his gratitude to Joshua M. Kaplowitz, Esq., of Drinker Biddle & Reath LLP, Philadelphia, for generously supplying him with information concerning recent litigation in Pennsylvania asserting the legality of marriages solemnized by ministers ordained over the Internet or itinerant ministers. He also wishes to express his appreciation to his research assistants, Lindsay Griffel (class of 2008) and TrudiAnn Kirby (class of 2010).

\* GABRIEL GARCÍA MÁRQUEZ, *LOVE IN THE TIME OF CHOLERA* 56 (Edith Grossman trans., Alfred A. Knopf 1988) (1985).

‡ JOHN GODFREY SAXE, *The Blind Men and the Elephant*, in *THE POEMS OF JOHN GODFREY SAXE* 259, 261 (1873).

## I. INTRODUCTION

In the decade and a half since the Hawaii Supreme Court's landmark decision in *Baehr v. Lewin*,<sup>1</sup> academics,<sup>2</sup> politicians,<sup>3</sup> judges,<sup>4</sup> the media, and voters in many jurisdictions<sup>5</sup> have focused their attention on the right (or lack thereof) of same-sex couples to marry. Yet difficult questions remain with regard to the essentials and formalities of traditional heterosexual marriage, and, as usual, the states are not in agreement as to how to resolve these questions. As a result, couples who believe (or one of whom believes) they are married may not be, and vice versa.<sup>6</sup> Couples who cannot marry in the state where they reside may "migrate" to a more romantically inclined (or financially inclined)<sup>7</sup> juris-

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1. 852 P.2d 44 (Haw. 1993).

2. For a good, but necessarily incomplete, listing of academic articles on same-sex marriage, see Lynn D. Wardle & Lincoln C. Oliphant, *In Praise of Loving: Reflections on the "Loving Analogy" for Same-Sex Marriage*, 51 How. L.J. 117 app. I at 170-77 (2007).

3. See Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C (2006)). See also the various state "DOMAs," including e.g., ARIZ. REV. STAT. ANN. § 25-101(c) (2008); IND. CODE ANN. § 31-11-1-1 (West 2008); N.H. REV. STAT. ANN. § 457:1 (2008); 23 PA. CONS. STAT. ANN. §§ 1102, 1704 (West 2001).

4. See, e.g., *In re Marriage Cases*, 183 P.3d 384, 447 (Cal. 2008); *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 411 (Conn. 2008); *Conaway v. Deane*, 932 A.2d 571, 586 (Md. 2007); *Opinions of the Justices to the Senate*, 802 N.E.2d 565, 570 (Mass. 2004); *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 952 (Mass. 2003); *Baker v. State*, 744 A.2d 864, 869 (Vt. 1999); *Andersen v. King County*, 138 P.3d 963, 986 (Wash. 2006) (en banc).

5. As of this writing (Feb. 2009), in every state that has put a ban on same-sex marriage on the ballot, the voters have ultimately approved the ban. The voters in Arizona originally rejected such a measure in 2006. See CNN.com, *Key Ballot Measures*, <http://www.cnn.com/ELECTION/2006/pages/results/ballot.measures/> (last visited Feb. 15, 2009). However, when the matter was put to Arizona voters again in 2008, they passed a same-sex marriage ban. See Jesse McKinley & Laurie Goodstein, *Bans in 3 States on Gay Marriage*, N.Y. TIMES, Nov. 6, 2008, at A1.

6. See, e.g., *Everetts v. Apfel*, 214 F.3d 990, 992 (8th Cir. 2000); *Estate of Henry*, 353 A.2d 812, 814 (Pa. 1976).

7. See Pam Belluck & Katie Zezima, *A 1913 Law Dies to Better Serve Gay Marriages*, N.Y. TIMES, July 16, 2008, at A1.

Massachusetts may have been the first state to legalize same-sex marriage for its residents, but when California last month invited out-of-state gay and lesbian couples to get married, the potential economic benefits did not go unnoticed here. Now Massachusetts wants to extend the same invitation.

State officials said they expected a multimillion-dollar benefit in weddings and tourism, especially from people who live in New York. A just-released study commissioned by the State of Massachusetts concludes that in the next three years about 32,200 couples would travel here to get married, creating 330 permanent jobs and adding \$111 million to the economy, not including spending by wedding guests and tourist activities the weddings might generate.

Kofi Jones, spokeswoman for Secretary Dan O'Connell of Housing and Economic Development, said: "The administration believes repealing this discriminatory and antiquated law is simply the right thing to do. The study does

diction, tie the knot there, and return to their home states with uncertain legal consequences.<sup>8</sup> The states are almost equally divided on such a basic issue as whether first cousins may marry.<sup>9</sup> Not only do such uncertainties and inconsistencies bring the validity of marriages into question, they may also affect such secondary issues as the status of children,<sup>10</sup> derivative health insurance,<sup>11</sup> auxiliary Social Security benefits,<sup>12</sup> and distribution of estates.<sup>13</sup>

The lofty Brandeisian concept of the states being “laboratories of democracy”<sup>14</sup> often devolves in reality into a hodgepodge of inconsistent rules. While the National Conference of Commissioners on Uniform State Laws has had notable success in proposing to the states uniform laws addressing jurisdictional issues in the realm of child support<sup>15</sup> and custody matters,<sup>16</sup> its Uniform Marriage and Divorce Act (UMDA) has found only limited acceptance among a handful of states.<sup>17</sup>

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show, though, that this action could also bring some added economic benefits to the commonwealth, which would be welcomed.”

*Id.*

8. See, e.g., *In re May's Estate*, 114 N.E.2d 4 (N.Y. 1953).

9. See Fredrick Kunkle, *Cousins Try to Overcome Taboo of 'I Do,'* SUN HERALD (Biloxi, Miss.), Apr. 26, 2005, at B8 (noting the existence of the cloyingly named advocacy group, Cousins United to Defeat Discriminating Laws Through Education (C.U.D.D.L.E.)).

10. See, e.g., *In re Marriage of Simmons*, 825 N.E.2d 303 (Ill. App. Ct. 2005); *In re Marriage of K.E.V.*, 883 P.2d 1246 (Mont. 1994).

11. See Kevin Sack, *Health Benefits Inspire a Rush to the Altar, or to Divorce Court*, N.Y. TIMES, Aug. 13, 2008, at A1.

12. Compare LAURA HALTZEL & PATRICK PURCELL, CONG. RESEARCH SERV., THE EFFECT OF STATE-LEGALIZED SAME-SEX MARRIAGE ON SOCIAL SECURITY BENEFITS AND PENSIONS (2008), available at [http://assets.opencrs.com/rpts/RS21897\\_20080103.pdf](http://assets.opencrs.com/rpts/RS21897_20080103.pdf), with Memorandum Opinion for the Acting General Counsel, Social Security Administration on Whether the Defense of Marriage Act Precludes the Non-Biological Child of a Member of a Vermont Civil Union from Qualifying for Child's Insurance Benefits Under the Social Security Act (Oct. 16, 2007), available at <http://www.justice.gov/olc/2007/saadomaopinion10-16-07final.pdf>. See generally Robert E. Rains, *The Impact of the Federal Defense of Marriage Act (DOMA) on Social Security Benefits*, 30 SOC. SECURITY FORUM 14 (Aug. 2008).

13. See, e.g., *Hesington v. Estate of Hesington*, 640 S.W.2d 824 (Mo. App. 1982).

14. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

15. First, the Uniform Reciprocal Enforcement of Support Act (URESAs), then the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs), and now the Uniform Interstate Family Support Act (UIFSA). See Uniform Law Commissioners, Amendments to the Uniform Interstate Family Support Act (2001), [http://www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-uifsa.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-uifsa.asp) (last visited Feb. 15, 2009); Uniform Law Commissioners, Legislative Fact Sheet (2001), [http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-uifsa.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uifsa.asp) (last visited Feb. 15, 2009).

16. First, the Uniform Child Custody Jurisdiction Act (UCCJA), and now the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). See Uniform Law Commissioners, Uniform Child Custody Jurisdiction and Enforcement Act, [http://www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-uccjaea.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-uccjaea.asp) (last visited Feb. 15, 2009); Uniform Law Commissioners, Legislative Fact Sheet (1997), [http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-uccjaea.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uccjaea.asp) (last visited Feb. 15, 2009).

17. See UNIF. MARRIAGE & DIVORCE ACT (amended 1973), 9A U.L.A. 159, 159 (1998)

Nor have the uncertainties and inconsistencies in the states' rules for entering into marriage been significantly ameliorated by clear and consistent constitutional jurisprudence by the Supreme Court. We know that states cannot prevent a marriage based upon the race of either participant,<sup>18</sup> cannot bar "deadbeat dads" from marrying,<sup>19</sup> and cannot require prison inmates to obtain their superintendent's permission to marry, at least where permission is available only in limited circumstances.<sup>20</sup> While striking down the prohibition on "deadbeat dads" marrying, the Court admonished that:

By reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.<sup>21</sup>

In other cases, the Court has upheld both a direct prohibition on "lifers" marrying<sup>22</sup> and a criminal conviction for polygamy against a claim of religious freedom.<sup>23</sup> The Court has also unanimously upheld the loss of Social Security disabled adult-child benefits for a recipient who married a disabled woman who was not receiving Social Security benefits.<sup>24</sup>

Hence, exactly what may constitute "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship"<sup>25</sup> is difficult, perhaps impossible, to explicate, much less predict. Moreover, the Court has added uncertainty to uncertainty by famously allowing one state to override another state's divorce decrees and remarriage, resulting in a couple being legally married in State A and criminally convicted of "bigamous cohabitation" in State B.<sup>26</sup>

One area of current uncertainty that has received a paucity of academic attention is state regulation of who may solemnize a marriage. Section 206(a) of the Uniform Marriage and Divorce Act provides:

A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or

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(indicating that the UMDA has been adopted in Arizona, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, and Washington).

18. *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

19. *Zablocki v. Redhail*, 434 U.S. 374, 390-91 (1978).

20. *Turner v. Safley*, 482 U.S. 78 (1987).

21. *Zablocki*, 434 U.S. at 386 (citing *Califano v. Jobst*, 434 U.S. 47 (1977)).

22. *Butler v. Wilson*, 415 U.S. 953 (1974) (mem.), *aff'g* *Johnson v. Rockefeller*, 365 F. Supp. 377 (S.D.N.Y. 1973).

23. *Reynolds v. United States*, 98 U.S. 145, 167 (1878).

24. *Califano v. Jobst*, 434 U.S. 47 (1977).

25. *Zablocki*, 434 U.S. at 386.

26. *See Williams v. North Carolina*, 325 U.S. 226 (1945).

in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, or Native Group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the [marriage license] clerk.<sup>27</sup>

Rather typically, however, the UMDA fails to define “any religious denomination.” Section 206 contains a strangely worded savings clause, complete with a triple negative: “The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if neither [sic] party to the marriage believed him to be so qualified.”<sup>28</sup> The comment to this savings clause optimistically explains: “Subsection (d) states definitely what probably would be the meaning of the section without it. However, it probably is wise to remove any possibility of misconception.”<sup>29</sup>

Compounding the matter further has been the proliferation in recent years of new organizations containing the word “church” or “ministry” in their titles, which function exclusively or primarily on the Internet. Some of these organizations may be little more than jokes<sup>30</sup> or efforts to avoid drug laws,<sup>31</sup> others may be so on the fringe that they bear little relationship to any known *religious* belief system. Consider, for example, the Church of Body Modification, which, on its online Minister Application form, asks potential clergy to respond to the theological question, “Can a person with only a navel or ear piercing claim to be as spiritually modified as someone with brandings and a split tongue?”<sup>32</sup> While mortification of the flesh has been and is a well-known *practice* in certain religions,<sup>33</sup> it appears to be the sole *raison d'être* of the

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27. UNIF. MARRIAGE & DIVORCE ACT § 206(a) (amended 1973), 9A U.L.A. 182 (1998).

28. *Id.* at § 206(d). *Nota bene*: There is an egregious typographical error in the West’s Uniform Laws Annotated version of this section, substituting the word “neither” for “either.” E-mail from Eric Fish, National Conference of Commissioners on Uniform State Laws, to author (July 16, 2008) (on file with author).

29. UNIF. MARRIAGE & DIVORCE ACT § 206(d) cmt. d.

30. *See* Beer Church, <http://www.beerchurch.com> (last visited Feb. 17, 2009).

31. *See* The Hawai’i Cannabis Ministry, <http://www.thc-ministry.org> (last visited Feb. 11, 2010) (claiming to use marijuana for religious purposes); *see also* Commonwealth v. Henry 57 Cumb. 246 (C.P. Cumb. 2008).

32. Church of Body Modification Minister Application, <http://uscobm.com/join-us/minister-application/> (last visited July 15, 2008). One adherent to the Church of Body Modification unsuccessfully claimed religious discrimination after she was fired for failing to remove her facial piercings. *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 138 (1st Cir. 2004); *see also* BOB RAINS, *The Cutup*, in *TRUE TALES OF TRYING TIMES: LEGAL FABLES FOR TODAY*, 84, 84–85 (2007).

33. *See generally* G.R.S. MEAD, *CONCERNING THE MORTIFICATION OF THE FLESH* (Kessinger Publishing 2003) (1920).

Church of Body Modification.<sup>34</sup>

Other “churches” may have somewhat more legitimate religious *bona fides*, creating difficult issues when their “ministers” purport to solemnize a wedding. A prime example is the Universal Life Church (ULC). This article will examine the decades-old, yet still quite current, controversy concerning marriages officiated by ULC ministers, and suggest a solution for the states which will avoid legislatures and courts having to answer the difficult—perhaps impossible—question of what is a “true religion.”

## II. PROVENANCE OF THE UNIVERSAL LIFE CHURCH

As the Universal Life Church is ignored in standard treatises on religions<sup>35</sup> and sects,<sup>36</sup> one must turn to the litigation over its tax status as a Section 501(c)(3) organization to get an understanding of what it is and is not, and the requirements—or lack thereof—to be a minister. In March 1970, the Internal Revenue Service filed a \$10,377.20 levy against the ULC’s bank account, prompting the ULC to file for a tax refund, followed by the IRS issuing a notice of tax deficiency.<sup>37</sup> The ULC proceeded to sue the United States in federal district court in California for a tax refund.<sup>38</sup> As the underlying facts were basically uncontested,<sup>39</sup> the resulting decision provides a useful guide to the ULC’s history and belief system, such as it is, as confirmed in the ULC’s own

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34. See Church of Body Modification Mission Statement, <http://uscobm.com/who-are-we/mission-statement> (last visited Feb. 15, 2009):

We, the congregation of the Church of Body Modification, will always respect our bodies. We promise to always grow as individuals through body modification and what it can teach us about who we are and what we can do. We vow to share our experiences openly and honestly in order to promote growth in mind, body, and soul. We honor all forms of body modification and those who choose to practice body modification for any reason. We also promise to respect those who do not choose body modification. We support all that join us in our mission and help those seeking us in need of spiritual guidance. We strive to share a positive message with everyone we encounter, in order to act as positive role models for future generations in the body modification community. We always uphold basic codes of ethics and encourage others to do the same. We are a dynamic community, always growing and changing, continually promoting safety, education, and experience in body modification.

35. See ENCYCLOPEDIA OF RELIGION (Lindsay Jones ed., 2d ed. 2005); THE OXFORD DICTIONARY OF WORLD RELIGIONS (John Bowker ed., 1997); THE BRILL DICTIONARY OF RELIGION (Kocku von Stuckrad ed., 2006).

36. See MARC GALANTER, CULTS: FAITH, HEALING, AND COERCION (2d ed. 1999); STEPHEN J. HUNT, ALTERNATIVE RELIGIONS: A SOCIOLOGICAL INTRODUCTION (2003); JAMES R. LEWIS, LEGITIMATING NEW RELIGIONS (2003).

37. Universal Life Church, Inc. v. United States, 372 F. Supp. 770, 775 (E.D. Cal. 1974).

38. *Id.* at 770–71.

39. *Id.* at 771.

basic texts.<sup>40</sup>

Kirby J. Hensley founded the Universal Life Church in 1959.<sup>41</sup> He converted a garage at his residence in Modesto, California into a church and chapel.<sup>42</sup> The ULC was incorporated in 1962 under the laws of the State of California.<sup>43</sup> According to Reverend Hensley, “the Honorary Doctor of Divinity program was developed since the church policy allowed ministerial credentials to be conferred gratis upon anyone on request and upon new ministers who were seeking information on ministerial procedures.”<sup>44</sup>

Not only were individuals granted ministerial credentials gratis without any theological training, fieldwork, or testing, but also there was—and is—no requirement of a declaration on their part to any spiritual belief system. In the words of Reverend Hensley, “[t]he Universal Life Church has no traditional doctrine. It only believes in that which is right. We believe that everyone has a right to his own conviction, a right to express it, and we recognize everyone’s belief.”<sup>45</sup> Today the ULC ordains its ministers online, “for life, without cost.”<sup>46</sup> As from the inception of the ULC, there is a complete absence of any religious doctrine whatsoever. “The Universal Life Church wants you to pursue your spiritual beliefs without interference from any outside agency, including . . . church authority.”<sup>47</sup> The website explicitly states that the ULC will ordain ministers “without question of faith.”<sup>48</sup> The online application form for ordination is simplicity itself. The applicant is only called upon to supply name, address, and email, and to click on the “Ordain me” button.<sup>49</sup>

In the original litigation over the ULC’s tax-exempt status, the government cited two issues:

- (1) Whether the ordination of ministers, the granting of church char-

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40. See generally KIRBY J. HENSLEY, *THE HOLY BIBLE FOR THE 21ST CENTURY* (1991); UNIVERSAL LIFE CHURCH, *A TEXTBOOK ABOUT THE UNIVERSAL LIFE CHURCH* (2005).

41. *Universal Life Church, Inc.*, 372 F. Supp. at 773.

42. *Id.* at 772.

43. *Id.*

44. *Id.*

45. *Id.* at 773 (internal quotation marks omitted).

46. Universal Life Church, <http://www.ulc.net/> (last visited Feb. 15, 2009). Technically, there may be a nondogmatic schism between the Universal Life Church and the Universal Life Church Monastery, which is the website to which the supplicant is referred for ordination, but, as there is no apparent doctrinal difference between the two entities, I shall simply refer generally to either of them as the Universal Life Church or ULC.

47. *Id.*

48. *Id.*

49. *Id.* (follow “apply for free ordination” link). Indeed, people have been known to register their pets online as ULC ministers. See *Blackwell v. Magee*, 531 So. 2d 1193, 1201 n.1 (Miss. 1988) (Griffin, J., dissenting).

ters, and the issuance of Honorary Doctor of Divinity titles by plaintiff are substantial activities which do not further any religious purpose, thus disqualifying plaintiff from tax exemption; and (2) Whether the issuance of Honorary Doctor of Divinity titles by plaintiff is an activity which is either illegal or in violation of public policy under the California Education Code Section 29007.<sup>50</sup>

The district court readily found that the ULC's issuance of Honorary Doctor of Divinity titles was proper under California law and was not a substantial activity which did not further any religious purpose.<sup>51</sup> Accordingly, the court found the ULC to be entitled to tax-exempt status.<sup>52</sup>

While granting the ULC tax-exempt status, the court was at pains not to try to pass on the ULC's religious *bona fides*:

Neither this Court, nor any branch of this Government, will consider the merits or fallacies of a religion. Nor will the Court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the Court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the Court to do so, it would impinge upon the guarantees of the First Amendment.<sup>53</sup>

The ULC's unorthodox method of ordaining ministers has been a huge quantitative success, although it may be impossible to know with any assurance the full measure of that success. In later litigation over the ULC's continued tax-exempt status, the U.S. Claims Court noted in 1987: "In its January 1971 Newsletter, [the ULC] estimated that it had sent out 700,000 ministerial certificates. In its Winter 1978 Newsletter, plaintiff speculated that its number of 6.5 million ministers would grow to 13 million if each minister would ordain just one other."<sup>54</sup> According to the ULC's "Monastery" website today, "[o]ver 20 million [Universal Life Church] ministers have become ordained online throughout the world."<sup>55</sup>

By way of contrast, the 2008 edition of the Catholic Church's statistical yearbook indicates that there were 407,242 Catholic priests

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50. *Universal Life Church, Inc.*, 372 F. Supp. at 771.

51. *Id.* at 775-76.

52. *Id.* at 776.

53. *Id.*

54. *Universal Life Church, Inc. v. United States*, 13 Cl. Ct. 567, 571 (Cl. Ct. 1987), *aff'd*, 862 F.2d 321 (Fed. Cir. 1988). The ULC lost this round of litigation, with the Claims Court finding that it had engaged in the substantial not exempt purpose of giving tax advice. *Id.* at 583. Accordingly, the ULC lost its tax-exempt status for the fiscal years ending April 30, 1978, through April 30, 1981. *Id.* at 568. The court explicitly declined to "judge . . . the legitimacy" of the ULC's religion. *Id.* at 580.

55. *Universal Life Church Monastery*, <http://www.themonastery.org/> (follow "become ordained online" hyperlink) (last visited Feb. 15, 2009).



worldwide at the close of 2006.<sup>56</sup> Thus, it appears that the ULC is claiming to have roughly fifty times more ordained ministers than the Catholic Church has priests.<sup>57</sup>

In the 1974 tax litigation, Reverend Hensley testified by deposition that he performed various sacerdotal functions, including the solemnization of marriages.<sup>58</sup> His lesson plans for ministers likewise covered basic church functions, including how to conduct marriage ceremonies.<sup>59</sup>

Today, the ULC website starts with this enticement: “Become ordained quickly and easily, and begin your own ministry! As a legally ordained minister, you will be able to perform weddings, funerals, baptisms and other functions of the clergy.”<sup>60</sup> Similarly, the ULC Monastery’s webpage asserts without qualification that the freedom of being a Universal Life Church Minister includes the legal status to officiate marriages.<sup>61</sup> Furthermore, it asserts that ordained ministers can officiate marriages for friends, family, and others.<sup>62</sup> “As a minister, you can officiate wedding ceremonies, baptisms, and other rituals. You can even start your own ministry. . . . You don’t have to purchase anything to gain the legal benefits and respect of being a minister.”<sup>63</sup>

The legal effect of such marriages, however, is far from clear in many American jurisdictions.

### III. STATE LITIGATION OVER UNIVERSAL LIFE CHURCH WEDDINGS

Given the ULC’s lack of any actual religious belief system, lack of a corporeal seminary, and lack of any training or qualifications for its ministry, it was inevitable that there would be challenges to the authority of its ministers to solemnize marriages. Also, given the variety of state marriage laws, it was also perhaps inevitable that these challenges would meet with differing results.

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56. *Vatican Yearbook Shows Rise in Catholic Population, Number of Priests*, EWTNEWS, Feb. 29, 2008, [http://www.ewtn.com/vnews/getstory\\_print.asp?number=86573](http://www.ewtn.com/vnews/getstory_print.asp?number=86573).

57. Faced with a declining priesthood, the Catholic Church restored the office of permanent deacon during the Second Vatican Council. Deacons can perform Catholic weddings as long as they are not masses. Ken Kusmer, *While Priesthood Shrinks, Catholic Deacons Multiply*, THE PROVIDENCE J., July 19, 2008, [http://www.projo.com/pets/content/LB\\_deacon\\_increase\\_07-19-08\\_7EASP39\\_v8.24c3325.html](http://www.projo.com/pets/content/LB_deacon_increase_07-19-08_7EASP39_v8.24c3325.html). However, as of 2005, there were fewer than 35,000 permanent Catholic deacons worldwide. Georgetown University Center for Applied Research in the Apostolate, *Frequently Requested Catholic Church Statistics*, <http://cara.georgetown.edu/bulletin/index.htm> (last visited July 21, 2008).

58. *Universal Life Church, Inc.*, 372 F. Supp. at 773.

59. *Id.* at 772.

60. Universal Life Church, <http://www.ulc.net/> (last visited Feb. 15, 2009).

61. Universal Life Church Monastery, <http://www.themonastery.org/> (last visited Feb. 15, 2009).

62. *Id.*

63. *Id.* (follow “become ordained online” link) (last visited Feb. 15, 2009).

A. *New York*

The first reported decision addressing the legality of a ULC marriage was handed down in New York State in 1972, some ten years after the incorporation of the ULC. In *Ravenal v. Ravenal*,<sup>64</sup> Richard Ravenal sued Cathy Ravenal for an “annulment on the ground of alleged invalidity of the marriage by reason of solemnization by a person not authorized to perform the marriage ceremony.”<sup>65</sup> Although Cathy entered her appearance, she did not file an answer or otherwise defend the case.<sup>66</sup> The parties had obtained a marriage license from the city clerk of the City of New York, and the marriage was performed in upstate New York by a ULC minister whose principal occupation was as a guitarist and folk singer.<sup>67</sup> The decision does not indicate either the length of the marriage or whether the union was blessed with issue.

The court reviewed New York’s Domestic Relations Law which allows marriages to be solemnized *inter alia* by “[a] clergyman or minister of any religion.”<sup>68</sup> The terms “clergyman” or “minister” are defined in the New York Religious Corporations Law which

defines the term ‘clergyman’ or ‘minister’ as including ‘a duly authorized pastor, rector, priest, rabbi, and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.’<sup>69</sup>

Moreover, a church in New York need not be incorporated, although there are certain requirements for recognition of an unincorporated church: “Religious Corporations Law [section] 2 defines an ‘unincorporated church’ as a ‘congregation, society, or other assemblage of persons who are accustomed to statedly meet for divine worship or other religious observances, without having been incorporated for that purpose.’”<sup>70</sup>

The court recognized that the constitutional guarantee of free exercise of religion includes “the right to have one’s marriage solemnized by a minister of one’s own faith.”<sup>71</sup> The court also took note of a 1928 opinion of the Attorney General of New York that a minister need not be

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64. 338 N.Y.S.2d 324 (Sup. Ct. 1972).

65. *Id.* at 325.

66. *Id.*

67. *Id.* at 325–26.

68. *Id.* at 326 (quoting N.Y. DOM. REL. LAW § 11 (McKinney 1971)) (internal quotation marks omitted).

69. *Id.* (quoting N.Y. RELIG. CORP. LAW § 2 (McKinney 1971)).

70. *Id.*

71. *Id.*

ordained in order to perform a marriage ceremony “[i]f, in fact, he is recognized by his church and congregation as a minister of such religious sect.”<sup>72</sup>

Nevertheless, for a number of reasons, the court found that ULC ministers did not meet this standard. First, the record included a letter from the office of the California Secretary of State that it did not know whether the ULC is a “‘religious denomination’ [for purposes of marriage officiation] within the meaning of section 4205 of the California Civil Code.”<sup>73</sup> Second, the New York Secretary of State had no record of the ULC.<sup>74</sup> Third, there was no evidence that the ULC had a church or situs within New York.<sup>75</sup> Fourth, based on its own circular, the ULC had no traditional doctrine or requirements to be a minister, and it (allegedly) already had ordained over 1,000,000 ULC ministers.<sup>76</sup> Accordingly, the court concluded that the ULC was “entirely non-ecclesiastical and non-denominational,” and that its minister “neither had authority from a ‘governing ecclesiastical body of the denomination or order’ nor ‘otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.’”<sup>77</sup> Finding an absence of any legal authority of the ULC minister to perform a wedding, the court granted Richard Ravenal his annulment.<sup>78</sup>

New York courts have twice revisited this issue since the *Ravenal* decision. In *Rubino v. City of New York*, two ULC ministers, Anthony Rubino and Michael Coffey, brought a proceeding to compel the city to accept their applications to permit them to perform marriages.<sup>79</sup> City officials asserted without contradiction that ULC ministers “receive no religious training, profess no beliefs to distinguish their church as a religion, and that the ‘credentials of ministry’ may be obtained by mailing a fee to the home of Kirby J. Hensely [sic], the founder of the ULC.”<sup>80</sup> The ULC ministers argued, first, that the refusal to register them to perform marriages violated their right to free exercise of religion guaranteed by the First and Fourteenth Amendments.<sup>81</sup> The court disagreed. Citing *Cantwell v. Connecticut*,<sup>82</sup> the court noted that although there is an absolute right to religious belief, “the right to act upon or

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72. *Id.* at 327 (internal quotation marks omitted).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 327–28.

77. *Id.* at 328.

78. *Id.*

79. *Rubino v. City of New York*, 480 N.Y.S.2d 971, 971–72 (Sup. Ct. 1984).

80. *Id.* at 972.

81. *Id.*

82. 310 U.S. 296 (1940).

exercise those beliefs is not absolute.”<sup>83</sup> Regulation of marriage is within a state’s traditional control,<sup>84</sup> “and there is no recognized First Amendment free exercise right to perform marriages.”<sup>85</sup>

The ULC ministers also argued that denying them permission to conduct weddings was arbitrary and capricious.<sup>86</sup> Again, the court disagreed inasmuch as the state has a strong interest in “protecting the rights and duties derived from marriage.”<sup>87</sup> Not only had the *Ravenal* court nullified a ULC marriage, but the highest courts in Virginia and North Carolina had determined that ULC ministers cannot perform weddings.<sup>88</sup> Given the possibility that a ULC marriage might be declared invalid or annulled, it was reasonable for the city to deny ULC ministers the right to perform marriages.<sup>89</sup>

The issue of ULC marriages arose a third time in New York in *Ranieri v. Ranieri*.<sup>90</sup> Again, as in *Ravenal*, the parties did not really contest the invalidity of the ULC marriage. Rae Brandt Ranieri and Rocco J. Ranieri were married by a ULC minister on October 18, 1986.<sup>91</sup> She left the marital residence less than three months later,<sup>92</sup> and there is no indication that their union was fruitful. She sued, *inter alia*, for an annulment, as well as for recovery of \$90,000 that Rocco had agreed to pay her as part of a prenuptial agreement.<sup>93</sup> Rocco filed a counterclaim in which he, too, sought a judgment declaring that the marriage was void.<sup>94</sup> The trial court denied Rocco’s demand for summary judgment on this issue, finding that there were triable facts “as to whether the parties knew whether the marriage celebrant had the requisite authority to perform marriages in the State of New York or not and whether they believed themselves to be husband and wife.”<sup>95</sup>

The Supreme Court Appellate Division reversed, finding the marriage void since the ULC minister was not authorized to perform marriages under the New York Domestic Relations Law.<sup>96</sup> The Appellate

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83. *Rubino*, 480 N.Y.S.2d at 972.

84. *Id.* (citing *Maynard v. Hill*, 125 U.S. 190 (1888)).

85. *Id.* (citing *Jones v. Bradley*, 590 F.2d 294 (9th Cir. 1979) (upholding the right of a prison to deny a prisoner who was a self-proclaimed ULC pastor the use of the prison chapel to conduct study sessions and permission to perform marriages)).

86. *Id.*

87. *Id.* (citing *Maynard*, 125 U.S. 190).

88. *Id.*

89. *Id.*

90. 539 N.Y.S.2d 382 (App. Div. 1989).

91. *Id.* at 384.

92. *Id.*

93. *Id.* at 383–84.

94. *Id.* at 384.

95. *Id.* at 385.

96. *Id.* at 390.

Division relied on the prior New York decisions in *Ravenal* and *Rubino*, as well as the rationales in decisions of the highest courts of North Carolina and Virginia, to find ULC ministers unqualified.<sup>97</sup> The Appellate Division did note that the Supreme Court of Mississippi had recently ruled a ULC marriage to be valid, but declined to follow that ruling in part because New York's marriage statute is far more restrictive than Mississippi law.<sup>98</sup>

### B. Virginia

As noted in the *Rubino* and *Ranieri* decisions, the Supreme Court of Virginia also found ULC ministers to lack qualification to solemnize marriages. In *Cramer v. Commonwealth*, several ULC ministers had appeared in a court clerk's office, presented their ULC ordination cards, and were routinely processed.<sup>99</sup> When a reporter showed up at the clerk's office with his ULC ordination card, the clerk questioned the eligibility of ULC ministers, and the court below entered a show cause order.<sup>100</sup> After a hearing, that court rescinded the authority of the ULC ministers to perform weddings, and the ministers appealed to the Supreme Court of Virginia.<sup>101</sup>

The Supreme Court of Virginia reviewed the ULC's lack of doctrine and lack of training for its ministers, by then allegedly over 1,000,000 in number.<sup>102</sup> The court rejected the Commonwealth's argument that Virginia law only allows full-time ministers to solemnize marriages.<sup>103</sup> The court also rejected the ULC ministers' argument that the Virginia Code required the courts "to enforce a religious test as a prerequisite to appointing ministers to perform marriages."<sup>104</sup>

While recognizing that most people prefer their marriages to take place within their own church or religious meeting place, the court found that the state has the "necessity that the marriage contract itself be memorialized in writing . . . by a person of responsibility and integrity and by one possessed of some educational qualifications."<sup>105</sup> The court found that ULC ministers are not selected or elected in any meaningful way:

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97. *Id.* at 387–88 (citing *State v. Lynch*, 272 S.E.2d 349 (N.C. 1980) and *Cramer v. Commonwealth*, 202 S.E.2d 911 (Va. 1974)); see discussion *infra* Part III.B–C.

98. *Id.* at 388 (citing *Blackwell v. Magee*, 531 So. 2d 1193 (Miss. 1988)); see discussion *infra* Part III.D.

99. *Cramer*, 202 S.E.2d at 913.

100. *Id.*

101. *Id.* at 912.

102. *Id.* at 912–13, 915.

103. *Id.* at 913.

104. *Id.*

105. *Id.* at 914.

A church which consists of all ministers, and in which all new converts can become instant ministers, in fact has no “minister” within the contemplation of Code § 20-23. . . . [I]n Universal every living person is not only eligible for membership, but eligible for immediate ordination into the ministry, with all the benefits of that profession. We do not believe that the General Assembly ever intended to qualify, for licensing to marry, a minister whose title and status could be so casually and cavalierly acquired.<sup>106</sup>

Hence, it was proper for the Commonwealth to disallow ULC ministers from performing weddings.

### C. North Carolina

The issue of the validity of ULC marriages arose in North Carolina in an entirely different context than the previous litigation in New York; but, as in *Ravenal* and *Ranieri*, a party to a ULC marriage was seeking to escape its legal consequences. In *State v. Lynch*, James Roberts Lynch was prosecuted for the crime of bigamy.<sup>107</sup> James had married Sandra Lynch in a marriage officiated by her father, Chester Wilson, a Roman Catholic layman who was a ULC minister.<sup>108</sup> After four years of this marriage, James and Sandra separated, and, without obtaining a divorce from Sandra, James married Mary Alice Bovender.<sup>109</sup> At his subsequent bigamy trial, James Lynch had requested a jury instruction that would have required the jury to determine whether Chester Wilson was “an ordained minister . . . authorized by his church.”<sup>110</sup> The trial judge refused to issue this instruction and instead instructed the jury that “whether Mr. Wilson was an ordained minister was not for their determination but was a matter of church law.”<sup>111</sup> The jury convicted James Lynch, and the North Carolina Court of Appeals affirmed that conviction.<sup>112</sup>

The Supreme Court of North Carolina reversed.<sup>113</sup> The critical issue was the legality of James and Sandra’s marriage. Exhibits included Chester Wilson’s ULC certificate of ordination and the certificate of marriage certified by a deputy register of deeds for the county.<sup>114</sup> James had intended his 1973 marriage to Sandra to be legal until their breakup

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106. *Id.* at 915.

107. *State v. Lynch*, 272 S.E.2d 349, 349 (N.C. 1980).

108. *Id.* at 350.

109. *Id.* at 350–51.

110. *State v. Lynch*, 265 S.E.2d 491, 492 (N.C. Ct. App.), *rev’d*, 272 S.E.2d 349 (N.C. 1980).

111. *Id.*

112. *Id.* at 493.

113. *Lynch*, 272 S.E.2d 349.

114. *Id.* at 349–50.

in 1977.<sup>115</sup> The ULC by now was claiming to have seven million ministers.<sup>116</sup> The ULC had also offered to confer, among other titles, Archpriest, Bishop, Dervish, Guru, Reverend Mother, Preceptor, Brahman, and Universal Religious Philosopher.<sup>117</sup>

The court reasoned that the State had to prove the existence of James's first marriage beyond a reasonable doubt.<sup>118</sup> Thus, the State had to prove Chester Wilson's status as an ordained minister or a minister authorized by his church beyond a reasonable doubt.<sup>119</sup> James's subjective intent to marry Sandra was "of minimal consequence."<sup>120</sup> The court was clear that it was not deciding what is or is not a religious body or a religious leader: "Whether defendant is married in the eyes of God, of himself or of any ecclesiastical body is not our concern. Our concern is whether the marriage is one the State recognizes."<sup>121</sup> Here, a marriage performed by a Roman Catholic layman who bought for ten dollars a mail order certificate of ordination from the Universal Life Church, "whatever that is," simply was not a valid North Carolina marriage.<sup>122</sup> Since Chester Wilson was not legally authorized to perform the wedding, James's first marriage was a legal nullity; hence he was not guilty of bigamy.<sup>123</sup>

As a direct result of the Supreme Court of North Carolina's decision in *Lynch*, the North Carolina General Assembly passed a curative statute on July 3, 1981, to validate any ULC marriages entered into prior to that date that had not already been invalidated by a court.<sup>124</sup> That statute provides:

Any marriages performed by ministers of the Universal Life Church prior to July 3, 1981, are validated, unless they have been invalidated by a court of competent jurisdiction, provided that all other requirements of law have been met and the marriages would have been valid if performed by an official authorized by law to perform wedding ceremonies.<sup>125</sup>

The evident purpose of this statute was to allow those North Carolinians who had already been married by a ULC minister to be able to rely on

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115. *Id.* at 351.

116. *Id.*

117. *Id.* at 352.

118. *Id.* at 353.

119. *Id.* at 354.

120. *Id.*

121. *Id.*

122. *Id.* at 354-55.

123. *Id.*

124. *Fulton v. Vickery*, 326 S.E.2d 354, 357 (N.C. Ct. App. 1985) (citing N.C. Gen. Stat. §51-1.1 (1984)).

125. N.C. GEN. STAT. ANN. § 51-1.1 (2007).

their marriages, while not affecting the mandate of the *Lynch* court as it would apply to nullify any future ULC officiated marriage.<sup>126</sup>

While James Lynch was, no doubt, relieved to find his marriage to Sandra Lynch declared a nullity by the Supreme Court of North Carolina, Sandra clearly did not share that view. There are obvious problems with declaring any marriage to be invalid, especially when one or both of the parties entered into it in good faith, intending to be married. Sandra Lynch responded by filing a diversity action in the United States District Court for the Middle District of North Carolina against the Universal Life Church.<sup>127</sup> She alleged that the ULC had engaged in fraud to her detriment by representing that its ministers could perform valid marriages in North Carolina.<sup>128</sup> The jury returned a verdict against the ULC for \$10,000 in compensatory damages and \$150,000 in punitive damages, and, after the district court upheld the verdict, the ULC appealed.<sup>129</sup>

The Court of Appeals for the Fourth Circuit reversed, finding that the action was barred by the statute of limitations and that Mrs. Lynch had failed to prove the elements of fraud.<sup>130</sup> On the merits, the court reasoned that Mrs. Lynch would have had to prove that the ULC had knowingly represented to the officiant (her father, Chester Wilson) that he could perform a legally recognized wedding in North Carolina.<sup>131</sup> The ULC already knew that its ministers could not perform legally recognized marriages in Ohio and New York.<sup>132</sup> While the ULC represented to Wilson that he could perform weddings, it also informed him that he should check with local authorities to see if he needed to be licensed.<sup>133</sup> He did check with the county clerk's office and was given the advice that he could conduct legally recognized weddings in North Carolina.<sup>134</sup> He relied upon the county clerk's advice and officiated at his daughter's wedding.<sup>135</sup> It was not the ULC's fault that the Supreme Court of North Carolina ultimately found the county clerk's advice to be wrong; there was no evidence that the ULC knew that advice to be

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126. See, e.g., *Fulton*, 326 S.E.2d at 358 (holding, *inter alia*, that this statute rendered Lynn Stone Fulton's ULC marriage valid from its inception). For this and other reasons, she could not maintain her action for negligent/fraudulent inducement to enter into a void marriage against her husband, the ULC minister who had officiated, and against the ULC itself. *Id.* at 360.

127. *Lynch v. Universal Life Church*, 775 F.2d 576, 577 (4th Cir. 1985).

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 580–81.

132. *Id.* at 581. *Nota bene*: The basis of this knowledge regarding Ohio is not set forth in the opinion.

133. *Id.*

134. *Id.*

135. *Id.*



wrong when given.<sup>136</sup> Ergo, the ULC had not knowingly misrepresented a material fact to either Chester Wilson or Sandra Lynch, and the ULC was entitled to judgment notwithstanding the verdict.<sup>137</sup>

Not all North Carolina men attempting to avoid the legal consequences of their ULC marriages have been as fortunate as James Lynch. Carl Pickard married Jane Pickard in June 1991, the marriage being performed in the Native American tradition by Hawk Littlejohn, a Cherokee Indian who was also a ULC minister.<sup>138</sup> Carl and Jane lived together as husband and wife for the next eleven years, separating in April 2002.<sup>139</sup> Significantly, although Carl and Jane produced no issue, Carl adopted Jane's daughter by a prior relationship and, in the adoption proceeding, filed a sworn statement that he was married to Jane and was the stepfather of her daughter.<sup>140</sup> In April 2002, Carl filed an annulment action against Jane; and, in September 2004, the trial court concluded that Carl and Jane's marriage was not properly solemnized.<sup>141</sup> However, the trial court also concluded that Carl was judicially estopped by his actions from obtaining an annulment on several grounds.<sup>142</sup> Carl appealed, and the Court of Appeals of North Carolina affirmed the trial court.<sup>143</sup>

The majority on the court of appeals relied upon the doctrine of judicial estoppel.<sup>144</sup> They accepted as conclusive the trial court's finding that Littlejohn was not properly licensed to perform the marriage.<sup>145</sup> Thus, Carl had overcome the presumption that, where a marriage ceremony has taken place, it was legally performed and resulted in a valid marriage.<sup>146</sup> Nevertheless, the doctrine of judicial estoppel was applicable to prevent litigants from playing "fast and loose" with the judicial system.<sup>147</sup> Having sworn to the court in the adoption proceeding that he was married to Jane, Carl was barred from asserting the contrary in the annulment action.<sup>148</sup> Additionally, the majority applied an equitable consideration: "Finally, plaintiff would impose an unfair detriment on defendant by undoing an eleven-year marriage were he allowed to pro-

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136. *Id.*

137. *Id.* at 582.

138. *Pickard v. Pickard*, 625 S.E.2d 869, 870–71 (N.C. Ct. App. 2006).

139. *Id.* at 871.

140. *Id.* at 874 (Tyson, J., dissenting).

141. *Id.* at 871 (majority opinion).

142. *Id.* at 871–72. The trial court also relied on other grounds including quasi-estoppel, collateral estoppel, and *res judicata*. *Id.* at 872.

143. *Id.* at 870.

144. *Id.* at 872.

145. *Id.*

146. *Id.* (citing *Kearney v. Thomas*, 33 S.E.2d 871, 876 (N.C. 1945)).

147. *Id.* (internal quotation marks omitted).

148. *Id.* at 873.

ceed with his inconsistent position here.”<sup>149</sup>

One judge dissented from the majority’s rationale but also would have denied the annulment.<sup>150</sup> Judge Tyson reasoned that the burden of proof in Carl’s civil action for annulment rested on Carl, as opposed to the heavy burden on the State in its bigamy prosecution of James Lynch.<sup>151</sup> North Carolina recognizes a marriage performed in a native tribal ceremony,<sup>152</sup> and Carl had failed to produce any evidence that Littlejohn was not authorized to perform such a ceremony.<sup>153</sup> Thus, in Judge Tyson’s view, Carl had not met his burden of proof, and his complaint should simply have been dismissed.<sup>154</sup>

Obviously, the decision of the Court of Appeals of North Carolina in *Pickard* did not, and could not, overrule the decision of the Supreme Court of North Carolina in *Lynch*. Reliance on a ULC-officiated marriage in North Carolina remains highly dangerous; the majority in *Pickard* accepted that the marriage was invalid. Nevertheless, North Carolina courts may use equitable or other principles to bar a party to such a marriage from using a ULC minister’s lack of authority as an automatic escape clause from an unhappy or inconvenient legal entanglement.

#### D. Mississippi

The legality of a ULC marriage in Mississippi arose in the context of a will contest.<sup>155</sup> Cobert Blackwell executed a will in July 1980 that devised his real property to his wife, Margaret, for life, with the remainder to his brothers and sisters in equal parts.<sup>156</sup> Margaret died, and, in November 1984, Cobert married Nadine Fortenberry in a marriage officiated by ULC minister Claude Clark.<sup>157</sup> Cobert died in February 1985; his will was offered for probate, and one of his sisters was appointed executrix.<sup>158</sup> In March 1985, Nadine renounced the will and requested a widow’s allowance and her share of the estate.<sup>159</sup> Cobert’s brothers and sisters challenged Nadine’s status as his widow on the basis that Claude Clark was not authorized to perform marriages under Mississippi law as he was not a “spiritual leader” of any “religious body.”<sup>160</sup>

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149. *Id.*

150. *Id.* (Tyson, J., dissenting).

151. *Id.* at 876.

152. *Id.* at 875.

153. *Id.* at 877.

154. *Id.*

155. See *Blackwell v. Magee*, 531 So. 2d 1193 (Miss. 1988).

156. *Id.* at 1194.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

After a hearing, the Chancery Court ruled that Claude Clark was “not a minister of the gospel as contemplated by the [marriage] statute, nor . . . a spiritual leader of a religious body.”<sup>161</sup> Thus Cobert and Nadine were never legally married, and Nadine was not Cobert’s widow.<sup>162</sup> Nadine appealed to the Supreme Court of Mississippi, which reversed in a divided opinion.<sup>163</sup>

The majority noted that Claude Clark was a practicing Methodist who had written to the ULC inquiring what was required to be one of its ministers.<sup>164</sup> In reply, the ULC mailed him a document entitled “Credentials of Ministry,” which certified that the bearer was an authorized minister.<sup>165</sup> Clark filled in his name on this form.<sup>166</sup> The court reviewed how the ULC was founded in California by Kirby J. Hensley, “an illiterate Baptist minister from North Carolina.”<sup>167</sup> Although Hensley ordained ministers for free, he charged twenty dollars for a doctor of divinity degree.<sup>168</sup> After California enjoined Hensley from issuing degrees from an unaccredited institution, the ULC moved its “Department of Education” to Arizona.<sup>169</sup> By 1977, he claimed to have over 6,000,000 ULC ministers.<sup>170</sup>

Clark acknowledged that before becoming a ULC minister, he was not required to learn anything about the ULC or any religious belief held by the ULC.<sup>171</sup> He had performed some twelve to fifteen weddings before conducting the one at issue in this case.<sup>172</sup>

The majority briefly reviewed the cases from New York and North Carolina denying the validity of ULC marriages, but although that precedent was “of value,” it concluded that only the Supreme Court of Mississippi could interpret Mississippi’s statutory language—“any . . . spiritual leader of any . . . religious body.”<sup>173</sup> The majority declined to establish “some hard-edged line of demarcation prescribing minimum qualifications for one authorized to solemnize rites of matrimony” under the statute.<sup>174</sup> Without further explanation or elaboration, the majority simply found that Claude Clark was close enough to meeting the statu-

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161. *Id.* (internal quotation marks omitted).

162. *Id.*

163. *Id.* at 1196–97.

164. *Id.* at 1195.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.* at 1196.

172. *Id.*

173. *Id.* at 1195–96 (alterations in original).

174. *Id.* at 1196.

tory requirement: “Claude Clark is enough of a ‘spiritual leader,’ and the Universal Life Church is enough of a ‘religious body’ that, in the eyes of the law of this state, Cobert C. Blackwell and Nadine B. Fortenberry became husband and wife on November 8, 1984, and this is sufficient unto the day.”<sup>175</sup>

One justice concurred in the result, while deriding the majority’s “horseshoe jurisprudence” with its “close enough to count” standard.<sup>176</sup> Reasoning that “[c]lose counts in horseshoes and hand grenades,” Justice Sullivan—and only Justice Sullivan—would have held that Claude Clarke was a spiritual leader and the ULC met the requirements to be a religious body.<sup>177</sup>

Four justices dissented, relying heavily on the opinion of the lower court.<sup>178</sup> The dissenters noted that “Clark made no contention that he was a religious leader and well he could not because . . . he had no congregation nor made any effort to form such an assembly.”<sup>179</sup> In a footnote, the dissent pointed out that the ULC issued a sainthood certificate for five dollars, offered advice on how to fight the Internal Revenue Service, and apparently had ordained two dogs as ministers.<sup>180</sup> The dissent pointedly asked, “[a]re these dogs now ‘close enough’ to being spiritual leaders of a religious body to qualify to perform marriages?”<sup>181</sup>

### E. *Utah*

The legislature in one state has taken a proactive approach to combating the perceived evil of “internet ministers” solemnizing marriages. In 2001, the Utah Legislature passed Senate Bill 211, providing: “Certification, licensure, ordination, or any other endorsement received by a person through application over the Internet or by mail that purports to give that person religious authority is not valid for the purposes of [the marriage solemnization law].”<sup>182</sup> This explicit prohibition carried significant weight because Utah law makes it a crime punishable by up to three years in prison for an unauthorized person to solemnize a marriage under the pretense of having authority to do so.<sup>183</sup> Naturally, the ULC was concerned about the new law, so the ULC and one of its ministers,

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175. *Id.*

176. *Id.* at 1197 (Sullivan, J., specially concurring) (internal quotation marks omitted).

177. *Id.*

178. *See id.* at 1197–1202 (Griffin, J., dissenting).

179. *Id.* at 1199.

180. *Id.* at 1201 n.1.

181. *Id.*

182. *Universal Life Church v. Utah*, 189 F. Supp. 2d 1302, 1306–07 (D. Utah 2002) (quoting UTAH CODE ANN. § 30-1-6.1 (Supp. 2001)) (internal quotation marks omitted).

183. *Id.* at 1307 (citing UTAH CODE ANN. § 30-1-14 (1998)).

J.P. Pace, brought suit against Utah in federal district court, alleging that the law violated their rights to free exercise of religion, substantive due process, and equal protection.<sup>184</sup>

On the parties' cross-motions for summary judgment, the court reviewed the now familiar background that "[t]he ULC will ordain anyone free, for life, without questions of faith."<sup>185</sup> The ULC ordained Pace through the mail in 1993, and he had performed several marriages in Utah as a ULC minister.<sup>186</sup> The ULC asserted in an affidavit that there were more than 5,600 ULC ministers in Utah, many of whom received their ordinations over the Internet or through the mail.<sup>187</sup>

After disposing of standing and immunity issues, the court turned to the merits.<sup>188</sup> The court readily disposed of the free exercise claim, reasoning that the plaintiffs had not demonstrated that being ordained over the Internet or through the mail is a religious belief, and furthermore the challenged statute "applies to a secular activity [regulating entry into state-recognized marriage] that the State clearly has the power to regulate."<sup>189</sup> Similarly the court rejected the substantive due process claim, reasoning that the statute is rationally related to the legitimate state interest of protecting the integrity of marriages.<sup>190</sup>

Turning to equal protection issues, the court first rejected the claim that the statute was irrational for treating Native American spiritual advisors differently from other "ecclesiastics."<sup>191</sup> The court noted that there was no suggestion that Native American spiritual advisors achieve their status as effortlessly as the targets of the legislation do.<sup>192</sup>

However, the court concluded that the statute did violate equal protection for another reason.<sup>193</sup> The law applied only to ministers who obtained their credentials over the Internet or by mail, and not to those whose applications were received by phone or fax or in person by another ULC minister.<sup>194</sup> The ULC—ordained ministers by all of these methods, and the court could discern no rational basis for distinguishing among them.<sup>195</sup> Hence the court awarded summary judgment (and attor-

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184. *Id.* at 1307.

185. *Id.*

186. *Id.*

187. *Id.* at 1311.

188. *Id.* at 1308–12.

189. *Id.* at 1313.

190. *Id.* at 1315–16.

191. *Id.* at 1316–17.

192. *Id.* at 1317.

193. *Id.* at 1317–18.

194. *Id.* at 1317.

195. *Id.* at 1317–18.

neys fees) to the ULC and its minister.<sup>196</sup>

#### F. *Pennsylvania—The Latest Battleground State*

As in the *Ravenal* case in New York, in Pennsylvania, a newly minted bride, Dorie Heyer, brought an annulment action seeking to invalidate her ULC-minister-officiated marriage.<sup>197</sup> Heyer had married Jacob Hollerbush on August 24, 2006, with ULC minister Adam Johnston performing the ceremony.<sup>198</sup> It is unclear when the parties separated, but Heyer filed a motion to declare the marriage invalid on June 12, 2007.<sup>199</sup> As in *Ravenal* and *Ranieri*, the parties did not actually contest the annulment; to the contrary, Heyer and Hollerbush stipulated to the averments in her motion.<sup>200</sup>

The only testimony before the court was that of Adam Johnston.<sup>201</sup> He had been ordained by the ULC over the Internet, had never attended a ULC meeting, and “[did] not have a location or congregation of members for which he serve[d] as a minister with any regularity.”<sup>202</sup> He was also the only witness to the marriage.<sup>203</sup>

First, the court rejected Heyer’s claim that the marriage was invalid because she and Hollerbush were not members of the ULC.<sup>204</sup> The court reasoned that the statutory section requiring at least one party to be a member of the religious society, religious institution, or religious organization, only applies to “those marriage ceremonies where there is no presiding officiant but rather the ceremony is conducted by the parties in front of the particular religious society’s congregation or elders such as occurs in the Quaker society.”<sup>205</sup>

The court proceeded to briefly review the prior decisions from other jurisdictions addressing the authority of ULC ministers to solemnize marriages: *Ravenal*, *Ranieri*, *Cramer*, *Lynch*, and *Blackwell*.<sup>206</sup> Then the court turned to the Pennsylvania Domestic Relations Code provision, which includes among authorized officiants “[a] minister, priest or rabbi of any regularly established church or congregation.”<sup>207</sup> The

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196. *Id.* at 1319.

197. *Heyer v. Hollerbush*, No. 2007-SU-002132-Y08 (C.P. York, Sept. 07, 2007).

198. *Id.* at 1.

199. *Id.* at 2.

200. *Id.* at 1.

201. *Id.*

202. *Id.* at 2.

203. *See id.*

204. *Id.* at 3.

205. *Id.*

206. *See id.* at 3–5.

207. *Id.* at 5 (quoting 23 PA. CONS. STAT. ANN. § 1530(a)(6) (2005)) (internal quotation marks omitted).

court reasoned that this provision requires at the very least “an activity that occurs on a habitual or patterned periodic basis at a place of worship (church) or before a group of individuals gathered together for the same purpose (congregation).”<sup>208</sup> ULC minister Johnston did not meet those qualifications.<sup>209</sup> Accordingly, the court annulled the Heyer-Hollerbush marriage, declaring it to be void *ab initio*.<sup>210</sup>

There are intrinsic problems with a court, as in *Heyer*, deciding such an important question in a nonadversarial context. The judge had before her a case involving a brief marriage, apparently not producing children, with no one to defend its validity or status. Had the husband actively defended the case, he might have raised a variety of issues that could well have persuaded the court to reach a different result. He may have argued that: (1) Pennsylvania law does not include an unauthorized officiant as a ground for annulment;<sup>211</sup> (2) since Pennsylvania courts have long held that causes of action for divorce and alimony are not cognizable at common law,<sup>212</sup> the absence of such a statutory ground for annulment renders a court without jurisdiction to grant one under these circumstances; (3) the solemnization of a marriage should not be invalidated by the fact that the person solemnizing the marriage was not authorized, where either of the parties believed him to be authorized;<sup>213</sup> (4) having voluntarily participated in the wedding, presumably with knowledge that the officiant was a ULC minister, Heyer should be estopped from attacking the validity of the marriage;<sup>214</sup> and (5) even if the court were to grant an annulment, it should declare the marriage to have been voidable rather than void.<sup>215</sup>

While Dorie Heyer, and probably Jacob Hollerbush, were pleased to have been granted an annulment, other Pennsylvanians who had been married in similar ceremonies did not necessarily share that emotion. Not present or represented in court were couples in short- or long-term ULC-officiated marriages, who file joint federal and state income tax returns, carry each other on health and life insurance policies, own their

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208. *Id.* at 6.

209. *Id.*

210. *Id.*

211. See 23 PA CONS. STAT. ANN. §§ 3304, 3305 (West 2001).

212. See, e.g., *Miller v. Miller*, 3 Binn. 30 (Pa. 1810).

213. See UNIF. MARRIAGE & DIVORCE ACT § 206 (d) (amended 1973). See *supra* text accompanying notes 27–28.

214. See *Diamond v. Diamond*, 461 A.2d 1227 (Pa. 1983) (finding that husband was estopped from obtaining an annulment).

215. See *Fulton v. Vickery*, 326 S.E.2d 354, 358 (N.C. Ct. App. 1985) (declaring ULC marriages in North Carolina to be voidable rather than void). “While a voidable marriage is valid for all civil purposes until annulled by a competent tribunal, in a direct proceeding, a void marriage is a nullity and may be impeached at any time.” *Id.*

homes and other property as tenants by the entirety, have children, and in myriad other respects carry on their personal and legal existence as married couples. The *Heyer* ruling clearly called into question the validity of their marriages, too.

The *Heyer* decision was picked up not just by the legal press,<sup>216</sup> but also by such general media outlets as *The Philadelphia Inquirer*.<sup>217</sup> The Bucks County Register of Wills held a news conference and urged couples who might be affected to remarry as soon as possible.<sup>218</sup> According to the Register, at least forty-five couples quickly heeded her call and applied for new marriage licenses.<sup>219</sup>

With, no doubt, purposeful timing, the ACLU filed suit on behalf of three Pennsylvania couples in three separate counties on Valentine's Day 2008,<sup>220</sup> seeking declaratory judgments that their marriages are valid.<sup>221</sup> Two of the marriages in question were performed by ULC ministers, and the third was performed by an ordained Jesuit priest who did not have his own assigned church or congregation.<sup>222</sup>

On November 13, 2008, the Philadelphia County Court of Common Pleas entered an order without opinion upholding the validity of a ULC-minister-officiated marriage.<sup>223</sup> On December 5, 2008, the Montgomery County Court of Common Pleas entered an order without opinion declaring valid a marriage performed by an itinerant Jesuit minister who did not have his own assigned church or congregation.<sup>224</sup>

Only the Bucks County Court of Common Pleas issued an opinion, on December 31, 2008, explaining its decision to uphold a ULC-officiated marriage.<sup>225</sup> Jason and Jennifer O'Neill had been married in September 2005 by Jason's uncle, Robert Norman, a ULC minister, in a ceremony witnessed by 300 of their friends and family.<sup>226</sup> Their

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216. See, e.g., Tresa Baldas, *Court Ruling Spikes Internet Ministers, Highlights Legal Issue*, NAT'L L.J., Oct. 22, 2007.

217. See Dianna Marder, *Legality of Some Pa. Marriages Is Questioned*, Oct. 9, 2007, <http://www.familylife.org/wedding/article1.pdf>.

218. *Id.*

219. *Id.*

220. See Shannon D. Duffy, *ACLU Goes to Court on Valentine's Day to Defend Marriages*, PENN. LAW WEEKLY, Feb. 25, 2008, at 7.

221. O'Neill v. O'Neill, No. 08-01620-29-1 (C.P. Bucks, Dec. 31, 2008); Goldberger v. Durbin, No. 08-03984 (C.P. Montgomery, Dec. 5, 2008); Hancock v. Hancock, No. 080201774 (C.P. Phila., Nov. 13, 2008).

222. James W. Cushing, *I Now [Cannot] Pronounce You Man and Wife*, PA. FAM. LAW., Oct. 2009, at 119, 120, available at <https://www.pabar.org/Public/sections/FAMCO/Pubs/Newsletters/pfloc09.pdf>.

223. See Hancock v. Hancock, No. 080201774 (C.P. Phila., Nov. 13, 2008).

224. See Goldberger v. Durbin, No. 08-03984 (C.P. Montgomery, Dec. 5, 2008).

225. See O'Neill v. O'Neill, No. 08-01620-29-1, slip op. at 1 (C.P. Bucks, Dec. 31, 2008).

226. *Id.* at 2.



certificate of marriage was filed with the Clerk of the Orphans' Court of Bucks County.<sup>227</sup> After the publicity surrounding the York County decision in *Heyer v. Hollerbush*, the O'Neills had become justifiably concerned about the status of their marriage.<sup>228</sup> The O'Neills had received healthcare and life insurance benefits as a married couple and had consistently filed joint tax returns.<sup>229</sup>

The *O'Neill* court reviewed the various ways that couples may lawfully be married in Pennsylvania, and appropriately focused on a marriage solemnized by an authorized third-party clergy or officiant.<sup>230</sup> With perhaps a touch of irony, the court opined that “[o]nly a select few are authorized to officiate over a marriage, and they need not be religious figures.”<sup>231</sup> Judges and mayors may officiate, as may any “minister, priest or rabbi of any regularly established church or congregation.” The court decided to give this statutory language a disjunctive interpretation, permitting performance of a marriage by “a minister of *either* any regularly established church *or* a minister of any regularly established congregation.”<sup>232</sup> In the absence of a statutory definition of a “regularly established church,” the court concluded that the ULC, while nontraditional, constitutes a regularly established religious faith within the meaning of the Pennsylvania Marriage Act.<sup>233</sup> The court also found Mr. Norman to be a minister; hence the O'Neills' marriage was valid.<sup>234</sup>

Ironically, the ACLU's success in these three actions almost certainly precludes appellate review of the issue in Pennsylvania, as there would not appear to be anyone with standing to file an appeal. This leaves Pennsylvanians in marriages solemnized in the last few years by ULC or other Internet-ordained ministers in a state of uncertainty.<sup>235</sup> Such marriages are deemed valid in Philadelphia, Montgomery, and Buck Counties, but invalid in York County, with no decisions in Pennsylvania's sixty-three other counties.<sup>236</sup> Compounding this uncertainty, in Pennsylvania a resident may file a divorce or annulment action in any

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227. *Id.* at 3.

228. *Id.* at 4.

229. *Id.*

230. *Id.* at 5.

231. *Id.* at 6.

232. *Id.*

233. *Id.* at 7–8.

234. *Id.* at 8, 12.

235. For such marriages entered into in Pennsylvania prior to January 2, 2005, the issue is probably moot. They are presumably valid common law marriages. The General Assembly of Pennsylvania abolished common law marriage effective for marriages entered into after January 1, 2005. See *Costello v. Workers' Comp. Appeal Bd.*, 916 A.2d 1242 (Pa. Commw. Ct.), *appeal granted*, 937 A.2d 447 (Pa. 2007).

236. There are sixty-seven counties in Pennsylvania. See 116 THE PENNSYLVANIA MANUAL 6–4 (2003).

county, even if neither party resides in that county, if the parties agree to file there.<sup>237</sup> Hence an unhappily, ULC–married couple in Pennsylvania, even if they reside in Philadelphia, Bucks, or Montgomery County, can get their marriage annulled by the simple expedient of agreeing to have one of them file an action in York County.

In an effort to address this matter on a statewide basis, several members of the Pennsylvania House of Representatives introduced a bill in 2007 that would enshrine the *Heyer* decision into statutory law, at least prospectively. That bill would define a “regularly established church or congregation” to exclude “churches or congregations through which ordination is available by mail order or via the Internet or any other electronic means.”<sup>238</sup> However, the bill was not enacted and its principal sponsor does not have plans to reintroduce it.<sup>239</sup>

#### IV. THE SCOPE OF THE PROBLEM(S)

The current state of the law regarding Internet ministers officiating at weddings presents myriad public policy problems.

First, to recapitulate, there is a patchwork of inconsistent judicial decisions regarding the validity of ULC–officiated marriages, which may be summed up as follows:

New York: invalid (*Ravenal* (1972); *Rubino* (1984); *Ranieri* (1989))

Virginia: invalid (*Cramer* (1974))

North Carolina: invalid for purposes of criminal prosecution (*Lynch* (1980)); but valid by statute if entered into before July 3, 1981, unless already invalidated by a court (*Fulton* (1985)); and a claim of invalidity may be barred by estoppel (*Pickard* (2006))

Mississippi: valid enough (*Blackwell* (1988))

Utah: valid to have minister ordained by Internet or mail (*Universal Life Church* (2002))

Pennsylvania: invalid in York County (*Heyer* (2007)); valid in three other counties (*Goldberger* (2008), *Hancock* (2008), *O’Neill* (2008))

Second, even a reasonably intelligent (and suspicious) person could be readily misled by the ULC into believing that by becoming a ULC

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237. See PA. R. CIV. P. 1920.2(a)(2).

238. H.B. 1099, 190th Gen. Assem., Reg. Sess. (Pa. 2007) (attempting to amend 23 PA. CONS. STAT. § 1503).

239. E-mail from Jess Henninger, Admin. Assistant to Representative Stan Saylor, Pa. House of Representatives, to author (Feb. 18, 2009) (on file with author).

minister he can legally perform marriages throughout the United States, and beyond. As noted, the Universal Life Church Minister's Association website boldly announces, "The freedom of being a Universal Life Church Minister includes the legal status to officiate marriages."<sup>240</sup> With somewhat more integrity, the website of the ULC International Headquarters warns, "Please be sure to find out about the legal doctrines governing your country, state or province."<sup>241</sup> But the list of "State Laws" on the main website fails to alert the visitor that New York, North Carolina, Virginia, and Pennsylvania courts all have decisions invalidating ULC marriages.<sup>242</sup> While the ULC Monastery website provides much more detail on state marriage laws, it too is misleading, failing entirely to mention any of the cases invalidating ULC marriages.<sup>243</sup>

Third, while some states, such as Utah, criminalize the act of marriage solemnization by an unauthorized person,<sup>244</sup> other states, such as Pennsylvania,<sup>245</sup> do not criminalize such conduct.

Fourth, an Internet-ordained minister could find himself subject to criminal prosecution in certain states (but not others) for conducting a wedding even though believing in good faith he had the right to do so.

Fifth, the sheer number of ULC ministers who may sincerely believe they can perform marriages and who may act on that belief is staggering. As previously noted, the ULC Monastery website boasts "Over 20 Million Ministers Ordained Worldwide."<sup>246</sup> Even if one assumes that there is a certain amount of puffing in this assertion and that some of these ministers have passed on to their heavenly reward or have retired (if one can be said to retire from a ULC ministry), it is highly probable that millions of such ministers remain and that many perform marriages, at least occasionally.<sup>247</sup> It is telling that in Bucks County, Pennsylvania, at least forty-five couples quickly came forward and applied for marriage licenses after their ULC marriages were pub-

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240. Universal Life Church Minister's Association, <http://www.freewebs.com/ulcma/> (last visited Feb. 17, 2009).

241. Universal Life Church, <http://www.ulchq.com/ordination.htm> (last visited Feb. 17, 2009).

242. See Universal Life Church, <http://www.ulchq.com/statelaws.htm> (last visited Feb. 17, 2009).

243. See Universal Life Church Monastery, <http://www.themonastery.org/?destination=ulcLibraryMarriageLaws> (last visited Feb. 17, 2009) (follow "Complete List of Legal Cases" hyperlink; then follow "Universal Life Church Legal cases" hyperlink).

244. See *supra* text accompanying notes 183-84; see also OHIO REV. CODE ANN. §§ 3101.09, 3101.99(b) (LexisNexis 2008).

245. See 23 PA. CONS. STAT. § 1503 (West 2009).

246. See *supra* text accompanying note 55.

247. A few years ago, your author personally attended a family wedding officiated by a ULC minister in one of the states mentioned in this article where it has been held that such marriages are invalid.

licly called into question.<sup>248</sup> Those are only the couples who learned of the legal concern and came forward in one county in one state, clearly the tip of the iceberg.

Sixth, given the success of the ULC, not surprisingly, other enterprising Internet churches have arisen to offer ordination through cyberspace with equal ease. There is Rose Ministries, which assures its potential clergy that they can, “Perform wedding ceremonies. Authorized in all 50 states.”<sup>249</sup> The website [ordination4all.com](http://ordination4all.com) makes similar representations.<sup>250</sup> While somewhat more restrained, the Ministerial Seminary of America, LLC, states on its website: “Choosing to become an Interfaith or Independent minister involves ministering to all denominations through the performance of weddings, baby dedications and namings, baptism, funerals, visits with the sick, sermons and spiritual counseling.”<sup>251</sup> The point, of course, is that Internet “churches,” no matter what one thinks of them from a theological or legal perspective, are here, are growing, are unlikely to disappear in the foreseeable future, and are busy creating more and more “ministers” who are likely to conduct marriage ceremonies for couples who genuinely believe they are getting married, even in jurisdictions where that is clearly not the case, or where the issue has yet to be decided.

Seventh, both members of a couple may believe they are entering into a legally valid marriage only to find out months or years later that the marriage is invalid, with real and significant negative consequences. Thus, in the *Blackwell* case in Mississippi, Nadine Fortenberry Blackwell stood to lose her widow’s share of the estate of the person she thought to be her husband.<sup>252</sup> Although she ultimately prevailed in the Supreme Court of Mississippi after having lost in the Chancery Court below, the fact that her marriage was subject to challenge no doubt cost her significant anguish, to say nothing of litigation expense.

Eighth, as the *Blackwell* case also illustrates, by the time a challenge is mounted to the legal validity of a marriage, it may be too late for the parties to that marriage to take corrective action. *Blackwell* was an estate battle launched by Cobert Blackwell’s other heirs after Cobert’s untimely demise.<sup>253</sup> There was obviously no action that Nadine

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248. See *supra* text accompanying notes 218–19.

249. Rose Ministries, <http://www.openordination.org/> (last visited Feb. 17, 2009). The website also promises that “[a]s a Legally Ordained Clergy-Member you can . . . officiate at weddings.” *Id.*

250. Online Ordination—Become a Legally Ordained Minister Online, <http://www.ordination4all.com> (last visited Feb. 15, 2009).

251. Ministerial Seminary, <http://www.ministerialseminary.com> (last visited Feb. 15, 2009).

252. See *Blackwell v. Magee*, 531 So. 2d 1193, 1194 (Miss. 1988).

253. See *id.*

(or Cobert) could then have taken to solidify their union.

Ninth, conversely, as *Blackwell* also illustrates, such a marriage may call into question not only the rights of the parties to the marriage, but also the rights of other potentially interested persons.

Tenth, where a court, as in *Heyer*, declares a marriage to have been void rather than merely voidable, this may have retroactive consequences, as a void marriage is deemed never to have existed.<sup>254</sup> Thus a couple may have to cope with improperly titled real estate, improper tax returns and possible tax deficiencies, claims by insurers for repayment for health care provided to a dependent spouse who turns out not to have been a spouse, questions about the legitimacy of children, and so forth. The *O'Neill* court acknowledged the legitimacy of that couple's concerns about possible insurance and tax fraud.<sup>255</sup>

Eleventh, a person who enters such a marriage knowing it is not legally binding, or who later learns it is not legally binding, will have a potential "trump card" he or she can hold over the "spouse's" head in negotiating all the financial and other ancillary matters that couples often dispute at the time of dissolution of a marriage.

Twelfth, an individual ought not be allowed to take on and off the legal mantle of being married as it suits his whim or legal benefit, as did James Lynch in his bigamy prosecution.<sup>256</sup>

Thirteenth, a decision such as that of the Supreme Court of North Carolina in *Lynch*, holding that Lynch was not married in the context of a bigamy prosecution where the state bore the criminal burden of proof, leaves open the anomalous possibility that a person in North Carolina could be unmarried for certain purposes (such as a bigamy prosecution) but married for other civil purposes, as Carl Pickard was effectively found to be.

Finally, and more generally, in the immortal words of Justice Robert H. Jackson, "[i]f there is one thing that the people are entitled to expect from their lawmakers, it is rules of law that will enable individuals to tell whether they are married and, if so, to whom."<sup>257</sup> In today's world, apparently teeming with Internet-ordained ministers, many individuals in many jurisdictions cannot and do not have any way of knowing whether they are legally married. Clearly this is a highly unsatisfactory state of the law.

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254. See *supra* note 215.

255. See *O'Neill v. O'Neill*, No. 08-01620-29-1, slip op. at 4 (C.P. Bucks, Dec. 31, 2008).

256. See *State v. Lynch*, 272 S.E.2d 349 (N.C. 1980).

257. *Estin v. Estin*, 334 U.S. 541, 553 (1948) (Jackson, J., dissenting).

## V. A MODEST PROPOSAL

Most states' marriage laws offer a laundry list of persons authorized to solemnize marriages. On the secular side are usually various judges (who may be active or retired) and often local mayors.<sup>258</sup> Minnesota's list includes the residential school administrators of the Minnesota State Academy for the Deaf and the Minnesota State Academy for the Blind.<sup>259</sup> On the religious side there is usually a rather all-inclusive description of various religious clergy.<sup>260</sup> Occasionally a state may actually try to list approved officiants from specific religious or spiritual bodies. For example, Massachusetts law specifically includes, among others, "an authorized representative of a Spiritual Assembly of the Baha'is" and "a leader of an Ethical Culture Society which is duly established in the commonwealth and recognized by the American Ethical Union."<sup>261</sup> Alaska law includes a "commissioned officer of the Salvation Army."<sup>262</sup> The District of Columbia Code strives, with questionable success, to define what it means for a society to be "religious" in nature so that its ordained ministers may celebrate marriages: "'Religious' includes or pertains to a belief in a theological doctrine, a belief in and worship of a divine ruling power, a recognition of a supernatural power controlling man's destiny, or a devotion to some principle, strict fidelity or faithfulness, conscientiousness, pious affection, or attachment."<sup>263</sup> The Appendix to this article sets forth state-by-state the bewildering diversity of statutorily approved marriage officiants.

Some states, such as Massachusetts, require religious organizations to file certain information regarding their clergy with the state;<sup>264</sup> other states (such as New York and Virginia) require clergy to register in order to solemnize marriages;<sup>265</sup> other states (such as Pennsylvania) do not require registration by either the religious group or its ministers.<sup>266</sup>

The purpose of requiring persons who intend to marry to obtain a license from the state is clear; it gives the state the opportunity to try to ensure that the parties are eligible to marry (that is, they are not under-

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258. See, e.g., CAL. FAM. CODE § 400 (West 2004 & Supp. 2009) (judges, state legislators, constitutional officers, and California members of Congress); LA. REV. STAT. ANN. § 9:202 (2008) (judges, but not mayors); OHIO REV. CODE ANN. § 3101.08 (LexisNexis 2008) (the superintendent of the state school for the deaf); 23 PA. CONS. STAT. § 1503(a) (2009) (judges and mayors).

259. MINN. STAT. § 517.04 (2006).

260. See sources cited *supra* note 258.

261. MASS. GEN. LAWS ANN. ch. 207, § 38 (West 2007).

262. ALASKA STAT. § 25.05.261 (2008).

263. D.C. CODE ANN. § 46-406(a)(1) (LexisNexis 2009).

264. See source cited *supra* note 261.

265. See *supra* notes 79, 99-100 and accompanying text.

266. See 23 PA. CONS. STAT. ANN. § 1503 (West 2001).

age, not within prohibited degrees of consanguinity, not still encumbered with a prior spouse, and so forth).<sup>267</sup> Some states build in a waiting period between application for, and issuance of, a marriage license (three days in Pennsylvania<sup>268</sup>). Again the purpose is reasonably clear, per the old adage, “Marry in haste; repent at leisure.” The purposes of solemnization are reasonably clear. Not all those who obtain a marriage license will necessarily tie the knot, and solemnization provides a public (or not-so-public) ritual by which the happy couple take on their new status. The purpose of then recording the marriage with the state is likewise clear; this enables the state to keep marriage records. The gradual elimination (in most American jurisdictions) of the doctrine of common law marriage was, in part, significantly spurred by the desire of the state to keep accurate records of who is, and isn’t, married.<sup>269</sup>

The purpose of limiting which adults may solemnize marriage is far less clear. The reported cases addressing ULC marriages provide little insight. Most do not address the rationale for restricting officiants at all but only look to whether a particular officiant falls within a statutorily approved category of officiants.<sup>270</sup> The few attempted explanations for limiting officiants are hardly persuasive. In *Cramer*, the Supreme Court of Virginia reasoned:

The state . . . is confronted with the necessity that the marriage contract itself be memorialized in writing and by a person of responsibility and integrity and by one possessed of some educational qualifications. Ministers, as a profession, class or group, are persons of integrity and responsibility, and are persons qualified to perform a marriage in a proper manner, execute the necessary forms required by the state, and report the contract of marriage between two people within the time prescribed.<sup>271</sup>

If this were really the case, why cannot doctors, lawyers, school teachers, or, for that matter, marriage counselors, solemnize marriages in Virginia?<sup>272</sup> They are not among Virginia’s approved officiants,<sup>273</sup> but one would surely hope and expect that they too could carry out this solemn function. Moreover, the list of disgraced members of the clergy—Ted

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267. See *id.* at § 1302.

268. *Id.* at § 1303.

269. See, e.g., *PNC Bank Corp. v. Workers’ Comp. Appeal Bd.*, 831 A.2d 1269, 1279 (Pa. Commw. Ct. 2003).

270. See cases cited *supra* notes 49, 64, 79, 90, 107, and 197.

271. *Cramer v. Commonwealth*, 202 S.E.2d 911, 914 (Va. 1974).

272. Maine appears to stand alone in allowing any member of the state bar who resides within the state to solemnize marriages. ME. REV. STAT. ANN. tit. 19–A, § 655(1)(A)(2) (1998). Montana allows its duly licensed lawyers to draw up a declaration of marriage for persons desiring to consummate a marriage by written declaration without solemnization. MONT. CODE ANN. §§ 40-1-311 to -312 (2008).

273. See VA. CODE ANN. § 20-25 (2008).

Haggard, Jim Bakker, and such lesser lights as Reverend Henry J. Lyons, Reverend Joe Barron, Evangelist Tony Alamo, and Rabbi Mordechai Gafni, just to name a few—is far too long for anyone to take seriously the notion that there is some sort of assurance that ministers or other clergy are necessarily persons of integrity and responsibility, or, at least, any more likely to be so than other mortals.<sup>274</sup>

Similarly, in *Universal Life Church v. Utah*, the federal district court hypothesized:

Conceivably, the Legislature was concerned that one who so cavalierly becomes a minister might not appreciate the gravity of solemnizing a marriage and might not bring to the ceremony the desired level of dignity and integrity. In addition, it is conceivable that the Legislature could rationally be concerned that an individual's decision to use such a minister might be reflective of a cavalier attitude toward the marriage relationship.<sup>275</sup>

But, since the Utah legislature does not, and probably could not, dictate the length or depth of a church's educational requirements for those seeking ordination, this is not particularly compelling. Again, could not another professional bring dignity and integrity to a wedding ceremony?

There are myriad reasons why a couple might prefer a big wedding or a small wedding, a traditional religious wedding or a nontraditional wedding with religious overtones, a purely secular wedding in front of a crowd of friends and relatives or a simple signing ceremony at a local courthouse in front of a judge or clerk, or innumerable other permutations. Today, it is difficult to perceive of a valid *and enforceable* reason for the state to demand a particular marriage methodology for the couple who have obtained a license ensuring their eligibility and intent to marry, as long as the *fact* of their marriage is then duly registered with the state. The state may validly regulate *who may enter into marriage* (based on age, mental capacity to consent, neither party being married to another person, and nonconsanguinity) subject to state and federal constitutional limitations and enforce those rules by a licensure requirement. The state may validly require registration of the marriage for record-keeping purposes.

But the day is simply over that the state can meaningfully regulate

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274. A study conducted by the John Jay College of Criminal Justice for the U.S. Conference of Catholic Bishops and published in 2004 found that at least 252 American priests and deacons had been convicted of some form of sexual abuse of minors and that the total cost to the American Catholic Church of child sexual abuse exceeded \$500,000,000. See U.S. Conference of Catholic Bishops, *The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States*, <http://www.usccb.org/nrb/johnjaystudy/> (last visited May 21, 2009).

275. *Universal Life Church v. Utah*, 189 F. Supp. 2d 1302, 1315 (D. Utah 2002) (footnote omitted).



*who may officiate* when the couple signify their present-tense declaration of entry into marriage, or even require any officiant other than the couple themselves. As the proliferation of Internet ministers expands, and the courts struggle with whether they are “close enough” to ministers who have actually engaged in meaningful religious training and whether their churches are “close enough” to brick-and-mortar churches with actual dogma, the effort at regulation of officiants is doomed to failure. Like it or not, such ministers will continue to perform weddings and couples, correctly or incorrectly, will believe they are legally married. While many may view this as a mockery of religion and a legally intolerable situation, nonetheless it is now a *fait accompli*. It is better for the state to acknowledge this situation than to attempt to define which ministers and churches are “close enough” to “real” ministers and churches for purposes of celebrating marriage. The state may certainly require marriage license applicants to attest on the application that they know of no legal impediment to the marriage, require the couple to sign a marriage return signifying that they have entered the marriage on a given date, require one or more adult witnesses to co-sign that document, and require that marriage return to be filed with the state.

But the state does not honor religion by trying to separate valid, meaningful religions and their ministers from those that might be considered shams or just plain silly. A hands-off approach will not only save the state from an ultimately impossible task, but will provide legal certainty for couples embarking on the already perilous path of matrimony.

APPENDIX: STATUTORILY APPROVED MARRIAGE  
OFFICIANTS STATE-BY-STATE

Alabama: ALA. CODE § 30-1-7 (2009)

Persons authorized to solemnize marriages.

(a) *Generally.* Marriages may be solemnized by any licensed minister of the gospel in regular communion with the Christian church or society of which the minister is a member; by an active or retired judge of the Supreme Court, Court of Criminal Appeals, Court of Civil Appeals, any circuit court, or any district court within this state; by a judge of any federal court; or by an active or retired judge of probate.

(b) *Pastor of religious society; clerk of society to maintain register of marriages; register, etc., deemed presumptive evidence of fact.* Marriage may also be solemnized by the pastor of any religious society according to the rules ordained or custom established by such society. . . .

(c) *Quakers, Mennonites, or other religious societies.* The people called Mennonites, Quakers, or any other Christian society having similar rules or regulations, may solemnize marriage according to their forms by consent of the parties, published and declared before the congregation assembled for public worship.

Alaska: ALASKA STAT. § 25.05.261 (2008)

Who may solemnize.

(a) Marriages may be solemnized

(1) by a minister, priest, or rabbi of any church or congregation in the state, or by a commissioned officer of the Salvation Army, or by the principal officer or elder of recognized churches or congregations that traditionally do not have regular ministers, priests, or rabbis, anywhere within the state;

(2) by a marriage commissioner or judicial officer of the state anywhere within the jurisdiction of the commissioner or officer; or

(3) before or in any religious organization or congregation according to the established ritual or form commonly practiced in the organization or congregation.

. . . .

Arizona: ARIZ. REV. STAT. ANN. § 25-124 (2007)

Persons authorized to perform marriage ceremony; definition

A. The following are authorized to solemnize marriages between persons who are authorized to marry:

1. Duly licensed or ordained clergymen.
2. Judges of courts of record.
3. Municipal court judges.
4. Justices of the peace.
5. Justices of the United States supreme court.
6. Judges of courts of appeals, district courts and courts that are created by an act of congress if the judges are entitled to hold office during good behavior.
7. Bankruptcy court and tax court judges.
8. United States magistrate judges.
9. Judges of the Arizona court of military appeals.

B. For the purposes of this section, “licensed or ordained clergymen” includes ministers, elders or other persons who by the customs, rules and regulations of a religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.

Arkansas: ARK. CODE ANN. § 9-11-213 (2008)

Persons who may solemnize marriages.

(a) For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons:

- (1) The Governor;
- (2) Any former justice of the Supreme Court;
- (3) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) years or more;
- (4) Any justice of the peace, including any former justice of

the peace who served at least two (2) terms since the passage of Arkansas Constitution, Amendment 55;

(5) Any regularly ordained minister or priest of any religious sect or denomination;

(6) The mayor of any city or town;

(7) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or

(8) Any elected district court judge and any former municipal or district court judge who served at least four (4) years.

(b)(1) Marriages solemnized through the traditional rite of the Religious Society of Friends, more commonly known as Quakers, are recognized as valid to all intents and purposes the same as marriages otherwise contracted and solemnized in accordance with law.

. . . .

California: CAL. FAM. CODE § 400 (West 2004 & Supp. 2009)

#### Authorized persons

Marriage may be solemnized by any of the following who is of the age of 18 years or older:

(a) A priest, minister, rabbi, or authorized person of any religious denomination.

(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record in this state.

(c) A judge or magistrate who has resigned from office.

(d) Any of the following judges or magistrates of the United States:

(1) A justice or retired justice of the United States Supreme Court.

(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the

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judges of which are entitled to hold office during good behavior.

(3) A judge or retired judge of a bankruptcy court or a tax court.

(4) A United States magistrate or retired magistrate.

(e) A legislator or constitutional officer of this state or a Member of Congress who represents a district within this state, while that person holds office.

Colorado: COLO. REV. STAT. ANN. § 14-2-109 (West 2005)

Solemnization and registration

(1) A marriage may be solemnized by a judge of a court, by a court magistrate, by a retired judge of a court, by a public official whose powers include solemnization of marriages, by the parties to the marriage, or in accordance with any mode of solemnization recognized by any religious denomination or Indian nation or tribe. . . .

. . . .

Connecticut: CONN. GEN. STAT. ANN. § 46b-22 (West 2009)

Who may join persons in marriage. Penalty for unauthorized performance

(a) Persons authorized to solemnize marriages in this state include (1) all judges and retired judges, either elected or appointed, including federal judges and judges of other states who may legally join persons in marriage in their jurisdictions, (2) family support magistrates, state referees and justices of the peace who are appointed in Connecticut, and (3) all ordained or licensed members of the clergy, belonging to this state or any other state, as long as they continue in the work of the ministry. All marriages solemnized according to the forms and usages of any religious denomination in this state, including marriages witnessed by a duly constituted Spiritual Assembly of the Baha'is, are valid. All marriages attempted to be celebrated by any other person are void.

. . . .

Delaware: DEL. CODE ANN. tit. 13, § 106 (1999 & Supp. 2008)

Solemnization of marriages; production of license; penalty; registration of persons authorized to solemnize marriages.

(a) A clergyperson or minister of any recognized religion, current and former members of this State's Supreme Court, Superior Court, Family Court, Court of Chancery, Court of Common Pleas, Justice of the Peace Court, federal Judges, federal Magistrates, clerks of the peace of various counties and current and former judges from other jurisdictions with written authorization by the clerk of the peace from the county in Delaware where the ceremony is to be performed may solemnize marriages between persons who may lawfully enter into the matrimonial relation. The Clerk of the Peace in each county for good cause being shown may:

(1) Allow by written permit within his or her respective county, any duly sworn member of another state's judiciary, to solemnize marriages in the State between persons who may lawfully enter into the matrimonial relation.

(2) Allow by written permit within his or her respective county, the Clerk of the Peace from another county within the State to solemnize marriages in the State between persons who may lawfully enter into the matrimonial relation.

Within the City of Wilmington the Mayor may solemnize marriages between persons who may lawfully enter into the matrimonial relation, but only if 1 of the parties to be married is a resident of this State. Marriages shall be solemnized in the presence of at least 2 reputable witnesses who shall sign the certificate of marriage as prescribed by this chapter. Marriages may also be solemnized or contracted according to the forms and usages of any religious society. No marriage shall be solemnized or contracted without the production of a license issued pursuant to this chapter.

District of Columbia: D.C. CODE ANN. § 46-406 (LexisNexis 2001)

Persons authorized to celebrate marriages [Formerly § 30-106].

(a) For the purposes of this section, the term:

(1) "Religious" includes or pertains to a belief in a theological doctrine, a belief in and worship of a divine ruling power, a recognition of a supernatural power controlling man's destiny,

or a devotion to some principle, strict fidelity or faithfulness, conscientiousness, pious affection, or attachment.

(2) “Society” means a voluntary association of individuals for religious purposes.

(b) For the purpose of preserving the evidence of marriages in the District of Columbia, every minister of any religious society approved or ordained according to the ceremonies of his religious society, whether his residence is in the District of Columbia or elsewhere in the United States or the territories, may be authorized by any judge of the Superior Court of the District of Columbia to celebrate marriages in the District of Columbia. Marriages may also be performed by any judge or justice of any court of record; provided, that marriages of any religious society which does not by its own custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such religious society, the license in such case to be issued to, and returns to be made by, a person appointed by such religious society for that purpose. The Clerk of the Superior Court of the District of Columbia or such deputy clerks of the Court as may, in writing, be designated by the Clerk and approved by the Chief Judge, may celebrate marriages in the District of Columbia.

Florida: FLA. STAT. § 741.07 (2009)

Persons authorized to solemnize matrimony.

(1) All regularly ordained ministers of the gospel or elders in communion with some church, or other ordained clergy, and all judicial officers, including retired judicial officers, clerks of the circuit courts, and notaries public of this state may solemnize the rights of matrimonial contract, under the regulations prescribed by law. . . .

(2) Any marriage which may be had and solemnized among the people called “Quakers,” or “Friends,” in the manner and form used or practiced in their societies, according to their rites and ceremonies, shall be good and valid in law; and wherever the words “minister” and “elder” are used in this chapter, they shall be held to include all of the persons connected with the Society of Friends, or Quakers, who perform or have charge of the marriage ceremony according to their rites and ceremonies.

Georgia: GA. CODE. ANN. § 19-3-30 (2004)

Issuance, return, and recording of license.

(a) Marriage licenses shall be issued only by the judge of the probate court or his clerk at the county courthouse between the hours of 8:00 A.M. and 6:00 P.M., Monday through Saturday.

. . . .

(c) The license shall be directed to any judge, including judges of state and federal courts of record in this state, city recorder, magistrate, minister, or other person of any religious society or sect authorized by the rules of such society to perform the marriage ceremony; such license shall authorize the marriage of the persons therein named and require the judge, city recorder, magistrate, minister, or other authorized person to return the license to the judge of the probate court with the certificate thereon as to the fact and date of marriage within 30 days after the date of the marriage.

. . . .

Hawaii: HAW. REV. STAT. ANN. § 572-12 (LexisNexis 2005)

By whom solemnized.

A license to solemnize marriages may be issued to, and the marriage rite may be performed and solemnized by any minister, priest, or officer of any religious denomination or society who has been ordained or is authorized to solemnize marriages according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, or any justice or judge or magistrate, active or retired, of a state or federal court in the State, upon presentation to such person or society of a license to marry, as prescribed by this chapter. . . .

Idaho: IDAHO CODE ANN. § 32-303 (2006 & Supp. 2008)

By whom solemnized.

Marriage may be solemnized by any of the following Idaho officials: a current or retired justice of the supreme court, a current or retired court of appeals judge, a current or retired district judge, the current or a former governor, the current lieutenant governor, a current or retired magistrate of the district court, a current mayor or by any of the following: a current federal judge, a current tribal judge



of an Idaho Indian tribe or other tribal official approved by an official act of an Idaho Indian tribe or priest or minister of the gospel of any denomination. . . .

Illinois: 750 ILL. COMP. STAT. 5/209 (LexisNexis 2009)

Solemnization and Registration.

(a) A marriage may be solemnized by a judge of a court of record, by a retired judge of a court of record, unless the retired judge was removed from office by the Judicial Inquiry Board, except that a retired judge shall not receive any compensation from the State, a county or any unit of local government in return for the solemnization of a marriage and there shall be no effect upon any pension benefits conferred by the Judges Retirement System of Illinois, by a judge of the Court of Claims, by a county clerk in counties having 2,000,000 or more inhabitants, by a public official whose powers include solemnization of marriages, or in accordance with the prescriptions of any religious denomination, Indian Nation or Tribe or Native Group, provided that when such prescriptions require an officiant, the officiant be in good standing with his religious denomination, Indian Nation or Tribe or Native Group. . . .

. . . .

Indiana: IND. CODE. ANN. § 31-11-6-1 (West 2008)

Persons authorized to solemnize marriages

Marriages may be solemnized by any of the following:

- (1) A member of the clergy of a religious organization (even if the cleric does not perform religious functions for an individual congregation), such as a minister of the gospel, a priest, a bishop, an archbishop, or a rabbi.
- (2) A judge.
- (3) A mayor, within the mayor's county.
- (4) A clerk or a clerk-treasurer of a city or town, within a county in which the city or town is located.
- (5) A clerk of the circuit court.

- (6) The Friends Church, in accordance with the rules of the Friends Church.
- (7) The German Baptists, in accordance with the rules of their society.
- (8) The Bahai faith, in accordance with the rules of the Bahai faith.
- (9) The Church of Jesus Christ of Latter Day Saints, in accordance with the rules of the Church of Jesus Christ of Latter Day Saints.
- (10) An imam of a masjid (mosque), in accordance with the rules of the religion of Islam.

Iowa: IOWA CODE ANN. § 595.10 (West 2001 & Supp. 2009)

Who may solemnize

Marriages may be solemnized by:

- 1. A judge of the supreme court, court of appeals, or district court, including a district associate judge, associate juvenile judge, or a judicial magistrate, and including a senior judge . . . .
- 2. A person ordained or designated as a leader of the person’s religious faith.

IOWA CODE ANN. § 595.11 (West 2001)

Nonstatutory solemnization—forfeiture

Marriages solemnized, with the consent of parties, in any manner other than that prescribed in this chapter, are valid; but the parties, and all persons aiding or abetting them, shall pay to the treasurer of state for deposit in the general fund of the state the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if within fifteen days after the ceremony is conducted, the person makes the required return to the county registrar.

Kansas: KAN. STAT. ANN. § 23-104a (2007)

Solemnizing marriages; persons authorized to officiate.

- (a) Marriage may be validly solemnized and contracted in this state, after a license has been issued for the marriage, in the follow-

ing manner: By the mutual declarations of the two parties to be joined in marriage, made before an authorized officiating person and in the presence of at least two competent witnesses over 18 years of age, other than the officiating person, that they take each other as husband and wife.

(b) The following are authorized to be officiating persons:

- (1) Any currently ordained clergyman or religious authority of any religious denomination or society;
- (2) any licentiate of a denominational body or an appointee of any bishop serving as the regular clergyman of any church of the denomination to which the licentiate or appointee belongs, if not restrained from so doing by the discipline of that church or denomination;
- (3) any judge or justice of a court of record;
- (4) any municipal judge of a city of this state; and
- (5) any retired judge or justice of a court of record.

(c) The two parties themselves, by mutual declarations that they take each other as husband and wife, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties belong, may be married without an authorized officiating person.

Kentucky: KY. REV. STAT. ANN. § 402.050 (LexisNexis 1999)

Who may solemnize marriage—Persons present.

- (1) Marriage shall be solemnized only by:
  - (a) Ministers of the gospel or priests of any denomination in regular communion with any religious society;
  - (b) Justices and judges of the Court of Justice, retired justices and judges of the Court of Justice except those removed for cause or convicted of a felony, county judges/executive, and such justices of the peace and fiscal court commissioners as the Governor or the county judge/executive authorizes; or
  - (c) A religious society that has no officiating minister or priest and whose usage is to solemnize marriage at the usual place of

worship and by consent given in the presence of the society, if either party belongs to the society.

.....

Louisiana: LA. REV. STAT. ANN. § 9:202 (2008)

Authority to perform marriage ceremony

A marriage ceremony may be performed by:

- (1) A priest, minister, rabbi, clerk of the Religious Society of Friends, or any clergyman of any religious sect, who is authorized by the authorities of his religion to perform marriages, and who is registered to perform marriages;
- (2) A state judge or justice of the peace.

Maine: ME. REV. STAT. ANN. tit. 19-A § 655 (1998) (footnote omitted)

Authorization; penalties

1. Persons authorized to solemnize marriages. The following may solemnize marriages in this State:

A. If a resident of this State:

- (1) A justice or judge;
- (2) A lawyer admitted to the Maine Bar;
- (3) A justice of the peace; or
- (4) A notary public under Title 4, chapter 19; and

B. Whether a resident or nonresident of this State and whether or not a citizen of the United States:

- (1) An ordained minister of the gospel;
- (2) A cleric engaged in the service of the religious body to which the cleric belongs; or
- (3) A person licensed to preach by an association of ministers, religious seminary or ecclesiastical body.

.....

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Maryland: MD. CODE ANN., FAM. LAW § 2-406 (LexisNexis 1999 & Supp. 2004)

Performance of ceremony.

(a) *Authorized officials.*—

(1) In this subsection, “judge” means:

(i) a judge of the District Court, a circuit court, the Court of Special Appeals, or the Court of Appeals;

(ii) a judge approved under Article IV, § 3A of the Maryland Constitution and § 1-302 of the Courts Article for recall and assignment to the District Court, a circuit court, the Court of Special Appeals, or the Court of Appeals; or

(iii) a judge of a United States District Court or a United States Court of Appeals; or

(iv) a judge of a state court if the judge is active or retired but eligible for recall.

(2) A marriage ceremony may be performed in this State by:

(i) any official of a religious order or body authorized by the rules and customs of that order or body to perform a marriage ceremony;

(ii) any clerk;

(iii) any deputy clerk designated by the county administrative judge of the circuit court for the county; or

(iv) a judge.

. . . .

(f) *Ceremony performed by a clerk or deputy clerk.* — The county administrative judge of the circuit court for the county shall designate:

(1) when and where the clerk or deputy clerk may perform a marriage ceremony; and

(2) he form of the marriage ceremony to be recited by the clerk or deputy clerk and the parties being married.

(g) *Forms of religious ceremonies.* — This section does not affect the right of any religious denomination to perform a marriage ceremony in accordance with the rules and customs of the denomination.

Massachusetts: MASS. GEN. LAWS ANN. ch. 207, § 38 (West 2007)

Situs; persons authorized

A marriage may be solemnized in any place within the commonwealth by the following persons who are residents of the commonwealth: a duly ordained minister of the gospel in good and regular standing with his church or denomination, including an ordained deacon in The United Methodist Church or in the Roman Catholic Church; a commissioned cantor or duly ordained rabbi of the Jewish faith; by a justice of the peace if he is also clerk or assistant clerk of a city or town, or a registrar or assistant registrar, or a clerk or assistant clerk of a court or a clerk or assistant clerk of the senate or house of representatives, by a justice of the peace if he has been designated as provided in the following section and has received a certificate of designation and has qualified thereunder; an authorized representative of a Spiritual Assembly of the Baha'is in accordance with the usage of their community; a priest or minister of the Buddhist religion; a minister in fellowship with the Unitarian Universalist Association and ordained by a local church; a leader of an Ethical Culture Society which is duly established in the commonwealth and recognized by the American Ethical Union and who is duly appointed and in good and regular standing with the American Ethical Union; the Imam of the Orthodox Islamic religion; and, it may be solemnized in a regular or special meeting for worship conducted by or under the oversight of a Friends or Quaker Monthly Meeting in accordance with the usage of their Society; and, it may be solemnized by a duly ordained nonresident minister of the gospel if he is a pastor of a church or denomination duly established in the commonwealth and who is in good and regular standing as a minister of such church or denomination, including an ordained deacon in The United Methodist Church or in the Roman Catholic Church; and, it may be solemnized according to the usage of any other church or religious organization which shall have complied with the provisions of the second paragraph of this section.

. . . .

MASS. GEN. LAWS ANN. ch. 207, § 39 (West 2007)

Justice or non-resident clergymen

The governor may in his discretion designate a justice of the peace in each town and such further number, not exceeding one for every five thousand inhabitants of a city or town, as he considers expedient, to solemnize marriages, and may for a cause at any time revoke such designation. . . .

The state secretary may authorize, subject to such conditions as he may determine, the solemnization of any specified marriage anywhere within the commonwealth by the following nonresidents: a minister of the gospel in good and regular standing with his church or denomination; a commissioned cantor or duly ordained rabbi of the Jewish faith; an authorized representative of a Spiritual Assembly of the Baha'is in accordance with the usage of their community; the Imam of the Orthodox Islamic religion; a duly ordained priest or minister of the Buddhist religion; a minister in fellowship with the Unitarian Universalist Association and ordained by a local church; a leader of an Ethical Culture Society which is recognized by the American Ethical Union and who is duly appointed and in good and regular standing with the American Ethical Union; a justice of a court or a justice of the peace authorized to solemnize a marriage by virtue of their office within their state of residence; and, it may be solemnized in a regular or special meeting for worship conducted by or under the oversight of a Friends or Quaker Monthly Meeting in accordance with the usage of their Society. A nonresident may solemnize a marriage according to the usage of any church or religious organization which shall have complied with the provisions of the second paragraph of section 38. . . .

In addition to the foregoing, the governor may designate any other person to solemnize a particular marriage on a particular date and in a particular city or town, and may for cause at any time revoke such designation. . . .

Michigan: MICH. COMP. LAWS. ANN. § 551.7 (West 2005 & Supp. 2009)

Persons authorized to solemnize marriages; records and returns; fees

Sec. 7. (1) Marriages may be solemnized by any of the following:

(a) A judge of the district court, in the district in which the judge is serving.

(b) A district court magistrate, in the district in which the magistrate serves.

(c) A municipal judge, in the city in which the judge is serving or in a township over which a municipal court has jurisdiction. . . .

(d) A judge of probate, in the county or probate court district in which the judge is serving.

(e) A judge of a federal court.

(f) A mayor of a city, anywhere in a county in which that city is located.

(g) A county clerk in the county in which the clerk serves, or in another county with the written authorization of the clerk of the other county.

(h) For a county having more than 2,000,000 inhabitants, an employee of the county clerk's office designated by the county clerk, in the county in which the clerk serves.

(i) A minister of the gospel or cleric or religious practitioner, anywhere in the state, if the minister or cleric or religious practitioner is ordained or authorized to solemnize marriages according to the usages of the denomination.

(j) A minister of the gospel or cleric or religious practitioner, anywhere in the state, if the minister or cleric or religious practitioner is not a resident of this state but is authorized to solemnize marriages under the laws of the state in which the minister or cleric or religious practitioner resides.

. . . .

Minnesota: MINN. STAT ANN. § 517.04 (West 2006)

Solemnization



Marriages may be solemnized throughout the state by a judge of a court of record, a retired judge of a court of record, a court administrator, a retired court administrator with the approval of the chief judge of the judicial district, a former court commissioner who is employed by the court system or is acting pursuant to an order of the chief judge of the commissioner's judicial district, the residential school administrators of the Minnesota State Academy for the Deaf and the Minnesota State Academy for the Blind, a licensed or ordained minister of any religious denomination, or by any mode recognized in section 517.18.

MINN. STAT ANN. § 517.041 (West 2006 & Supp. 2008)

Power to appoint court commissioner; duty

The Third Judicial District may appoint as court commissioner for Fillmore and Olmsted Counties respectively a person who was formerly employed by those counties as a court commissioner.

The sole duty of an appointed court commissioner is to solemnize marriages.

MINN. STAT ANN. § 517.18 (West 2006)

Marriage solemnization

*Subdivision 1. Friends or Quakers.* All marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be valid and not affected by any of the foregoing provisions. . . .

*Subd. 2. Baha'i.* Marriages may be solemnized among members of the Baha'i faith by the chair of an incorporated local Spiritual Assembly of the Baha'is, according to the form and usage of such society.

*Subd. 3. Hindus; Muslims.* Marriages may be solemnized among Hindus or Muslims by the person chosen by a local Hindu or Muslim association, according to the form and usage of their respective religions.

*Subd. 4. American Indians.* Marriages may be solemnized among American Indians according to the form and usage of their religion by an Indian Mide' or holy person chosen by the parties to the marriage.

. . . .

Mississippi: MISS. CODE ANN. § 93-1-17 (West 2007)

Persons authorized to solemnize marriage

Any minister of the gospel ordained according to the rules of his church or society, in good standing; any Rabbi or other spiritual leader of any other religious body authorized under the rules of such religious body to solemnize rites of matrimony and being in good standing; any judge of the Supreme Court, Court of Appeals, circuit court, chancery court or county court may solemnize the rites of matrimony between any persons anywhere within this state who shall produce a license granted as herein directed. Justice court judges and members of the boards of supervisors may likewise solemnize the rites of matrimony within their respective counties. . . .

MISS. CODE ANN. § 93-1-19 (West 2007)

Religious solemnization

It shall be lawful for a pastor of any religious society in this state to join together in marriage such persons of the society to whom a marriage license has been issued, according to the rules and customs established by the society. . . .

Missouri: MO. ANN. STAT. § 451.100 (West 2003)

Marriages solemnized by whom

Marriages may be solemnized by any clergyman, either active or retired, who is in good standing with any church or synagogue in this state. Marriages may also be solemnized, without compensation, by any judge, including a municipal judge. Marriages may also be solemnized by a religious society, religious institution, or religious organization of this state, according to the regulations and customs of the society, institution or organization, when either party to the marriage to be solemnized is a member of such society, institution or organization.

Montana: MONT. CODE ANN. § 40-1-301 (2009)

Solemnization and registration.

(1) A marriage may be solemnized by a judge of a court of record,

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by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group.

. . . .

MONT. CODE ANN. § 40-1-311 (2009)

Declaration of marriage without solemnization.

(1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 shall, prior to executing the declaration, secure the medical certificate required by this chapter. The declaration and the certificate or the waiver provided for in 40-1-203 must be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

- (a) the names, ages, and residences of the parties;
- (b) the fact of marriage;
- (c) the name of father and maiden name of mother of both parties and address of each;
- (d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

. . . .

MONT. CODE ANN. § 40-1-312 (2009)

Persons who may draft declaration of marriage.

It is unlawful for any person other than the parties to the written declaration to draw any declaration of marriage unless the person is licensed to practice law in the state of Montana.

Nebraska: NEB. REV. STAT. §42-108 (2008)

Marriage ceremony; who may perform; return; contents.

Every judge, retired judge, clerk magistrate, or retired clerk magistrate, and every preacher of the gospel authorized by the usages of the church to which he or she belongs to solemnize marriages, may perform the marriage ceremony in this state. . . .

Nevada: NEV. REV. STAT. ANN. § 122.062 (LexisNexis 2004)

Licensed or ordained ministers and chaplains of Armed Forces to obtain certificates from county clerk; temporary replacements; solemnization by minister licensed or ordained in another state.

1. Any licensed or ordained minister in good standing within his denomination, whose denomination, governing body and church, or any of them, are incorporated or organized or established in this state, may join together as husband and wife persons who present a marriage license obtained from any county clerk of the state, if the minister first obtains a certificate of permission to perform marriages as provided in this section, and NRS 122.064 to 122.073, inclusive. The fact that a minister is retired does not disqualify him from obtaining a certificate of permission to perform marriages if, before his retirement, he had active charge of a congregation within this state for a period of at least 3 years.

2. A temporary replacement for a licensed or ordained minister certified pursuant to this section, and NRS 122.064 to 122.073, inclusive, may solemnize marriages pursuant to subsection 1 during such time as he may be authorized to do so by the county clerk in the county in which he is a temporary replacement, for a period not to exceed 90 days. . . .

3. Any chaplain who is assigned to duty in this state by the Armed Forces of the United States may solemnize marriages if he obtains a certificate of permission to perform marriages from the county clerk of the county in which his duty station is located. . . .

4. A county clerk may authorize a licensed or ordained minister whose congregation is in another state to perform marriages in the county if the county clerk satisfies himself that the minister is in good standing with his denomination or church. . . .

NEV. REV. STAT. ANN. § 122.080 (LexisNexis 2004)

Solemnization of marriage by supreme court justice, district judge, justice of the peace, municipal judge and commissioner and deputy commissioner of civil marriages; unlawful acts.

1. After receipt of the marriage license previously issued to persons wishing to be married as provided in NRS 122.040 and 122.050, it is lawful for any justice of the supreme court, any judge of the district court, any justice of the peace in his township if it is not a commissioner township, any justice of the peace in a commissioner township if authorized pursuant to subsection 3, any municipal judge if authorized pursuant to subsection 4, any commissioner of civil marriages within his county and within a commissioner township therein, or any deputy commissioner of civil marriages within the county of his appointment and within a commissioner township therein, to join together as husband and wife all persons not prohibited by this chapter.

2. This section does not prohibit:

(a) A justice of the peace of one township, while acting in the place and stead of the justice of the peace of any other township, from performing marriage ceremonies within the other township, if such other township is not a commissioner township.

(b) A justice of the peace of one township performing marriages in another township of the same county where there is no duly qualified and acting justice of the peace, if such other township is not a commissioner township or if he is authorized to perform the marriage pursuant to subsection 3.

. . . .

NEV. REV. STAT. ANN. § 122.160 (LexisNexis 2004 & Supp. 2007)

Marriages between Indians performed by tribal custom on reservation or in colony: Validity; certificate of declaration.

1. Marriages between Indians performed in accordance with tribal customs within closed Indian reservations and Indian colonies have the same validity as marriages performed in any other manner provided for by the laws of this state, if there is recorded or filed in the county in which the marriage takes place, within 30 days after the performance of the tribal marriage, a certificate declaring the marriage to have been performed.

. . . .

NEV. REV. STAT. ANN. § 122.170 (LexisNexis 2004 & Supp. 2007)

Marriages between Indians consummated in accordance with tribal customs valid: Certificate of marriage; contents; recording.

1. Marriages between Indians heretofore or hereafter consummated in accordance with tribal custom have the same validity as marriages performed in any other manner provided for by the laws of the State of Nevada.

. . . .

New Hampshire: N.H. REV. STAT. ANN. § 457:31 (2007)

#### Who May Solemnize

Marriage may be solemnized by a justice of the peace as commissioned in the state; by any minister of the gospel in the state who has been ordained according to the usage of his or her denomination, resides in the state, and is in regular standing with the denomination; by any clergy who is not ordained but is engaged in the service of the religious body to which he or she belongs, resides in the state, after being licensed therefor by the secretary of state; within his or her parish, by any minister residing out of the state, but having a pastoral charge wholly or partly in this state; by judges of the United States appointed pursuant to Article III of the United States Constitution, by bankruptcy judges appointed pursuant to Article I of the United States Constitution, or by United States magistrate judges appointed pursuant to federal law.

N.H. REV. STAT. ANN. § 457:32 (2007)

#### Special Commission.

The secretary of state may issue a special license to an ordained or non-ordained minister residing out of the state, or to an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, authorizing him or her in a special case to marry a couple within the state. . . .

N.H. REV. STAT. ANN. § 457:32-a (2007)

Judges of the United States.

The secretary of state may issue a special license to a judge of the United States residing in this state who is appointed pursuant to Article III of the United States Constitution, to a judge of the United States Bankruptcy Court residing in this state and appointed pursuant to Article I of the United States Constitution, or to a United States magistrate judge residing in this state and appointed pursuant to federal law, to marry a couple within the state. . . .

New Jersey: N.J. STAT. ANN. § 37:1-13 (West 2002 & Supp. 2009)

Persons authorized to solemnize

Each judge of the United States Court of Appeals for the Third Circuit, each judge of a federal district court, United States magistrate, judge of a municipal court, judge of the Superior Court, judge of a tax court, retired judge of the Superior Court or Tax Court, or judge of the Superior Court or Tax Court, the former County Court, the former County Juvenile and Domestic Relations Court, or the former County District Court who has resigned in good standing, surrogate of any county, county clerk and any mayor or the deputy mayor when authorized by the mayor, or chairman of any township committee or village president of this State, and every minister of every religion, are hereby authorized to solemnize marriage or civil union between such persons as may lawfully enter into the matrimonial relation or civil union; and every religious society, institution or organization in this State may join together in marriage or civil union such persons according to the rules and customs of the society, institution or organization.

New Mexico: N.M. STAT. § 40-1-2 (2006)

Clergymen or civil magistrates may solemnize; fees.

A. A person may solemnize the contract of matrimony by means of an ordained clergyman or authorized representative of a federally recognized Indian tribe, without regard to the sect to which he may belong or the rites and customs he may practice.

B. Judges, justices and magistrates of any of the courts established by the constitution of New Mexico, United States constitution, laws of the state or laws of the United States are civil magistrates having authority to solemnize contracts of matrimony.

. . . .

New York: N.Y. DOM. REL. LAW § 11 (McKinney 1999 & Supp. 2009)

By whom a marriage must be solemnized

No marriage shall be valid unless solemnized by either:

1. A clergyman or minister of any religion, or by the senior leader, or any of the other leaders, of The Society for Ethical Culture in the city of New York, having its principal office in the borough of Manhattan, or by the leader of The Brooklyn Society for Ethical Culture, having its principal office in the borough of Brooklyn of the city of New York, or of the Westchester Ethical Society, having its principal office in Westchester county, or of the Ethical Culture Society of Long Island, having its principal office in Nassau county, or of the Riverdale-Yonkers Ethical Society having its principal office in Bronx county, or by the leader of any other Ethical Culture Society affiliated with the American Ethical Union.
2. A mayor of a village, a county executive of a county, or a mayor, recorder, city magistrate, police justice or police magistrate of a city, a former mayor or the city clerk of a city of the first class of over one million inhabitants or any of his or her deputies or not more than four regular clerks, designated by him or her for such purpose as provided in section eleven-a of this chapter, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section.
3. A judge of the federal circuit court of appeals for the second circuit, a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, a federal administrative law judge presiding in this state, a justice or judge of a court of the unified court system, a housing judge of the civil court of the city of New York, a retired justice or judge of the unified court system or a retired housing judge of the civil court of the city of New York certified pursuant to paragraph (k) of subdivision two of section two hundred twelve of the judiciary law, the clerk of the appellate division of the supreme court in each judicial department, a retired city clerk who served for more than ten years in such capacity in a city having a population of one million or more or a county clerk of



a county wholly within cities having a population of one million or more; or,

4. A written contract of marriage signed by both parties and at least two witnesses, all of whom shall subscribe the same within this state, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged before a judge of a court of record of this state by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded.

5. Notwithstanding any other provision of this article, where either or both of the parties is under the age of eighteen years a marriage shall be solemnized only by those authorized in subdivision one of this section or by (1) the mayor of a city or village, or county executive of a county, or by (2) a judge of the federal circuit court of appeals for the second circuit, a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, or a justice or a judge of a court of the unified court system, or by (3) a housing judge of the civil court of the city of New York, or by (4) a former mayor or the clerk of a city of the first class of over one million inhabitants or any of his or her deputies designated by him or her for such purposes as provided in section eleven-a of this chapter.

6. Notwithstanding any other provisions of this article to the contrary no marriage shall be solemnized by a public officer specified in this section, other than a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, a federal administrative law judge presiding in this state, a judge or justice of the unified court system of this State, a housing judge of the civil court of the city of New York, or a retired judge or justice of the unified court system or a retired housing judge of the civil court certified pursuant to paragraph (k) of subdivision two of section two hundred twelve of the judiciary law, outside the territorial jurisdiction in which he or she was elected or appointed. Such a public officer, however, elected or appointed within the city of New York may solemnize a marriage anywhere within such city.

7. The term “clergyman” or “minister” when used in this article, shall include those defined in section two of the religious corporations law. The word “magistrate,” when so used, includes any person referred to in the second or third subdivision.

N.Y. DOM. REL. LAW § 11-c (McKinney 1999)

Marriage officers.

1. Notwithstanding the provisions of section eleven of this article or any other law, the governing body of any village, town, or city may appoint one or more marriage officers who shall have the authority to solemnize a marriage which marriage shall be valid if performed in accordance with other provisions of law. Nothing herein contained shall nullify the authority of other persons authorized to solemnize marriages.

2. The number of such marriage officers appointed for a municipality shall be determined by the governing body of the municipality. Such marriage officers shall be eighteen years of age or over, and they shall reside in the municipality by which they are appointed. A marriage officer shall have the authority to solemnize a marriage within the territory of the municipality which makes the appointment.

....

North Carolina: N.C. GEN. STAT. § 51-1 (2007)

Requisites of marriage; solemnization.

A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, either:

(1)a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate; and

b. With the consequent declaration by the minister or magistrate that the persons are husband and wife; or

(2) In accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.

....

N.C. GEN. STAT. § 51-1.1 (2007)

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Certain marriages performed by ministers of Universal Life Church validated.

Any marriages performed by ministers of the Universal Life Church prior to July 3, 1981, are validated, unless they have been invalidated by a court of competent jurisdiction, provided that all other requirements of law have been met and the marriages would have been valid if performed by an official authorized by law to perform wedding ceremonies.

North Dakota: N.D. CENT. CODE § 14-03-09 (2004)

Who may solemnize marriages.

Marriages may be solemnized by all judges of courts of record; municipal judges; recorders, unless the board of county commissioners designates a different official; ordained ministers of the gospel; priests; clergy licensed by recognized denominations pursuant to chapter 10-33; and by any person authorized by the rituals and practices of any religious persuasion.

Ohio: OHIO REV. CODE ANN. § 3101.08 (LexisNexis 2008)

Who may solemnize.

An ordained or licensed minister of any religious society or congregation within this state who is licensed to solemnize marriages, a judge of a county court in accordance with section 1907.18 of the Revised Code, a judge of a municipal court in accordance with section 1901.14 of the Revised Code, a probate judge in accordance with section 2101.27 of the Revised Code, the mayor of a municipal corporation in any county in which such municipal corporation wholly or partly lies, the superintendent of the state school for the deaf, or any religious society in conformity with the rules of its church, may join together as husband and wife any persons who are not prohibited by law from being joined in marriage.

Oklahoma: OKLA. STAT. ANN. tit. 43, § 7 (West 2001)

Solemnization of marriages

A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a judge or retired judge of any court in this state, or an ordained or authorized preacher or minister of the

Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.

. . . .

D. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Baha'is, or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church, or assembly.

Oregon: OR. REV. STAT. § 106.120 (2007)

Who may solemnize marriage; fee; personal payment; records.

(1) As used in this section, "judicial officer" means:

(a) A judicial officer of this state as that term is defined in ORS 1.210 and includes but is not limited to a judge of a municipal court and a justice of the peace.

(b) An active judge of a federal court.

(c) An active United States magistrate judge.

(2) Marriages may be solemnized by:

(a) A judicial officer;

(b) A county clerk;

(c) Religious congregations or organizations as indicated in ORS 106.150 (2); or

(d) A clergyperson of any religious congregation or organization who is authorized by the congregation or organization to solemnize marriages.

. . . .

Pennsylvania: 23 PA. CONS. STAT. ANN. § 1503 (West 2001 & Supp. 2009)

Persons qualified to solemnize marriages

(a) *General rule.*—The following are authorized to solemnize marriages between persons that produce a marriage license issued under this part:

(1) A justice, judge or magisterial district judge of this Commonwealth.

(2) A former or retired justice, judge or magisterial district judge of this Commonwealth who is serving as a senior judge or senior magisterial district judge as provided or prescribed by law.

(3) An active or senior judge or full-time magistrate of the District Courts of the United States for the Eastern, Middle or Western District of Pennsylvania.

(3.1) An active, retired or senior bankruptcy judge of the United States Bankruptcy Courts for the Eastern, Middle or Western District of Pennsylvania who is a resident of this Commonwealth.

(4) An active, retired or senior judge of the United States Court of Appeals for the Third Circuit who is a resident of this Commonwealth.

(5) A mayor of any city or borough of this Commonwealth.

(6) A minister, priest or rabbi of any regularly established church or congregation.

(b) *Religious organizations.*—Every religious society, religious institution or religious organization in this Commonwealth may join persons together in marriage when at least one of the persons is a member of the society, institution or organization, according to the rules and customs of the society, institution or organization.

. . . .

Rhode Island: R.I. GEN. LAWS § 15-3-5 (2007)

Officials empowered to join persons in marriage.—

Every ordained clergy or elder in good standing, every justice of the supreme court, superior court, family court, workers' compen-

sation court, district court or administrative adjudication court, the clerk of the supreme court, every clerk of a superior court, family court, district court, or administrative adjudication court, magistrates, special or general magistrates of the superior court, family court, traffic tribunal or district court, administrative clerks of the district court, administrators of the workers' compensation court, every former justice or judge and former administrator of these courts and every former chief clerk of the district court, and every former clerk of a superior court may join persons in marriage in any town in this state; and every justice and every former justice of the municipal courts of the cities and towns in this state and of the police court of the town of Johnston and every probate judge may join persons in marriage in any city or town in this state, and wardens of the town of New Shoreham may join persons in marriage in New Shoreham.

R.I. GEN. LAWS § 15-3-6 (2007)

Marriages after the manner of Friends, according to Jewish rites, or spiritual assembly of Bahais.—

Any marriage which may be had and solemnized among the people called Quakers, or Friends, in the manner and form used or practiced in their societies, or among persons professing the Jewish religion, according to their rites and ceremonies, or by a local spiritual assembly of the Bahais according to the usage of the religious community, shall be good and valid in law; and wherever the words “minister” and “elder” are used in this chapter, they are held to include all of the persons connected with the Society of Friends, or Quakers, and with the Jewish religion, and with the Bahai faith, who perform or have charge of the marriage ceremony according to their rites and ceremonies.

South Carolina: S.C. CODE ANN. § 20-1-20 (1985 & Supp. 2008)

Persons who may perform marriage ceremony.

Only ministers of the Gospel, Jewish rabbis, officers authorized to administer oaths in this State, and the chief or spiritual leader of a Native American Indian entity recognized by the South Carolina Commission for Minority Affairs pursuant to Section 1-31-40 are authorized to administer a marriage ceremony in this State.

South Dakota: S.D. CODIFIED LAWS § 25-1-30 (2004)

### Persons authorized to solemnize marriages

Marriage may be solemnized by a justice of the Supreme Court, a judge of the circuit court, a magistrate, a mayor, either within or without the corporate limits of the municipality from which the mayor was elected, or any person authorized by a church to solemnize marriages.

Tennessee: TENN. CODE ANN. § 36-3-301 (2001)

### Persons who may solemnize marriages.—

(a) (1) All regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief, more than eighteen (18) years of age, having the care of souls, and all members of the county legislative bodies, county executives, judges, chancellors, former chancellors and former judges of this state, former county executives or of this state, the governor, the speaker of the senate and former speakers of the senate, the speaker of the house of representatives and former speakers of the house of representatives, the county clerk of each county and the mayor of any municipality in the state may solemnize the rite of matrimony. For the purposes of this section, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state. The amendments to this section by Acts 1987, ch. 336 which applied provisions of this section to certain former judges, do not apply to any judge who has been convicted of a felony or who has been removed from office.

(2) In order to solemnize the rite of matrimony, any such minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs must provide for such ordination or designation by a considered, deliberate, and responsible act.

(3) If any marriage has been entered into by license issued pursuant to this chapter at which any minister officiated before June 1, 1999, such marriage shall not be invalid because the requirements of the preceding subdivision (2) have not been met.

(b) The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows one to another in the presence of the congregation, constitutes an equally effective solemnization.

. . . .

(h) The judge of the general sessions court of any county, and any former judge of any general sessions court, may solemnize the rite of matrimony in any county of this state. . . .

. . . .

Texas: TEX. FAM. CODE ANN. § 2.202 (Vernon 2006 & Supp. 2009)

Persons Authorized To Conduct Ceremony

(a) The following persons are authorized to conduct a marriage ceremony:

- (1) a licensed or ordained Christian minister or priest;
- (2) a Jewish rabbi;
- (3) a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony; and
- (4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, or judge or magistrate of a federal court of this state.

. . . .

Utah: UTAH CODE ANN. § 30-1-6 (2007 & Supp. 2009)

Who may solemnize marriages—Certificate.

- (1) Marriages may be solemnized by the following persons only:
  - (a) ministers, rabbis, or priests of any religious denomination who are:



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- (i) in regular communion with any religious society; and
- (ii) 18 years of age or older;
- (b) Native American spiritual advisors;
- (c) the governor;
- (d) the lieutenant governor;
- (e) mayors of municipalities or county executives;
- (f) a justice, judge, or commissioner of a court of record;
- (g) a judge of a court not of record of the state;
- (h) judges or magistrates of the United States;
- (i) the county clerk of any county in the state, if the clerk chooses to solemnize marriages;
- (j) the president of the Senate;
- (k) the speaker of the House of Representatives; or
- (l) a judge or magistrate who holds office in Utah when retired, under rules set by the Supreme Court.

. . . .

Vermont: VT. STAT. ANN. tit. 18, § 5144 (2000 & Supp. 2008)

#### Persons authorized to solemnize marriage

Marriages may be solemnized by a supreme court justice, a superior court judge, a district judge, a judge of probate, an assistant judge, a justice of the peace, an individual who has registered as an officiant with the Vermont secretary of state pursuant to section 5144a of this title, a member of the clergy residing in this state and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention or other authority of his or her faith or denomination, or by such a clergy person residing in an adjoining state or country, whose parish, church, temple, mosque, or other religious organization lies wholly or in part in this state, or by a member of the clergy residing in some other state of the United States or in the Dominion

of Canada, provided he or she has first secured from the probate court of the district within which the marriage is to be solemnized a special authorization, authorizing him or her to certify the marriage if such probate judge determines that the circumstances make the special authorization desirable. Marriage among the Friends or Quakers, the Christadelphian Ecclesia, and the Baha'i Faith may be solemnized in the manner heretofore used in such societies.

Virginia: VA. CODE ANN. § 20-23 (2008)

Order authorizing ministers to perform ceremony.—

When a minister of any religious denomination shall produce before the circuit court of any county or city in this Commonwealth, or before the judge of such court or before the clerk of such court at any time, proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, or proof that he holds a local minister's license and is serving as a regularly appointed pastor in his denomination, such court, or the judge thereof, or the clerk of such court at any time, may make an order authorizing such minister to celebrate the rites of matrimony in this Commonwealth. . . .

VA. CODE ANN. § 20-25 (2008)

Persons other than ministers who may perform rites.—

Any circuit court judge may issue an order authorizing one or more persons, resident in the circuit in which the judge sits, to celebrate the rites of marriage in the Commonwealth. . . .

Any judge or justice of a court of record, any judge of a district court or any retired judge or justice of the Commonwealth or any active, senior or retired federal judge or justice who is a resident of the Commonwealth may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization.

VA. CODE ANN. § 20-26 (2008)

Marriage between members of religious society having no minister.—

Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons

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and in the manner prescribed by and practiced in any such society. . . .

Washington: WASH. REV. CODE ANN. § 26.04.050 (West 2005 & Supp. 2009)

Who may solemnize

The following named officers and persons, active or retired, are hereby authorized to solemnize marriages, to wit: Justices of the supreme court, judges of the court of appeals, judges of the superior courts, supreme court commissioners, court of appeals commissioners, superior court commissioners, any regularly licensed or ordained minister or any priest of any church or religious denomination, and judges of courts of limited jurisdiction as defined in RCW 3.02.010.

West Virginia: W. VA. CODE ANN. § 48-2-402 (LexisNexis 2009)

Qualifications of religious representative for celebrating marriages; registry of persons authorized to perform marriage ceremonies; special revenue fund.

(a) Beginning the first day of September, two thousand one, the Secretary of State shall, upon payment of the registration fee established by the Secretary of State pursuant to subsection (d) of this section, make an order authorizing a person who is a religious representative to celebrate the rites of marriage in all the counties of the State, upon proof that the person:

- (1) Is eighteen years of age or older;
- (2) Is duly authorized to perform marriages by his or her church, synagogue, spiritual assembly or religious organization; and
- (3) Is in regular communion with the church, synagogue, spiritual assembly or religious organization of which he or she is a member.

. . . .

Wisconsin: WIS. STAT. ANN. § 765.16 (West 2009)

Marriage contract, how made; officiating person

Marriage may be validly solemnized and contracted in this state only after a marriage license has been issued therefor, and only by the mutual declarations of the 2 parties to be joined in marriage that they take each other as husband and wife, made before an authorized officiating person and in the presence of at least 2 competent adult witnesses other than the officiating person. The following are authorized to be officiating persons:

- (1) Any ordained member of the clergy of any religious denomination or society who continues to be an ordained member of the clergy.
- (2) Any licentiate of a denominational body or an appointee of any bishop serving as the regular member of the clergy of any church of the denomination to which the member of the clergy belongs, if not restrained from so doing by the discipline of the church or denomination.
- (3) The 2 parties themselves, by mutual declarations that they take each other as husband and wife, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties may belong.
- (4) Any judge of a court of record or a reserve judge appointed under s. 753.075.
- (5) Any circuit court commissioner appointed under SCR 75.02(1) or supplemental court commissioner appointed under s. 757.675(1).
- (6) Any municipal court judge.

Wyoming: WYO. STAT. ANN. § 20-1-106 (2009)

Who may solemnize marriage; form of ceremony.

- (a) Every district or circuit court judge, district court commissioner, supreme court justice, magistrate and every licensed or ordained minister of the gospel, bishop, priest or rabbi, or other qualified person acting in accordance with the traditions or rites for the solemnization of marriage of any religion, denomination or religious society, may perform the ceremony of marriage in this state.

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. . . .

WYO. STAT. ANN. § 20-1-110 (2009)

Marriage ceremony according to rites and customs of religious societies or assemblies.

Any religious society or religious assembly may perform the ceremony of marriage in this state according to the rites and customs of the society or assembly. . . .

