

DRINKER BIDDLE & REATH LLP
Wilson M. Brown, III
Attorney I.D. No. 25846
Joshua M. Kaplowitz
Attorney I.D. No. 206606
Matthew S. Barndt
Attorney I.D. No. 204475
One Logan Square, 18th & Cherry Streets
Philadelphia, PA 19103
Phone: (215) 988-2700 / Fax: (215) 988-2757

AMERICAN CIVIL LIBERTIES FOUNDATION OF PA
Mary Catherine Roper
Attorney I.D. No. 71107
P.O. Box 40008
Philadelphia, PA 19106
Phone: (215) 592-1513, ext. 116 / Fax: (215) 592-1343

Attorneys for Plaintiffs Peter Goldberger and Anna M. Durbin

In re Marriage of	:	IN THE COURT OF
	:	COMMON PLEAS OF
PETER GOLDBERGER	:	MONTGOMERY COUNTY
	:	
and	:	
	:	DOCKET No. 08-03984
ANNA M. DURBIN	:	Hon. Thomas M. Del Ricci
	:	
Plaintiffs.	:	CIVIL ACTION -
	:	DECLARATORY
	:	JUDGMENT

**MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT TO CONFIRM
THE VALIDITY OF MARRIAGE PURSUANT TO 23 PA CONS. STAT. § 3306**

Couples in Pennsylvania have been free for over 50 years to be married by an ordained minister of their choosing. Plaintiffs Peter Goldberger and Anna M. Durbin (“Plaintiffs”), residents of Montgomery County, exercised this freedom when they chose to be married on August 21, 1976 by Rev. Thomas M. Gannon. At the time of the wedding, Rev. Gannon was an ordained Jesuit priest without a congregation or his own

physical church, but nonetheless was a “minister, priest or rabbi of a regularly established church or congregation” under the Pennsylvania Marriage Act. 23 PA. CONS. STAT. § 1503(a)(6). But now a cloud hangs over Plaintiffs’ union. A ruling by the York County Court of Common Pleas invalidates marriages like Plaintiffs’, holding that under the Marriage Act ministers who do not regularly preach to a congregation in a physical church may not perform marriages in the Commonwealth.

This interpretation of § 1503(a)(6) is wrong. Nonetheless, Registers of Wills across the Commonwealth have threatened to make it the law of the land, thereby calling into question thousands of long-standing Pennsylvania marriages. Plaintiffs fear the effect this could have on the legal status of their marriage and the benefits conferred by such status. They have brought this action under 23 PA. CONS. STAT. § 3306 to confirm that their marriage is still valid.¹

I. STATEMENT OF FACTS

Plaintiffs met each other and began dating in the fall of 1973 while attending Yale Law School in New Haven, CT. Affidavit of Peter Goldberger and Anna M. Durbin at ¶¶ 3 (affidavit attached hereto as **Exhibit A**). They became engaged in 1976 while Peter was clerking for the late Judge Edward R. Becker in the United States District Court for the Eastern District of Pennsylvania in Philadelphia and Anna was completing her third

¹ This is an action for declaratory relief pursuant to the Marriage Act. The practice and procedure in declaratory judgment actions “shall follow, as nearly as may be, the rules governing the civil action.” Pa. R. C. P. 1601(a). The instant motion may be viewed as a motion for summary judgment pursuant to Rules 1035.1 *et seq.*; the accompanying affidavits and exhibits establish material facts as to which there is no genuine issue and based on those facts plaintiffs are entitled to judgment as a matter of law. Pa. R.C.P. 1035.2(1). Alternatively, the court may accept this as a motion for judgment in a case submitted on stipulated facts. *See* Pa. R.C.P. 1038.1.

year in law school. *Id.* ¶ 4. Peter is Jewish by heritage and Anna was raised in an observant Roman Catholic family. *Id.* ¶¶ 1-2. Plaintiffs decided to have a Catholic wedding ceremony in accordance with the wishes of Anna's family. Since Anna was not a member of a parish nearby, they asked a mutual friend of theirs, Rev. Thomas M. Gannon, if he would officiate their marriage. *Id.* ¶ 5-6. Rev. Gannon readily agreed, and worked with Plaintiffs to plan a ceremony that satisfied them, their families, and the requirements of Catholic ritual. Affidavit of Thomas M. Gannon at ¶ 4 (affidavit attached hereto as **Exhibit B**); Goldberger Durbin Aff. ¶ 7.

Rev. Gannon was an ordained Roman Catholic priest in the Society of Jesus (the Jesuit order) and was clerking for another federal judge in Philadelphia at the time. Gannon Aff. ¶¶ 1, 3. At the time, Rev. Gannon preached on a weekly basis at St. Timothy's Catholic Church in Northeast Philadelphia as a visiting priest, but did not have his own congregation or a physical house of worship of which or at which he was a priest. *Id.* ¶ 6. Prior to the marriage, Rev. Gannon received faculties – an ecclesiastical authorization – from the pastor of Old St. Joseph's Church in Willings Alley in Philadelphia so that he could serve as official witness at Plaintiffs' wedding at that church. *Id.* ¶ 5.

Plaintiffs were married by Rev. Gannon at Old St. Joseph's on August 21, 1976 in the presence of approximately seventy (70) of their closest family and friends. Goldberger Durbin Aff. ¶ 8; *see also* Plaintiffs' marriage license, Exhibit 1 of Goldberger Durbin Affidavit. Plaintiffs have been continuously married since that day and have lived in Ardmore, PA as a family for nearly 30 years. Both are practicing attorneys, and Plaintiffs' marriage has produced three daughters: Cecilia Rose Durbin, born 1982; Nora

Johanna Goldberger, born 1986; and Dorothy Mathilda Goldberger, born 1990. Goldberger Durbin Aff. ¶ 9.

Plaintiffs had been married thirty-one years on September 7, 2007, when the York County Court of Common Pleas decided *Heyer v. Hollerbush*, No. 2007-SU-002132-Y08 (Sept. 7, 2007) (attached hereto as **Exhibit C**), and invalidated a marriage solely because it had been solemnized by an ordained minister of the Universal Life Church (ULC). *Id.*, slip op. at 6. The ULC is a global, nondenominational interfaith ministry in which all members are vested with the authority to sanctify marriages. *See* ULC web site, <http://www.themonastery.org/>.

The *Heyer* court reasoned that the Marriage Act, which allows marriages to be consecrated by “[a] minister, priest or rabbi of any regularly established church or congregation,” 23 PA. CONS. STAT. § 1503(a)(6), “requires 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).” *Heyer*, slip op. at 6. The judge concluded that because a ULC minister “has no congregation with which he regularly or occasionally meets and no place of worship,” he “does not meet the qualifications of persons who may solemnize marriages in the Commonwealth of Pennsylvania.” *Id.*

As discussed below, *Heyer* directly contradicts the plain meaning of § 1503 of the Pennsylvania Marriage Act and its legislative history. No less troubling to Plaintiffs is the fact that the Registers of Wills of several counties appear to view this decision as binding law and are routinely advising couples that their marriages may be invalid. *See*

Letter of Barbara Reilly, Register of Wills of Bucks County, attached hereto as **Exhibit D**; website of the Lancaster County Register of Wills, attached hereto as **Exhibit E**.

Plaintiffs here were wed by a minister who was ordained by a regularly established church but who had neither a regular place of worship nor a congregation. Gannon Aff. ¶ 6. They are thus concerned that their marriage may be declared invalid by a Pennsylvania court which follows the misguided ruling in *Heyer*. Plaintiffs have a deep emotional interest in insuring that their marriage is presently valid and has been valid for the duration of their time as husband and wife. Goldberger Durbin Aff. ¶ 12. Moreover, the potential invalidity of Plaintiffs' marriage could have serious legal consequences, as it would impact, at minimum, the distribution of their estate, their ability to collect life and health insurance, and their status as taxpayers. Goldberger Durbin Aff. ¶ 13.

Lastly, the *Heyer* decision calls into question thousands of marriages across the Commonwealth that were solemnized by ordained ministers with neither a house of worship nor a congregation. The ULC estimates that there are nearly 9,600 ministers in Pennsylvania alone, who doubtlessly have solemnized thousands of marriages here. Email from George Freeman, President, ULC Monastery, to Joshua Kaplowitz, counsel for Plaintiffs (February 7, 2008) (attached hereto as **Exhibit F**). *Heyer* also potentially affects a number of marriages consecrated by ordained ministers of other faiths who also do not have a regular congregation in a physical building – for example, rabbis at college Hillels or Jesuit, Augustinian and other Catholic university professors. Vital legal consequences hinge on the validity of each of these questioned marriages. For themselves and for these untold other couples, Plaintiffs ask this Court for a declaration

under 23 PA. CONS. STAT. § 3306 that their marriage is valid under the laws of the Pennsylvania as properly construed and applied.

II. ARGUMENT

A. PLAINTIFFS HAVE STANDING TO SEEK DECLARATORY RELIEF BECAUSE THE YORK COUNTY DECISION CASTS DOUBT UPON THE VALIDITY OF THEIR MARRIAGE.

1. The Marriage Act Affords Couples Declaratory Relief Whenever The Validity of Their Marriage Is In Doubt.

Heyer casts substantial doubt upon the validity of Plaintiffs' marriage and the marriages of thousands of similarly situated couples across the Commonwealth. The Marriage Act specifically provides that such doubt can be resolved through a declaratory judgment under 23 PA. CONS. STAT. § 3306:

[W]hen the validity of a marriage is denied or doubted, either or both of the parties to the marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage

The legislature has thus directed that declaratory relief shall be available whenever there is *doubt* as to the legal validity of a marriage. The fact that either *or both* parties may bring such an action makes plain that suits for this special form of declaratory relief need not be adversarial. The point of the statute is to provide a means to clarify this important question *before* a marriage is subject to collateral attack.

The primary purpose of 23 PA. CONS. STAT. § 3306 is to permit “a declaratory judgment to determine the validity of a marriage By allowing declaratory judgments, this section provides a convenient method to remove any doubts that might exist as to the status of a marriage.” *McConway v. McConway*, 40 Pa. D. & C. 3d 223, 226-27 (Com. Pl. Bucks Cty. 1986). The court in *McConway* specifically ruled that the statute was not

to be used as a substitute for an adversarial annulment proceeding. *Id.* at 227. Rather, “the procedure prescribed in section 206 [now 3306] is appropriate to deal with a unique set of circumstances, for example, where a declaration of validity is sought, or where an alleged common-law marriage is challenged as invalid.” *Id.* (emphasis added). The legislature thus specifically anticipated that a couple concerned about the validity of their union could use the statute jointly to petition a court to declare that they were married and entitled to all benefits that marriage affords.

Pennsylvania courts have, consistent with the language and purposes of Section 3306, permitted such lawsuits in the absence of “actual threats or actions” against the marriage. In *Ross v. The Policemen’s Relief and Pension Fund of the City of Pittsburgh*, 871 A.2d 277 (Pa. Cmwlth. Ct. 2005), plaintiff was permitted to use a declaration of the validity of her marriage to obtain her deceased husband’s pension benefits. *Id.* at 281. Plaintiff cohabitated with a Pittsburgh police officer for eleven years without a ceremonial marriage. *Id.* at 278. Upon his death, she brought a Section 3306 action in the Orphan’s Court of Allegheny County seeking a declaration that she and the decedent had been married under the common law. *Id.* The Orphan’s Court issued an order declaring that the plaintiff and the decedent had indeed been married. *Id.* The plaintiff then sued the fund after it refused to pay her the decedent’s death benefits. *Id.* at 278-79. The fund argued that it should have been joined in plaintiff’s Section 3306 action as an adversarial party and because it was not joined, the fund should not be bound by the Orphan’s Court order. *Id.* at 280. The Commonwealth Court rejected this argument, ruling that plaintiff was not required to sue the fund and that the Orphan’s Court order was binding on all interested parties. *Id.* Doubt over whether the plaintiff and decedent

had a valid marriage was all that was required to bring an action under Section 3306; the action did not require the existence or inclusion of any adversarial party.

There is nothing unusual about this in domestic relations law. Acting pursuant to statutes and pursuant to their broad general jurisdiction, courts routinely approve adoptions, 23 Pa. CONS. STAT. § 2901 *et seq.*, grant uncontested no-fault divorces, 23 Pa. CONS. STAT. § 3301(c), and otherwise assure that a couple's rights and responsibilities are appropriately affirmed and adjusted, even though no "adversary" is involved. Nothing in Article V of the Constitution of Pennsylvania requires otherwise. Indeed, Article I, § 11 expressly authorizes the Legislature to create a cause of action and to determine the "manner" in which "right and justice" shall be administered in such matters. Validating marriages at the request of a couple, under a statute enacted for this specific purpose, is a lawful and proper exercise of this Court's power.

2. The *Heyer* Decision Has Put Plaintiffs' Marriage In Doubt.

The *Heyer* decision creates tangible doubt as to the validity of Plaintiffs' marriage. *Heyer* takes a narrow and misguided view of the Pennsylvania marriage statute which, if applied directly to Plaintiffs' marriage, would likely invalidate it *ab initio*, creating grave legal and moral consequences for Plaintiffs and their children. While a York County Court of Common Pleas decision is not necessarily binding on this Court, Plaintiffs are in limbo. They do not know whether *Heyer* is or will be the law of this County. And, until they do, they live in precisely the "doubt" about the security of their marriage that 23 PA. CONS. STAT. § 3306 authorizes this Court to remedy.

This is *not* a problem for the future. For example, Plaintiffs must file their income tax returns annually, and have done so for years as a married couple. But *Heyer*

puts a cloud over even that routine act. Additionally, should misfortune befall either Peter or Anna in the near future, their authority to act for one another, their rights inter se and the rights of their children and heirs may be dramatically affected if their marriage should be challenged by an insurer or a claimant to the estate. They are therefore entitled to an affirmation of their marriage now.

There is, moreover, substantial evidence that registers of wills across the Commonwealth have embraced *Heyer* as binding law. The Register of Wills of Bucks County, for example, is issuing letters that advise couples to verify that their officiant passes muster under *Heyer* and to consult an attorney if their marriage was solemnized by a minister who does not “regularly preach to a congregation that regularly meets at a place of worship.” (*see Exh. D*). Likewise, the website of the Lancaster County Register of Wills advises couples that according to *Heyer*, persons ordained by the ULC are not ministers “IF they do not regularly preach to a congregation that regularly meets at a place of worship.” (letter attached hereto as **Exh. E**) (emphasis in original). Lastly, David Cleaver, the solicitor for the Pennsylvania Association of Registers of Wills and Clerks of Orphans Courts, reacted to *Heyer* by specifically advising clerks in Pennsylvania’s 67 counties to “no longer accept any marriage certificate signed by an officiant with potentially questionable qualifications.” Dianna Marder, *Legality of Some Pa. Marriages Is Questioned*, PHILA. INQUIRER, Oct. 9, 2007, at A1 (attached hereto as **Exhibit G**).

Given that officials in several counties are following Mr. Cleaver’s advice and have enthusiastically adopted *Heyer*’s reading of the Marriage Act without waiting for a

statewide ruling, the validity of Plaintiffs' marriage is in doubt. Plaintiffs therefore have a right to seek declaratory relief under 23 PA. CONS. STAT. § 3306.

B. PENNSYLVANIA MARRIAGE STATUTE UNAMBIGUOUSLY ALLOWS MARRIAGES TO BE SOLEMNIZED BY AN INDIVIDUAL ORDAINED BY ANY REGULARLY ESTABLISHED RELIGION.

The Pennsylvania marriage statute allows marriages within the Commonwealth to be consecrated by a priest, minister or rabbi of any regularly established religion. There is no requirement that such individuals regularly minister at a physical building or before a congregation.

The Marriage Act enumerates the persons qualified to solemnize marriages:

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.*

23 PA. CONS. STAT. § 1503(a) (emphasis added). The York County Court of Common Pleas in *Heyer* ruled that Section 1503(a)(6) "require[s] an activity that occurs on a habitual or patterned basis at a place of worship (church) or before a group of individuals gathered together for the same purpose (congregation)." *Heyer*, slip op. at 6.

This ruling is fundamentally flawed: it relies upon an incorrect definition of “church” and effectively requires that religious officiants must minister in an established physical place of worship before a congregation in order to qualify to solemnize marriages in the Commonwealth. In Section 1503(a)(6), the General Assembly intended “church” to mean “religion” in the broadest sense, and not simply a physical building or structure. This is evident from (1) the plain text of the statute; (2) the context of the statute when compared to the remainder of the Pennsylvania Code and the Pennsylvania Constitution; and (3) the legislative history of the Pennsylvania marriage statute. The individual who officiated Plaintiffs’ ceremony fits within the meaning of the statute because he was ordained by a regularly established religion, the Roman Catholic Church. Plaintiffs’ marriage is therefore valid under Pennsylvania law.

1. Plaintiffs’ Marriage Is Valid Under The Plain Text Of Section 1503(a)(6).

Heyer’s interpretation of the word “church” as a physical building reads the disjunctive out of the statute and requires a minister, priest or rabbi to be of a regularly established church *and* congregation. Few ministers will have their own place of worship without a congregation or their own congregation without any place of worship. Places of worship and congregations go together, and in requiring one, *Heyer* effectively requires the other. In fact, this is exactly how the Registers of Wills in several counties read *Heyer*. See **Exh. E** (Lancaster County Register of Wills: “IF they do not regularly preach to a congregation that regularly meets at a place of worship, you are advised to consult an attorney concerning the legality of such marriages.”); **Exh. D** (Bucks County Register of Wills: “A recent Court decision held that persons ordained over the Internet are not ministers as defined in the marriage law of Pennsylvania IF they do not regularly

preach to a congregation that regularly meets at a place of worship.”) (emphasis in original).²

The *Heyer* court thus narrows the range of clergy who may officiate marriages in Pennsylvania to those with physical churches *and* congregations. This limitation, however, is not found in the text of the statute, which qualifies any “minister, priest or rabbi of any regularly established church *or* congregation” to solemnize weddings (emphasis added). This statute is expansive and inclusive – it says “church” (not “church building”); it says “or” and not “and.” The *Heyer* reading ignores this and yields an absurd result, excluding the great many ordained ministers who have neither a building nor a congregation, as well as ministers of any established religion that does not worship in a building or with a congregation. It thus violates the basic principles that courts must give effect to the plain meaning of legislation, 1 PA. CONS. STAT. § 1921(a), and should avoid constructions that are “absurd, impossible of execution or unreasonable.” 1 PA. CONS. STAT. § 1922(1).

Indeed, rules of statutory construction require that the word “church” as used in Section 1503(a)(6) be given a broad meaning. “The language employed by the General Assembly is the best indication of its intent.” *Commonwealth v. Walls*, 592 Pa. 557, 566 (2007). Statutory language may be technical or general, 1 PA. CONS. STAT. § 1903, and because Section 1503(a)(6) plainly is not technical in nature, its “words shall be

² The Bucks County Register of Wills is incorrect: *Heyer* does not distinguish between persons ordained over the Internet and other ordained ministers, and therefore that distinction is not before this court. No Pennsylvania court has held that the manner of ordination may bar a clergy member from performing marriages, and Petitioners believe that such a rule would violate the United States Constitution. *See, e.g., Universal Life Church v. Utah*, 189 F.Supp.2d 1302, 1317-18 (D. Utah 2002.)

construed to take their meanings and be restricted by preceding particular words.” 1 PA. CONS. STAT. § 1903(b). Subject to those guidelines, the plain language of the statute requires this Court to find Plaintiffs’ marriage valid under Pennsylvania law.

In the dictionary, the word “church” has been alternately defined as “an edifice consecrated for public worship, especially one for Christian worship” and “a particular body of Christians united under one form of ecclesiastical government,” *Webster’s New Universal Unabridged Dictionary* 324 (2d ed. 1983), or “a building for public, esp. Christian, worship” and “[a] specified Christian denomination.” *The American Heritage Dictionary, Second College Edition* 273 (1982). However, the term “church” in the Marriage Act is restricted by the preceding particular words: “minister, priest, [] rabbi” and “regularly established.” 23 PA. CONS. STAT. § 1503(a)(6).

The inclusion of the term “rabbi”—and to a lesser extent the generic “minister”—is significant because these terms communicate that Christianity was not the only religion contemplated by the General Assembly, and they make plain that the legislature did not intend that “church” carry the specific Christian overtones of some standard definitions. In light of Article I, § 3 of the Pennsylvania Constitution’s Declaration of Rights, which forbids any preference among religions, and 1 PA. CONS. STAT. § 1922(3), which presumes that statutes are to be given a meaning which is not unconstitutional, the term “church” must be construed to include all houses of worship all genuine religious societies and denominations. Under the Marriage Act, a “church” is thus “a specified religious society or denomination” and not just “a building for religious worship.”³

³ Section 1503 should also be construed to avoid conflict with the United States Constitution. A reading of Section 1503 that disallowed some ordained clergy from performing marriages on the ground that the clergy did not conform to the state’s idea of

The further preceding phrase “regularly established” signals simply that an officiant’s faith or religion should be recognized by some segment of the community or organized under the laws of and recognized as a religious entity by one or more states. It means, in other words, a group, religious in character, that was not simply created for the purpose of consecrating the marriage at issue. Religions and faiths are “regularly established” because they habitually perpetuate themselves by being passed down through the generations, winning new converts and founding new denominations. The word “church” as it appears in Section 1503(a)(6) thus is properly understood broadly to mean a “faith” or “religion” and not merely a physical place of worship.

2. Plaintiffs’ Reading of Section 1503(a)(6) Is Consistent With Its Context.

The intent of Section 1503(a)(6) is confirmed when considered in the context of the Pennsylvania Code. When statutory meaning is uncertain, courts may consider “other statutes other statutes upon the same or similar subjects.” 1 PA. CONS. STAT.. § 1921(c)(5). The phrase “regularly established church” appears in the codification of the priest-penitent evidentiary privilege, a statute that, like the Marriage Act, defines legal rights of ministers, priests and rabbis. This codification states:

No clergyman, priest, rabbi or minister of the gospel of any *regularly established church* or religious organization, *except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers*, who while in the

the proper function of a minister (rather than the relevant faith’s idea of the proper function of a minister) would violate the Establishment Clause. “The First Amendment mandates neutrality between religion and religion . . .” *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). This principle of neutrality “is part of our settled jurisprudence” and “prohibits government from abandoning secular purposes in order to put an imprimatur on one religion, or on religion as such, or to favor the adherents of any sect or religious organization.” *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 8-9 (1989) (plurality opinion) (quoting *Gillette v. United States*, 401 U.S. 437, 450 (1971)).

course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

42 PA. CONS. STAT. § 5943 (emphasis added).

As the italicized language shows, in the context of the priest-penitent privilege the General Assembly has recognized that some “regularly established churches” may include self-ordained clergy and others who act as clergy or ministers but who are not leaders of their religious organizations, and has carefully carved these self-ordained clergy and others out of the scope of the evidentiary privilege. The legislature, however, has not made any similar carve-out in the Marriage Act: any minister, priest or rabbi of any “regularly established church” may officiate a marriage. Since both of these statutes are concerned with the rights of ministers of churches, there is a strong presumption that “regularly established church” means the same thing in both statutes. “Church” quite obviously means “faith” within the priest-penitent privilege, and should be read as meaning the same thing in the marriage statute.

Furthermore, when the law wishes to address physically situated places of worship, it does so with specificity. One need look no further than the Pennsylvania Constitution, wherein Article VIII, Section 2(a)(i) provides: “The General Assembly may by law exempt from taxation... *[a]ctual places* of regularly stated religious worship...” (emphasis added). PA. CONST. Art. 8, § 2(a)(i).

In this provision concerning tax exemptions, the Constitution leaves no doubt that it was referring to a physical building. And, there are at least two other examples where the use of the term “church” alone might have been confusing or inaccurate, and the General Assembly clarified that it was referring to a building that is an “actual place.”

The Community Revitalization Program “provides grants for community revitalization and improvement projects throughout this Commonwealth,” 12 PA. CONS. STAT. § 123.1(a), and has specific guidelines for eligibility. *See* 12 PA. CONS. STAT. § 123.3. Among the eligible recipients are religious organizations that are undertaking “[c]apital improvements to church-owned buildings” 12 PA. CONS. STAT. § 123.3(c)(2)(ii)(C). *See also* 7 PA. CONS. STAT. § 137b.74(a)(7) (describing a church building as a “place of worship”).

The rest of the Pennsylvania statutes thus confirm that Section 1503(a)(6) is properly read as allowing marriages to be solemnized by an ordained minister of any regularly established faith. For this reason as well, Plaintiffs’ marriage is valid.

3. The History Of Section 1503(a)(6) Further Supports Plaintiffs’ Reading of the Statute.

Finally, the history of the Pennsylvania marriage statute demonstrates that the General Assembly did not intend to limit § 1503(a)(6) to ministers, priests and rabbis with physical houses of worship and congregations. Prior versions of laws are effective tools for construing Pennsylvania statutes, 1 PA. CONS. STAT. § 1921(c)(5), and the wording of the former marriage statute supports a broad reading of the current law.

From its original enactment in 1885 until 1953, the marriage statute was not broken into subsections but instead read that “no person, within this Commonwealth, shall be joined in marriage, until a license shall have been obtained for that purpose, from the clerk of the orphans’ court, in the county, where the marriage was performed,” and noted that the license must be signed by “any *minister of the gospel*, justice of the peace or other person authorized by law.” Laws of Pennsylvania, Act 115 (1885). This language appears to require that the religious figure be of a Christian faith (although it

was never actually so construed and applied, since many Jews, Muslims, Hindus, Buddhists and others have been lawfully married in Pennsylvania within their own faith communities as long as the Commonwealth has existed), but it imposes no requirement that he or she have a congregation or a physical church.

The General Assembly amended the statute to its present form in 1953, deleting the word “gospel” and providing for solemnization by any “minister, priest or rabbi of a regularly established church or congregation.” The 1953 amendment clarified the statute by removing any implication that the wedding officiant was required to be Christian and signaling that “ministers” included ministers of all faiths. It is preposterous to think that the legislature intended to broaden the religious reach of the statute while narrowing the *type* of minister so that he or she must regularly preach in a consecrated building to a congregation. For this reason as well, this Court should adopt the natural, broad understanding that Section 1503(a)(6) allows marriages to be solemnized by any minister of any regularly established religion—thus including the officiant of Plaintiffs’ wedding.

III. CONCLUSION

In the wake of the erroneous *Heyer* decision, Peter Goldberger, Anna Durbin and thousands of similarly situated couples across Pennsylvania have a right to ensure that they are still validly married. Rather than stand pat and wait until misfortune strikes, Plaintiffs are entitled to certainty now. They want to know that the Marriage Act still grants the freedom that it always has in this state: the right to be wed by the religious officiant of one’s choosing.

Accordingly, for all of these reasons, Plaintiffs ask that this Court declare, pursuant to 23 PA. CONS. STAT. § 3306, that their marriage is valid under the laws of the Commonwealth of Pennsylvania.

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

July 22, 2008

By: _____
Wilson M. Brown, III
Attorney I.D. No. 25846
Joshua M. Kaplowitz
Attorney I.D. No. 206606
Matthew S. Barndt
Attorney I.D. No. 204475
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

AMERICAN CIVIL LIBERTIES
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By: _____
Mary Catherine Roper
Attorney I.D. No. 71107
P.O. Box 40008
Philadelphia, PA 19106

Attorneys for Plaintiffs Peter Goldberger
and Anna M. Durbin