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Attorneys for Plaintiffs Peter Goldberger and Anna M. Durbin

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

**COMPLAINT FOR DECLARATORY JUDGMENT TO CONFIRM THE
VALIDITY OF MARRIAGE PURSUANT TO PA CONS. STAT. § 3306**

Plaintiffs Peter Goldberger and Anna M. Durbin (“Plaintiffs”), by and through their undersigned attorneys, bring this action pursuant to 23 PA. CONS. STAT. § 3306, seeking a declaration that their marriage is valid under the laws of the Commonwealth of Pennsylvania.

JURISDICTION

1. The Court has subject matter jurisdiction over this action pursuant to 42 PA. CONS. STAT. § 931 and 23 PA. CONS. STAT. § 3306, and personal jurisdiction over Plaintiffs pursuant to 42 PA. CONS. STAT. § 5301 (a)(1).

2. Venue is proper in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006(a)(1) because (a) Plaintiffs reside in Montgomery County; and (b) the cause of action arises out of transactions and occurrences that took place in Philadelphia County.

FACTS

3. Plaintiffs, residents of Montgomery County, Pennsylvania, were married on August 21, 1976 in Philadelphia County, Pennsylvania.

4. Plaintiffs' wedding ceremony was officiated by Thomas M. Gannon.

5. Thomas M. Gannon was ordained a minister on June 6, 1970 by the Jesuit order of the Roman Catholic Church, an established church that is recognized as such by its members and is accorded tax-exempt status by the federal and state governments.

6. At the time of this wedding ceremony, Thomas M. Gannon was a itinerant minister who did not have his own assigned church or congregation.

7. Plaintiffs have remained married continuously since that date, over thirty-one years.

CLAIM FOR DECLARATORY JUDGMENT

8. On September 7, 2007, a ruling by the York County Court of Common Pleas, *Heyer v. Hollerbush*, No. 2007-SU-002132-Y08, threatened the validity of Plaintiffs' marriage (Slip opinion attached hereto as **Exhibit A**). The York County court

held that the marriage of Dorie Heyer and Jacob Hollerbush never existed because the minister who solemnized the marriage did not serve a congregation or preach in a physical house of worship, and in doing so called into question the marriages of thousands of other couples across the Commonwealth.

9. In *Heyer*, Ms. Heyer and Mr. Hollerbush’s wedding rites had been conducted by a minister who was ordained online by the Universal Life Church (ULC), a nondenominational faith. Ms. Heyer filed for a declaratory judgment that the marriage was void because the minister did not meet the requirements of 23 PA. CONS. STAT. ANN. § 1503(a)(6). Exh. A at 6. That statute allows marriages in Pennsylvania to be sanctified by any “minister, priest or rabbi of any regularly established church or congregation.” The York County court construed these words to require that in order to perform weddings a minister must, at minimum, preach to a group of individuals on a regular basis at a physically situated “place of worship.” *Id.* It then ruled that the minister to Ms. Heyer and Mr. Hollerbush’s ceremony was not authorized under § 1503(a)(6) and their marriage was therefore invalid as a matter of law. *Id.*

10. The York County court’s ruling is contrary to the plain text of § 1503(a)(6), which requires only that a religious officiant be clergy “of any regularly established church *or* congregation,” not that the officiant *both* represent an established “place of worship” *and* serve a particular congregation.

11. The York County court’s interpretation of § 1503(a)(6) would render Plaintiffs’ marriage invalid because the minister who solemnized it, although ordained by a regularly established church, did not have a physically situated “place of worship” or a congregation.

12. Furthermore, the York County court's ruling casts doubt upon the validity of *any* marriage performed in the Commonwealth by a religious official who does not have a physical house of worship or a congregation. Such officials would include, but are not limited to, Jesuit professors, rabbis at college Hillels, retired clergy, ordained church administrators, and priests or rabbis attached to military units, hospitals or care facilities. Upon information and belief, thousands of otherwise robust marriages in Pennsylvania have been consecrated by ministers who fail to meet the York County court's artificial standard.

13. The responsibility for issuance of marriage licenses in the Commonwealth is vested in the Register of Wills for each county. *See* 20 PA. CONS. STAT. § 711(19); PA. CONST. SCHED. Art. 5, § 15.

14. Since the *Heyer* decision, Registers of Wills in counties throughout the Commonwealth have been advising applicants for marriage licenses that their marriages may be or are void if they are solemnized by ministers who do not have a congregation or a place of worship. *See, e.g.*, Letter from Barbara Reilly, Register of Wills of Bucks County (attached hereto as **Exhibit B**); *see also* Lancaster County Government website at <http://www.co.lancaster.pa.us/lanco/cwp/view.asp?a=562&Q=262321> (last viewed February 12, 2008) (attached hereto as **Exhibit C**).

15. Because Plaintiffs' wedding was officiated by Thomas M. Gannon, Plaintiffs fear that their marriage will be void should courts adopt *Heyer's* misinterpretation of § 1503(a)(6). Plaintiffs also fear that they could lose many of the important privileges of marriage, such as spousal employment benefits, tax benefits, and

certainty regarding their estate, if the *Heyer* court’s ruling is used by insurance companies, courts or taxing authorities to determine their entitlement to such privileges.

16. Under 23 PA. CONS. STAT. ANN. § 3306, “both of the parties to a marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage.” To lift the cloud over their union, pursuant to this statute Plaintiffs seek a prompt determination that their marriage is valid under Pennsylvania law.

WHEREFORE, Plaintiffs pray for this court to enter a judgment declaring that Plaintiffs are lawfully married in the Commonwealth of Pennsylvania and establishing the validity of their marriage.

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VERIFICATION

CERTIFICATE OF SERVICE

I, Joshua Kaplowitz, hereby certify that on February 14, 2008 a true and correct copy of the foregoing Complaint was served via courier service upon:

D. Bruce Hanes
Register of Wills
Montgomery County Courthouse - 2nd Floor
P.O. Box 311
Norristown, PA 19404-0311

Date: February 14, 2008

NAME