Law Court Docket No. YOR-25-46

IN THE

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

TABAREK ALDARRAJI

Appellant

vs.

TAREQ ALOLWAN

Appellee

ON APPEAL FROM THE SUPERIOR COURT (York County)

BRIEF OF APPELLEE TAREQ ALOLWAN

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF PROCEDURAL HISTORY AND FACTS

Procedural History

The appeal to this Court comes from a ruling on a Motion to Dismiss by the district court in York County, ME granting said motion and dismissing Appellant's Complaint for divorce because the parties were not legally married, specifically because of failure to comply with the marriage licensing statutes as are outlined in 19-A M.R.S. §§ 650-753. On April 17, 2024, Appellant filed a Complaint for Divorce with the York County District Court; Appellee was properly served, and a case management conference was set for July of 2024 (App. 10). In advance of the case management conference, counsel for Appellee at the time, Jeffrey Bennett, Esq.[1], filed a Motion to Dismiss arguing that Appellant's Complaint for Divorce should be dismissed because there was no legally recognized marriage in Maine. The Motion to Dismiss was set for a 3-hour hearing on November 18, 2024 (App. 11) and then further in December of 2024.

The court at this hearing spent time hearing over 3 hours of testimony from the parties and their attorneys on the issue of whether the parties were legally married. At the conclusion of this hearing the court hesitated on making an immediate ruling and took the matter under advisement. And on January 7, 2025, almost 1 months after the hearing had occurred, Judge Sutton, who had presiding

[1] Attorney Bennett has now withdrawn from this matter.

over the hearing, issued a thoughtful opinion dismissing Appellant's Complaint for Divorce for lack of compliance in any way with the mandates of Maine's marriage licensing and certification statutes (App. 10-19).

The lower court found and held that,

"*Maine's statutory requirements for a valid marriage are mandatory, not directory, requirements*. . . This court was asked to decide the validity of the marriage in this case, and in doing so, must be guided by law as it is set out in statute or given to it by the Law Court. This court has no choice but to apply the facts as it has found in this case to the law as it stands now, and in doing so, the court is compelled to find that the parties are not legally married, although they were religiously married . . . the court finds that Plaintiff and Defendant are not legally married, and because they are not legally married, Defendant's Motion to Dismiss is granted . . . ." (App. 14, 18) (emphasis added).

Appellant timely appealed and filed a brief with this Court arguing that this Court should overturn the decision of the lower court finding that the parties were not legally married, and, in addition, address a constitutional argument that would radically and fundamentally reshape and reform the long held historical understanding of what constitutes a marriage in the State of Maine.

Statement of Facts

Appellee adopts in full, word for word, the lower court's factual findings as his Statement of facts in this appeal (App. 11-13).

ISSUE(S) PRESENTED

I. Should This Court Should Apply Maine Statutory Law, As Opposed To The Law Of The United Arab Emirates, In Determining Whether The Parties In This Case Were Legally Married Under Maine Law?

II. Did The Parties Enter Into A Valid Marriage As Provided By Maine Statute?

III. (1) Should This Court Should Exercise Its Discretion And Apply The Doctrine Of Constitutional Avoidance In This Case, (2) Is 19-A M.R.S § 658 Constitutionally Infirm Under The Maine Or Federal Constitution, and (3) If This Court Were To Find That § 658 Is Constitutionally Infirm, Should It Void § 658 In Full To Avoid Rendering The Rest of Chapter 23 Superfluous And Meaningless?

STANDARD OF REVIEW

Appellee does not take issue with or contest the standard of review in Appellant's brief.

ARGUMENT(S)

I. Choice of Law Issues: This Court Should Apply Maine Statutory Law, As Opposed To The Law Of The United Arab Emirates, In Determining Whether The Parties In This Case Were Legally Married Under Maine Law

The parties do not seem to be in disagreement here upon the premise that Maine law should be applied by this Court in reviewing this case. However, they have reached different conclusions based on the applications of those principles. Appellee agree that Maine law should apply, it was applied, and the lower court reached the conclusion that there was not a legal marriage under the laws of the State of Maine. Appellant seems to argue that Maine law should have applied, did in some respects, but then also argues that the lower court should have applied the Quaker and Bahai exception outlined in 19-A M.R.S. § 658 to the facts of this case. 19-A M.R.S § 658 reads in pertinent part that, "[a] marriage solemnized among Quakers or Friends, in the form practiced in their meeting, or solemnized among members of the Baha'i faith according to the rules and principles of the Baha'i faith, is valid and not affected by this subchapter."

Appellee understands from other parts of Appellant's brief[2] that she believes and argues to this Court that 19-A M.R.S. § 658 should be expanded to include her and any and all religious ceremonies (Appellant Brief, at 40) under the exception

[2] Appellee responds to the constitutional arguments below in corresponding sections.

to the various marriage licensing requirements contained in other parts of the subchapter. However, at the time of this filing the statute has not been amended by the Legislature in any way and there is no dispute that Appellant and Appellee are not of the Quaker or Bahai faith. Therefore, the presiding judge, when she ruled that 19-A M.R.S § 658 did not apply to the facts of this case ruled correctly. The lower court judge was applying the law of the forum state, Maine state law, but not in a way that resulted in a ruling in court favorable to Appellant. So, while Appellee has no problem conceding to the fact that Maine state law should be applied by the lower court, and this Court upon review, to reach the legal conclusions in this case, he argues that the fact that § 658 was not applied to Appellant's case was legally correct and in no way does not mean Maine law was not applied to the facts of this case.

Finally, Appellee points out that Appellant's reliance on *In Re Farraj*, 72A.D3d 1082 (N.Y. App. Div. 2010), 900 N.Y.S 2d 340, is misplaced as it only, in Appellee's eyes, supports his argument that Maine law should have been applied and was applied correctly in this case. In Farraj the court, in reaching its conclusion, found specifically that, "the intended and actual matrimonial domicile was New York, and the petitioner and the decedent held themselves out as a married couple in New York. Therefore, New York has a *significant interest* in the marriage between the petitioner and the decedent." *Id*. (emphasis added).

Turning to the facts of this case, there is no dispute that Maine was the intended and actual matrimonial domicile.[3] And, just like the State of New York in *Farraj*, The State of Maine has a significant interest and controlling interest in the marriage between Appellant and Appellee as it is the *only* state that the parties have lived in since returning from Dubai. But unlike New York which, as Appellant notes in her brief, "did not require a license," (Appellant's Brief, at 18), Maine has a comprehensive and mandatory, not permissive, system that governs the process of Codification of Marriage (19-A M.R.S. § 650-A), Recording of Intentions (19-A M.R.S. § 651), Issuance of Marriage License (19-A M.R.S. § 652), and Record of Marriages (19-A M.R.S. 654). New York elected to opt for a system with a more open-ended interpretation that rejected the necessity of a marriage license and other formalities. In contrast to New York, the legislature of Maine, in line with the State's history of flatly rejecting common law marriage,[4] long ago, over 200 years ago, decided to codify and specify what constitutes marriage and how to go about getting legally married in Maine when it enacted the 1821 Act for Regulating Marriage and For the Orderly Solemnization Thereof," and "An Act Regulating Divorces." *See* Smith, Laws of the State of Maine, Vol. I,

[3] See also 19-A M.R.S § 651, the recording of intentions statute, which defines residence as, "[f]or the purposes of this chapter, 'resident' means a person whose habitation is fixed in a place within this State and to which that person, *whenever temporarily absent, has the intention to return.*" Applying this definition the residence of both parties is inarguably Maine. They went to Dubai and conducted a religious ceremony, then went to Turkey, but then returned to Maine and have lived in Maine for over 5 years.

[4] *Pierce v. Sec'y of the United States Dep't of Health, Educ. & Welfare*, 254 A.2d 46, 47-48 (Me.1969), *see also Grishman v. Grishman*, 407 A.2d 9, 12 (Me.1979).

ch. 70, 71, pp. 419-30 (1834). *See also Holyoke v. Holyoke*, 78 Me. 404, 409-10, 6 A. 827, 827-28 (1886) (tracing legislation governing the dissolution of the marriage relationship from 1786 to 1886). As this Court has stated, "[s]ound public policy dictates that there be a minimum of uncertainty as to whether or not a valid marriage exists. The meeting of statutory requirements has this desirable effect." *Pierce*, at 47.

In conclusion, Maine law should govern this case in terms of choice of law but Appellant argues that the lower court got it right and applied the various statutes in 19-A M.R.S. §§ 650-753 when she concluded that the marriage was not legally valid under Maine law.

II. The Parties Did Not Enter Into A Valid Marriage As Provided By Maine Statute

In this country there is a long and established decision of the federal government and courts deferring to States, specifically state legislatures in statutory marriage or state courts in common law marriage states to define what constitutes a legal marriage. While these regulations cannot be offensive to constitutional principles, "regulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States." *Sosna v. Iowa*, 419 U.S. 393, 404 (1975); see also *Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 383-384, 489 (1930) ("[t]he significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for "when the Constitution

was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.")

In Maine, the requirements for a valid marriage are provided by statute. *Belliveau v. Whelan*, 2019 ME 122, ¶ 5, 213 A.3d 617, 618. This Court has continuously left policy decisions regarding marriage and divorce to the Legislature. *Id*. at ¶ 5. And the Maine legislature has codified provisions instructing those who seek to enter a marital relationship on exactly what they need to do to have their marriage legally recognized in the state, contained in large part in 19-A M.R.S. §§ 650-660.

As the lower court correctly noted, the marriage license provisions in this state are not permissive, they are mandatory (App. 14). § 651, the recording of intentions of marriage provision, contains the word "shall," 10 times and the word "must," 6 times; § 654 pertaining to record of marriages contains the word "shall," 5 times. It is clear that these statutes are riddled with shalls and musts when it comes to what one needs to do to make their marriage legally recognized in the State of Maine, not cans and mays. Only when the statutory language is ambiguous does this court look beyond its plain meaning and examine other indicia of legislative intent, including legislative history. *Melanson v. Belyea*, 1997 ME 150, ¶ 4, 698 A.2d 492, 493 (internal citations omitted). Here there is no ambiguity, the

plain language of these statutes leave no question that their requirements are mandatory, not permissive.

§ 651(1) requires that,

"Residents of the State intending to be joined in marriage shall record notice of their intentions in the office of the clerk of the municipality in which at least one of them resides or with the State Registrar of Vital Statistics. If only one of the parties resides in the State, the parties shall record notice of their intentions in the office of the clerk of the municipality in which the resident party resides or with the State Registrar of Vital Statistics. If there is no clerk in the place of their residence, the notice must be filed with the clerk of an adjoining municipality or with the State Registrar of Vital Statistics. If both parties to a marriage reside outside the State, they must file intentions in any municipal office or with the State Registrar of Vital Statistics. Once the intentions are filed and the license is issued, the parties are free to marry anywhere within the State."

§ 651(2) requires that,

"The parties wishing to record notice of their intentions of marriage shall submit an application for recording notice of their intentions of marriage. The application may be issued to any 2 persons otherwise qualified under this chapter regardless of the sex of each person if the clerk or State Registrar of Vital Statistics is satisfied as to the identity of the applicants. The application must include a signed

certification that the information recorded on the application is correct and that the applicant is free to marry according to the laws of this State."

§ 656(1) requires that,

"A marriage license must have conspicuously printed on it the following words: "The laws of Maine provide that only authorized persons may solemnize marriages in this State."

§ 656(2) requires that,

"Each marriage license issued must be completed and the certification statement signed by both parties to the intended marriage. The parties' signatures may be obtained at issuance or at the time the marriage is solemnized. The completed license or licenses must be delivered by the parties to the person solemnizing the marriage. Upon completion of the solemnization, which must be performed in the presence of at least 2 witnesses other than the person officiating, the person officiating and the 2 witnesses shall sign the license or licenses, which are then known as the marriage certificate or certificates."

Applying the statutory requirements to the facts of this case, the lower court correctly found that the parties, "did not follow any of these statutory requirements for marriage," (App. 15), and Appellee testified consistently with the lower court's conclusion about not taking any steps to legitimize the marriage in the courts of Maine (Tr. Volume 1, 17-19).

Appellant argues that the lower court ruled in error regarding the legality of the marriage because it failed to apply an exception contained in 19-A M.R.S. § 657 which states that,

"A marriage, solemnized before any known inhabitant of the State professing to be a justice, judge, lawyer admitted to the Maine Bar or marriage officiant or an ordained or licensed minister of the gospel, is not void, nor is its validity affected by any want of jurisdiction or authority in the justice, judge, lawyer, marriage officiant or minister or by any omission or informality in entering the intention of marriage*, if the marriage is in other respects lawful* and consummated with a *full belief*, on the part of either of the persons married, that they are *lawfully married."*

This exception, therefore, only applies if the marriage was in other respects lawful and consummated with a full and genuine belief that the parties were lawfully married. Here, neither is met. Appellant argues that the words "is in other respects lawful," are speaking solely to the restrictions contained in 19-A M.R.S. § 701 on prohibited marriages (consanguinity, polygamy), and not to any of the mandatory marriage licensing requirements contained through Chapter 23 (Appellant's Brief, at 25). Appellant does not cite any legislative history or case law in support of this proposition.

Appellee takes the side of the lower court and argues that the much more logical conclusion here is that "in other respects lawful," implicates §§ 651, 656,

the standard state based marriage functions in terms of recording, registering, and issuing marriage certificates that the State of Maine and other states have long required very a marriage to be held legally valid. This is the logical conclusion and in line with this Court's holding that, ""[s]ound public policy dictates that there be a minimum of uncertainty as to whether or not a valid marriage exists. The meeting of statutory requirements has this desirable effect." *Pierce*, at 47.

The parties took none of the steps outlined in the statutes described above and in fact, the scant evidence submitted into the record or testified to in court cut against the idea that the marriage was solemnized and/or registered in any type of accordance with Maine law. For example, when looking at the marriage certificate submitted into the record which is signed by the Imam, nowhere on the certificate does it say the words "The laws of Maine provide that only authorized persons may solemnize marriages in this State." 19-A M.R.S. § 656(1) and (App. 43).

Of even more concern is signature by the witnesses and parties of the marriage certificate more than 2 months after the religious ceremony had taken place. The lower court specifically found in line with the parties testimony at the Motion to Dismiss hearing that, "[a]bout a month after their religious ceremony in Dubai, Plaintiff and Defendant had a wedding reception in Turkey, and at that time, the Imam's certificate had been given to the parties, and their witness signed it on January 16, 2020." (App. 13). Appellee highlights this non-compliance

specifically, because, even if the parties had conducted this ceremony in Maine, this procedure of having the ceremony with the minister, the Imam, and then having the witnesses sign the marriage certificate, not at the solemnization or ceremony, but over 2 months later, would not comply with the statutes even if the ceremony had taken place in Maine.

Another point of concern undermining the legitimacy of this marriage under Maine law is the fact that the Imam was not present but instead had been patched through on the phone by Whatsapp audio or some similar application, to participate in the ceremony by telephone from Maine (App. 12). This would seem to run afoul of § 656(2) which states that, "[u]pon completion of the solemnization, which must be performed in the *presence of at least 2 witnesses* other than the person officiating, the *person officiating and the 2 witnesses shall sign the license or licenses*. (emphasis added). This provision clearly contemplates a situation where the Imam and the two witnesses *simultaneously* sign the license or marriage certificate. In this case, the Imam was in Maine, the parties were in Dubai, and the witnesses signed 2 months later in Turkey.

In 2021 the Maine legislature, likely in response to COVID-19 and the proliferation of Zoom or remote marriage ceremonies, passed into law 14 M.R.S. § 1915(17) which states that, "[a] notarial officer may not solemnize a marriage pursuant to Title 19-A, section 655 for a remotely located individual." While

Appellee understands that this statute was not in effect at the time of the ceremony in question, he argues it is informative for this Court to discern legislative intent of the legislature to make sure that there is a level of formality and process to consummating a marriage to be recognized in the State of Maine. Taking this statute and the presence-based requirements outlined in § 656, it is clear that this ceremony, with the remote attendance of an Imam by phone and non-simultaneous signatures, did not comply with the statutory process outlined by the legislature nor its general legislative intent as evidenced by the passage of 14 M.R.S. § 1915(17).

In conclusion, the purported marriage between the other parties was not in "all other respects lawful," § 657; quite the opposite, it, as outlined above, was in no respects lawful because it completely and wholly failed to comply with any of Maine's statutes related to marriage and solemnizing a marital relationship. If perhaps one issue had taken place in the process, e.g. the Imam failed to submit the certificate timely or failing to include the words contained in § 656(1), perhaps § 657 could operate to save, legally speaking, the marriage. But in a case where none of the statutory prerequisites have been complied with or followed, Appellee argues that the Legislature did not intend for § 657 to excuse non-compliance with, or replace the mandatory requirements outlined in §§ 650-A – 656. Such a holding would render the statutes superfluous and meaningless. Therefore, this Court should hold that § 657 is in applicable to this case and reserved for rare situations

where some type of clerical error has occurred on the part of the minister or officiant in terms of preparing the marriage certificate or "an omission or informality in entering the intention of marriage." § 657. This court need not expand that definition to include a religious ceremony conducted in Dubai but in complete non-compliance with Maine law, the resident state.

As to a full belief on the part of either persons that the parties were lawfully married, Appellee argues that the findings of fact made by the lower court and testimony elicited at the motion to dismiss hearing show that the parties were not of a full belief that they were lawfully married. First, Appellee testified under oath at the motion to dismiss hearing that himself and Appellant made the purposeful and deliberate decision to only religiously, not legally marry, in order to be able to avail themselves to FHA loans that would be favorable to the parties (Tr., Volume 1, 17-20). Second, The presiding judge found just as much after assessing the facts and credibility of the parties, writing that, "the court has considered abundant evidence that was presented to the court about Plaintiff and Defendant's FHA loans, their decision to take out two FHA loans, one in each of their names, rather than loans with both of their names on it . . . ." (App. 17).

Third, the lower courts finding as to Appellant's credibility on the issue of whether she was legally married, contained in a footnote, is informative and telling. The judge wrote that, "[a]lthough Plaintiff asserts her belief that the parties

were legally married, the court finds her assertions to be not entirely credible, because Plaintiff, before filing from Divorce from Defendant [5 years after 2019], went to Biddeford City Hall to 'certify,' her marriage; this is a step that Plaintiff would not need to undertake if she believed that she was already legally married to Defendant." (App. 16).[5] That Appellant did not go to the courthouse and make any attempt to certify her marriage until the eve of divorce speaks to the fact that she did not hold a credible belief that the parties were lawfully married.

In conclusion, and for all of the reasons stated above, Appellee argues that (1) the marriage was not valid under Maine law because it failed to comply with Maine's Marriage, Licensure, Certification, Declaration of Intent, and other relevant statutes, and (2) § 657 does not apply in this case because the parties were not legally married in Maine, the marriage was not otherwise unlawful, and Appellant and Appellee, through their conduct (e.g. FHA loans/going to "certify," marriage 5 years after ceremony on the eve of divorce), were not of the full belief that they were lawfully married in the State of Maine.

The problem here is not, as Appellant argues that there was a religious ceremony conducted in Dubai which should be construed as a valid marriage. The problem is that the parties failed to comply in any meaningful way with the

[5] See *Cumpiano v. Banco Santander Puerto Rico*, 902 F. 2d 148, 152 (1st Cir. 1990) ("[t]he trial judge sees and hears the witnesses at first hand and comes to appreciate the nuances of the litigation in a way which appellate courts cannot hope to replicate. Recognizing the superiority of this bird's-eye view, Rule 52(a) commands, and our precedents ordain, that deference be paid to the trier's assessment of the evidence.")

statutes. It would have been simple, sometime in the five years between when the parties returned to Maine and filed for divorce, they could have simply driven up the road to the courthouse in Biddeford and made an attempt to register the marriage and get a marriage license. But they did not take this step, and as the judge found and Appellee openly testified to, there was a coordinated and organized financial reason (FHA loans), right or wrong, that drove or influenced that decision. But for whatever reason, financial motivation or not, the parties failed to comply with §§ 650-753 and therefore, this Court should end the analysis here, avoid the constitutional question related to 19-A M.R.S. § 658 and rule that the lower court was correct in its ruling regarding the invalidity of their marriage under Maine law.

III. (1) This Court Should Exercise Its Discretion And Apply The Doctrine Of Constitutional Avoidance In This Case, (2) 19-A M.R.S § 658 Is Not Constitutionally Infirm Under The Maine Or Federal Constitution, and (3) If This Court Were To Find That § 658 Is Constitutionally Infirm, It Must Void § 658 In Full As Appellant's Proposed Solution Would Only Replicate The Constitutional Infirmity.

19-A M.R.S. § 658 contains a religious-based exception that applies to the record-keeping requirements of the rest of the subchapter. The exception states that, "[a] marriage solemnized among Quakers or Friends, in the form practiced in their meeting, or solemnized among members of the Baha'i faith according to the rules and principles of the Baha'i faith, is valid and not affected by this subchapter.

The clerk or the keeper of the records of the meeting or ceremony in which a marriage is solemnized shall return evidence of the solemnization of the marriage as provided in section 654." *Id*. § 654 states in turn that, "The person who solemnized the marriage shall return the marriage license to the State Registrar of Vital Statistics or the clerk who issued the license within 7 working days following the date on which the marriage is solemnized by that person," § 654(2), and that, "[t]he clerk or State Registrar of Vital Statistics shall record all marriage licenses returned under this section." §654(4).

(1) <u>This Court Should Exercise Its Discretion And Apply The Doctrine Of Constitutional Avoidance In This Case.</u>

This court has long employed a canon of judicial interpretation when analyzing statutes and constitutional challenges to statutes, and that is one of constitutional avoidance. As this Court has stated, "because we are asked to review the constitutionality of an act of the Legislature, we begin with the basic principle of statutory construction that this Court is bound to avoid an unconstitutional construction of a statute if a reasonable interpretation of the statute would satisfy constitutional requirements." *State v. Cropley*, 544 A.2d 302, 304 (Me.1988) (quoting *Bossie v. State*, 488 A.2d 477, 479 (Me. 1985)).

When applying the doctrine of constitutional avoidance to this case and Appellant's arguments related to § 658, Appellee argues that the reasonable

interpretation of § 658 that would satisfy constitutional requirements would be that the Quaker and Bahai sects are still burdened by state statutory requirements because § 654 requires that the person who solemnized the marriage under Bahai and Quaker faith return the marriage license to the State Registrar of Vital Statistics or the clerk who issued the license within 7 working days following the date on which the marriage is solemnized by that person. While there is a rather curious and specific exception in § 658 related to Quakers and Bahai religious ceremonies, the sects are still required to submit paperwork to the State in order for the marriage to be legally recognized in Maine. And, in applying § 654 to the facts of this case, there is no dispute that there was no marriage license filed in the courts and the Imam did not forward the certificate or marriage license to the State Registrar of Vital Statistics within the required 7 days, the witnesses did not even sign the certificate until 2 months later.

In conclusion, to extent that the Bahai and Quaker religious exception statute provides an exception, it is not an exception that would legitimize the marriage to the facts of this case because the provisions and mandates of § 654 were not followed by the parties. Appellee argues that this is the exact type of case where this Court can effectively apply the doctrine of constitutional avoidance and simply construe § 658 as constitutional because although it does identify specific sects,

those sects are still bound by § 654, a section with which the parties in this case undisputably did not comply.

(2) 19-A M.R.S § 658 Is Not Constitutionally Infirm Under The Maine Or Federal Constitution.

Appellee does not oppose, as Appellant argues, applying slightly more stringent protections of the Maine Constitution to this case, he is confident he still would prevail on these slightly more stringent standards. Therefore, he will address Appellant's free exercise argument made pursuant to the Maine constitution. "The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989). The party challenging a statute on free exercise grounds must "initially demonstrate: (1) that the activity burdened by the regulation is motivated by a sincerely held religious belief; and (2) that the challenged regulation restrains the free exercise of that religious belief." *Blount v. Department of Educ. and Cultural Servs*., 551 A.2d at 1379. If the challenger meets that initial burden, "the burden shifts and the State can prevail only by proving both: (3) that the challenged regulation is motivated by a compelling public interest; and (4) that no less restrictive means can adequately achieve that compelling public interest." *Id*.

Turning to the facts of this case, Appellee does not dispute the first prong that the activity burdened by the regulation is motivated by a sincerely held religious belief, in this case Shia Islam. As to the second prong, the challenged regulation in this case, § 658, in no way restrains Appellant's ability to practice Shia Islam faith. § 658 has nothing to do with Shia Islam and provides a religious exception to some record-keeping requirements to members of the Quaker and Bahai faith while still subjecting them to § 654 and submitting their marriage documentation to the State of Maine. And as Appellee noted in III(1) of this Brief, even if Appellee and Appellant were Bahai or Quaker, which they are not, the marriage still would not have been valid for failure to comply with § 654, a section Bahai and Quakers are required to comply with in full.

Therefore, what Appellant is really asking for from this Court is for special treatment under the Free Exercise Clause. However, this Court has clearly stated that, "[the] Free Exercise Clause is "designed to prevent the government from impermissibly burdening an individual's free exercise of religion, not to allow an individual to exact special treatment from the government." Bagley v. Raymond School Dept., 728 A.2d 127, 135 (Me. 1999) (quoting *Swanson v. Guthrie Indep. Sch. Dist.*, 135 F.3d 694, 702 (10th Cir. 1998) (citing *Snyder v. Murray City Corp.*, 124 F.3d 1349, 1353 (10th Cir.1997)); *Braunfeld*, 366 U.S. at 605, 81 S.Ct. 1144 (a statute that makes adherence to religious beliefs "more expensive" does not burden

free exercise); *McCarthy v. Hornbeck*, 590 F.Supp. 936, 945-46 (D.Md.1984) (Free Exercise Clause does not mandate that the State subsidize a person's constitutional right to send their children to church-related schools). The challenged regulation here does not restrain the free exercise of Appellant's belief because what Appellant is asking for is a special treatment exception to apply a statute to Appellant's marriage specifically, that, as Appellee points out, even if applied, would still run afoul of § 654 which the Quaker and Bahai sects are subject to.

Third, the challenged regulation here is supported by two compelling public interests, (a), the states interest in accordance with its historical and long held function of defining and regulating marital relation with the understanding that marriage is more than a routine classification for purposes of certain statutory benefits, *United States v. Windsor*, 570 US 744, 749 (2013), and (b), recordkeeping to advance the state interest of there being a minimum level of uncertainty as to whether or not a valid marriage exists in the State of Maine. *Pierce*, at 47.

Fourth and finally, the least restrictive means to achieve the public interests of having certainty as to who is married and who is not in Maine and the State's longstanding function in being able to govern domestic relations are not achieved by altering a statute pertaining to Bahai and Quaker sects to include any and all religious ceremonies. In fact, as Appellee will elaborate on further in the next section, such a hold would radically erode and diminish any certainty among the

public about whether the legislature or religious institutions are the ultimate arbiter of what does or does not constitute marriage in the State of Maine.

For all of the reasons outlined above, Appellee argues that this Court should hold that 19-A § 658 is not constitutionally infirm and passes constitutional muster because the Bahai and Quaker faiths are subject to recordkeeping requirements outlined in § 654 as all other inhabitants of the State of Maine, and furthermore, Appellant's marriage did not even meet the bare minimum of complying with § 654 so even if the § 658 exception was applied, the marriage would still be invalid under Maine law.

(3) <u>If This Court Were To Find That § 658 Is Constitutionally Infirm, It Must Void § 658 In Full As Appellant's Proposed Solution Would Only Replicate The Constitutional Infirmity.</u>

Even if Appellant is successful in convincing this Court that § 658 is constitutionally infirm, Appellee argues she will be no better off than if this Court were to hold § 658 is constitutional. The reason for this is quite plain: if this Court were to find that § 658 is unconstitutional, the only appropriate remedy, short of requiring this Court to invalidate completely and in whole all of 19-A M.R.S., Chapter 23: Marriage as superfluous or meaningless, is to void in full § 658 as facially unconstitutional and decline to expand the statutes definition to any and all language, as Appellant argues in an attempt to reimpose common law marriage in Maine. If this Court had to chose between invalidating all of the licensure,

registration, and other requirements contained in Chapter 23: Marriage, invalidating the Bahai and Quaker exception, it should void the sole statute instead of all of Chapter 23: Marriage.

Appellant argues that the simple solution to what she argues is a massive constitutional problem of preference of one religion over others is for this Court to simply alter the language of § 658 to "any and all", without input from the Legislature, to include any and all religious ceremonies in the record-keeping exception to marriage contained in § 658 (Appellant's Brief, at 40). However, this purported simple solution would have radical, and undesired effects. This solution would forever be undermining the State's interest in regulating, fostering, and promoting a uniform idea of statutory marriage that can be relied on by individuals and regulating domestic relations. For better or for worse, Maine, long ago, chose to reject common law marriage and opt for statutory marriage. But adopting Appellant's expansive definition of § 658 injects the common law back into the equation. It, in effect, creates two separate classes of married persons in the State of Maine: secular, non-religious individuals who did not conduct a religious ceremony and who are still bound by §§ 650-A – 656, or religious individuals who conducted a religious marriage ceremony that they believe to be legitimate and religious. This is the exact type of uncertainty that Maine and 40 other states in this country elected to avoid when they codified specific marriage licensure statutes.

Another consequence of adopting Appellant's all or nothing approach as to § 658 is that if the language of that statute reads how Appellant argues it should, it renders §§ 650-A – 656 meaningless and superfluous. In Appellant's prospective world, if one conducts what one sincerely believes to be a "religious ceremony," any and all compliance with §§ 650-A – 656, with the exception of § 654, is no longer necessary; so long as the parties had a religious ceremony in line with a purported faith, the courts of Maine and the State of Maine have no say. That flies in the face of long held and articulated constitutional principles that is the exclusive province of the states to regulate, license, and define what marriage is. And it also leaves an incredible amount open to interpretation. What is a religious ceremony?[6] What qualifies as an officiant? Do we accept religious ceremonies as the basis for marriage and require no compliance with what are at the time of this filing valid licensure statutes when they are based on religions or practices that are void for reasons of public policy (e.g. not encouraging polygamy, incest, dowry, etc.)?

But Appellee urges that this Court need not reach and decide these tough questions. Instead of radically reshaping the institution of marriage in Maine,

[6] For example, imagine one has a gathering in the woods where they, following their own religious traditions, distribute Peyote to their partner, they both take it, sign a piece of paper saying they are married in Maine under the laws of their Peyote religion, and there are two witnesses and an officiant, a shaman, present who submits the signed license to the court within 7 days after the campout. Is this a religious ceremony that would avail them to the protections of Appellant's proposed and all-sweeping religious-recordkeeping exception? Under Appellant's proposed definition why would it not be and why should these individuals not be accorded full marital rights in Maine?

altering Maine's choice to reject common law marriage, or creating maximum uncertainty over who is or who is not married in the State of Maine, this Court should simply elect instead to rule that Appellant failed to comply in any meaningful way with the basic mandates of the marriage licensure statutes in Maine and that there is no religious exception that applies to her in this case. However, if this Court feels the need to reach the question of the constitutionality of § 658 and does find it unconstitutional, Appellee argues that the remedy is abolishing § 658, not extending it to all religions and imposing, through judicial ruling rather than legislative amendment, a common law regime in Maine that has squarely been rejected by both this Court in the past[7] and our state legislature.

[7] "The Massachusetts Court was also of the view that if the law were to be changed to permit a valid marriage to be effectuated by the mere private contract of the parties, without going before any one as a magistrate or minister, *that should properly be a matter for legislative, and not for judicial consideration*. We are of the same view. *Pierce*, at 48.

CONCLUSION

For all the foregoing reasons, Appellee respectfully requests that this Court affirm the decision of the lower court that Appellant and Appellee were religiously married in Dubai, but did not take the steps to comply with Maine statutes and therefore were not legally married under Maine law as outlined by the statutes. If this Court must reach the constitutional question, Appellee argues it should find that § 658 does not substantially burden Appellant's exercise of religion or favor another religion over hers because there are still recordkeeping requirements in § 658 tied to § 654. But if this Court rules that § 658 violates the Free Exercise Clause of the Maine Constitution, it should void § 658 in full, not expand the definition to invalidate all of Maine's marriage licensure statutes and create uncertainty as to who is married and who is not in Maine.

CERTIFICATE OF SERVICE

I, Mehron D. Buerger, attorney for the Appellee, certify that I have on this date caused the foregoing brief to be served on the parties by email and by placing two copies thereof, postage prepaid, for delivery via first-class mail to Colin Chard, Esq.:

_____/s/_____

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