STATE OF MAINE
YORK, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
CIVIL DOCKET NO. YOR-25-46

TABAREK ALDARRAJI
Appellant

vs.

TAREQ ALOLWAN
Appellee.

On Appeal from the Maine District Court
(York County)

REPLY BRIEF

Counsel for Appellant
Robinson, Kriger & McCallum
12 Portland Pier
Portland, ME 04101
207-772-6565
cwc@rkmlegal.com
By: Colin W.B. Chard, Esq.

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1. The Clerical failings of the wedding officiant cannot justify constitutional avoidance.

Appellee first argues that 19-A M.R.S. § 657 should apply in the instance where the wedding officiant made a clerical mistake. Red Br. at 18. The return of the marriage certificate is the responsibility of the officiant, and not of the parties. *See* 19-A M.R.S. § 654 (2) (Record of Marriages); 19-A M.R.S. § 658 (Quaker; Baha'I); 19-A M.R.S. § 659 (Penalties). Thus, by Appellee's logic, a failure to file the marriage certificate is one of the situations where 19-A M.R.S. § 657 would "save the marriage." Red Br. at 18. But, Appellee then cites failure of the officiant (who has the legal duty to return the certificate under 19-A M.R.S. § 654) as the basis for this court to avoid the constitutional issue altogether. Red Br. at 23.

The essence of the argument is that the failure of the wedding *officiant* to bring the wedding certificate to a clerk should prevent this court from adjudicating the unconstitutional elevation of sects and the harm to Appellant, a *party* to the marriage.

To do so would be a misuse of the doctrine: This Court must be mindful of the unique status of a judicial inquiry into the interpretation of the First Amendment. Where such fundamental rights as those expressed in the First Amendment are at stake, we must examine the issues independently, and we will not limit our inquiry by the constraints of the often relied on deference to legislative findings. *Bagley v.*

Raymond Sch. Dep't, 1999 ME 60, ¶ 14, 728 A.2d 127, 133 (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 843, 56 L. Ed. 2d 1, 98 S. Ct. 1535 (1978)). *See also Welsh v. United States*, 398 U.S. 333, 354-55, 90 S. Ct. 1792, 1804 (1970) (Justice Harlan Concurring) ("I cannot subscribe to a wholly emasculated construction of a statute to avoid facing a latent constitutional question, in purported fidelity to the salutary doctrine of avoiding unnecessary resolution of constitutional issues.").

The issue must be reached, if only to avoid the uncertainty concerning marital status. Red Br. at 16, citing *Pierce*.

2. Failure to address the underinclusivity of 19-A M.R.S. § 658 restrains Appellant's practice of Shia Islam in violation of Me. Const. Art. I sec. 3 and U.S. Constitution Am. I.

Appellee claims that 19-A M.R.S. § 658 in no way restrains Appellant's free exercise of religion. Red Br. at 25. Appellee must have overlooked the extreme religious and cultural implications relating to the religious doctrine and practice of Haram within the Shia sect of Islam. *See* Blue Br. at 9-10 (God's punishment of those who commit Haram; physical harm to mother and child; social outcast; non-recognition of parentage).

It is undisputed in this action that the parties married in the in form practiced in the Shia sect of Islam, according to its rules and principles. *See* Blue Br. at 8.

Now, upon Appellee's motion, the Maine District Court has issued an Order (under appeal here) that the parties were never married. App. at 19 ("[B]ecause Plaintiff and Defendant are not legally married, Plaintiff's complaint for divorce is dismissed by the court."). Under 19-A M.R.S. § 658, the parties would be married if Quaker or Baha'I; the section subordinates the practice of Shia Islam by giving preference to the Quaker and Baha'I sects. This quintessentially, and facially, restrains Appellant's religious practice.

Reliance on *Bagley v. Raymond School Dept.* to plead "special treatment" is misplaced. Red Br. at 25-26. *Bagley* was a case about money subsidies for religious education: "The fact that government cannot exact from [a citizen] a surrender of one iota of [her] religious scruples does not, of course, mean that [she] can demand of government a sum of money, the better to exercise them." *Bagley v. Raymond Sch. Dep't*, 1999 ME 60, ¶ 18, 728 A.2d 127, 134. No subsidy is sought. Tabarek seeks equal treatment of her religious practice as that which is afforded the practices of the Quaker and Bahai'I.[1]

3. The only compelling interest involved in this case is that contained in 19-A M.R.S. § 650.

a. 19-A M.R.S. § 650 states: "The State has a compelling interest to nurture and promote the unique institution of monogamous marriage in the support of

[1] Me. Const. Art. I Sec. 3 appears to sound in equal protection terms, free exercise, and establishment terms.

harmonious families and physical and mental health of children; the State has the compelling interest in promoting the moral values inherent in a monogamous marriage."

b. Recordkeeping is not a compelling state interest.

Appellee cites *U.S. v. Windsor* in an effort to conjure a compelling interest for the State. Red Br. at 26. *Windsor* stands for the proposition that the Federal Government may not intrude upon the State's power in defining the marital relation. *United States v. Windsor*, 570 U.S. 744, 768, 133 S. Ct. 2675, 2692 (2013). This was a case concerning the proper exercise of sovereign authority by the State of New York and the intrusion upon that sovereignty (and denial of equal protection) by the United States of America (via application of federal Dictionary Act's definition of the word "spouse"). States have the power to regulate marriage. *United States v. Windsor*, 570 U.S. 744, 766, 133 S. Ct. 2675, 2691 (2013). This power is, of course, subject to constitutional principles. *Id*. Ultimately, the Court used a legitimate purpose standard via equal protection. *United States v. Windsor*, 570 U.S. 744, 775, 133 S. Ct. 2675, 2696 (2013). The dicta cited by Appellee has nothing to do with recordkeeping (nor did the case), and strict scrutiny was not applied regarding record-keeping.[2]

[2] The irony in Appellee's interpretation of 19-A M.R.S. § 658 is that it writes inequality into the entirety of Maine's matrimonial law, the exact infirmity of the amendment to the Dictionary Act stricken in *Windsor*. *United States v. Windsor*, 570 U.S. 744, 775, 133 S. Ct. 2675, 2695 (2013).

Appellee's quest for a compelling interest moves on to *Pierce v. Secretary of State*. Red Br. at 26. Here, uncertainty as to the marital status of Maine inhabitants is the purported chalice. The subject matter of the case is common law marriage. *Pierce v. Sec'y of U. S. Dep't of Health, etc.*, 254 A.2d 46, 47 (Me. 1969). The case at bar is not a case involving "private contract of the parties" (*Pierce v. Sec'y of U. S. Dep't of Health, etc.*, 254 A.2d 46, 48 (Me. 1969); it is a case involving the Legislatively crafted statutory method for establishing matrimonial status; *Pierce* traces the statutory method of entering the marital union, via religious marriage ceremony, to times before Maine joined the Union. *Id*.[3]

But, certainty as to marital status, and the recordkeeping provisions at issue, are not compelling state interests: They are useful (*see Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 490, 103 S. Ct. 2517, 2524 (1983)[4], they are important (*see Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 202, 119 S. Ct. 636, 647 (1999)[5], but they "hardly constitute the compelling state interest necessary to justify any infringement on First Amendment freedom." *Fed. Election Com. v. Mass.*

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[3] The Maine Legislature has endorsed religious marriage ceremonies for centuries, and over the past century has expanded the scope of this statute before bringing it into the recodified Title 19-A. (see below for legislative history). Maine's matrimonial statutory law is steeped in the tradition of the religious marriage ceremony.

[4] Recordkeeping requirement as "useful to the State's interest in protecting the health of its female citizens."

[5] We nevertheless upheld, as substantially related to important governmental interests, the recordkeeping, reporting, and disclosure provisions of the Federal Election Campaign Act of 1971.

Citizens for Life, Inc., 479 U.S. 238, 263, 107 S. Ct. 616, 630 (1986).

4. 19-A M.R.S. § 658, which validates religious marriages, dates to Maine's genesis and has been extended and ratified over the centuries.

Appellee notes that requirements for a valid marriage are provided by statute. Red Br. at 12. Appellee goes muses that Appellant "argues in an attempt to reimpose common law marriage in Maine." Red Br. at 27, 28, 30. This hypothesis is inapposite to the issue before the court: Tabarek Aldarraji seeks an application of 19-A M.R.S. § 658, a Maine statute that validates a marriage created via religious marriage ceremony. She simply asks that the statutory validation of Quaker and Baha'I ceremonies, via 19-A M.R.S. § 658, be extended to the parties at bar, in their practice of Shia Islam, the religious sect to which they adhere.[6]

"When a policy has roots so deeply embedded in history, there is a compelling reason for a court to hazard the necessary statutory repairs if they can be made within the administrative framework of the statute and without impairing other legislative goals, even though they entail, not simply eliminating an offending section, but rather building upon it." *Welsh v. United States*, 398 U.S. 333, 366-67, 90 S. Ct. 1792, 1810-11 (1970) (J. Harlan concurring).

[6] In addition to the "common law" bogeyman, Appellee cites a fanciful "peyote religion", "maximum uncertainty", and advances the position that this Court should not reach and decide the "tough questions." "[T]he task of this Court, like that of any other, [is] to do justice to each litigant on the merits of his own case." *Desist v. United States*, 394 U.S. 244, 259, 89 S. Ct. 1030, 1039 (1969) (J. Harlan dissenting)

The history of this statute appears to trace back to P.L. 1821, c. 70, §9, the fruit of the first legislative session held in the State of Maine after our admission to the Union on March 15, 1820. Laws of the State of Maine, J. Griffin printer, 1821.[7]

> *Be it further enacted*, That any marriages which shall be had and solemnized, among the people called Quakers or Friends, in the manner and form used and practiced in their societies, shall be good and valid in law, any thing in this Act to the contrary notwithstanding.

This was amended as R.S. 1840, c. 87, §10, The Revised States of the State of Maine, Passed October 22, 1840, William R. Smith & Co., 1841.

> All marriages, solemnized among the people called, quakers or friends, in the form heretofore practiced, and in use in their meeting, shall be good and valid, and shall not be construed, as affected by any of the foregoing provisions in this chapter.

R.S. 1871, c. 59, §10, The Revised Statutes of the State of Maine, Passed April 17, 1857, Wheeler & Lynde, 1857, polished the language to read as follows:

> All marriages solemnized among the quakers or friends, in the form heretofore practiced in their meeting, shall be valid, and not affected by the foregoing provisions.

The legislation was again revisited in 1871 (R.S. 1871, c. 59, §10); 1883 (R.S. 1883, c. 59, §10); 1903 (R.S. 1883, c. 59, §10); 1916 (R.S. 1916, c. 64, §11); 1930 (R.S. 1930, c. 72, §10); 1944 (R.S. 1944, c. 153, §10); and 1954 (R.S. 1954, c. 166, §10). From 1820 through 1954, the Maine Legislature maintained this alternative statutory path to the status of married persons.

[7] Jurisprudence traces the language back to times predating our statehood. *Pierce*.

The 1960s heralded PL 1969, c. 262, An Act Amending the Marriage Laws, broadening the categories of religions for whom the alternative statutory path applies; this legislation added the phrase "or solemnized among members of the Baha'I faith according to the rules and principles of the Baha'I faith". Broadening the scope of the law supports an inference that the Legislature intended to promote the monogamous family unit by widening the enumerated sects for whom religious marriage ceremonies legally create the marital union without regard to record-keeping activities.

In 1995, the Maine Legislature recodified Title 19 (Domestic Relations) as Title 19-A via PL 1995, c. 694. In recodification of this Title, the Legislature purposely, and purposefully, reviewed and reorganized Maine's statutory structure concerning matrimonial law. This was the perfect housekeeping opportunity to make any changes to recordkeeping requirements relating to 19-A M.R.S. § 658 (then 19-A § 1); the alternative path to marital status via religious ceremony carried over into Title 19-A, codified at § 658.

Maine has a deep history of promoting monogamous marriage via religious marriage ceremonies, and in the support of harmonious families and physical and mental health of children, together with the compelling interest in promoting the moral values inherent in a monogamous marriage. This history merits an examination of the longstanding, legislatively crafted alternative statutory process

contained in 19-A M.R.S. § 658, in view of constitutional principles, to craft a remedy for the parties at bar.

5. A constitutional adjudication should not stand as mere dictum.

Appellee presents an all or nothing analysis concerning constitutional remedies. Red Br. 27, 30. The remedy proposed: "Abolishing § 658." While this is an option, it leaves something wanting; Appellant is right that these are the tough questions:

> "The process of reconciling the constitutional interests reflected in a new rule of law with reliance interests founded upon the old is among the most difficult of those which have engaged the attention of courts, state and federal. Consequently, our holdings in recent years have emphasized that the effect of a given constitutional ruling on prior conduct "is subject to no set 'principle of absolute retroactive invalidity' but depends upon a consideration of 'particular relations . . . and particular conduct . . . of rights claimed to have become vested, of status, of prior determinations deemed to have finality'; and 'of public policy in the light of the nature both of the statute and of its previous application.'" *Lemon v. Kurtzman*, 411 U.S. 192, 198-99, 93 S. Ct. 1463, 1468 (1973) (citing *Linkletter v. Walker*, 381 U.S. 618 (1985) (internal citations omitted).

As the *Lemon* Court stated, "the problem of the instant case is essentially one relating to the appropriate scope of federal equitable remedies, a problem arising from enforcement of a state statute during the period before it had been declared unconstitutional." *Lemon v. Kurtzman*, 411 U.S. 192, 199, 93 S. Ct. 1463, 1469 (1973).[8]

[8] Title 4 § 57: "The following cases only come before the court as a court of law: …all questions arising in cases in which equitable relief is sought;" The equitable powers available in Federal

"Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion." *Welsh v. United States*, 398 U.S. 333, 361, 90 S. Ct. 1792, 1807-08 (1970). But, even this standard is too rigidly formulated.

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Lemon v. Kurtzman*, 411 U.S. 192, 200-01, 93 S. Ct. 1463, 1469 (1973), citing *Hecht Co. v. Bowles*, 321 U.S. 321, 329-330 (1944). This passage, an affirmative statement of legal principle and lodestar, begs the question, "What is the test?" [9]

a. Extend or Curtail: a flexible test.

A flexible three-part test is derived from Justice Harlan's concurrence in *Welsh v. United States*, 398 U.S. 333. *Welsh* involved a conscript convicted for

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Article 3 Courts, on questions of constitutional remedies, must likewise be available to this Court in matters concerning the Maine Constitution.

[9] Richard Marshall Abrams, *The Effects of Invalidating a Law on the Grounds of Equal Protection*, 8 HASTINGS CONST. L.Q. 29 (1980) sets forth a helpful primer on this topic, ultimately denominating, at 42, six categories of remedies.

failing to submit to induction into the Armed Forces; his defense was exemption via conscientious objection. *Id*. at 335. While the majority engaged in statutory interpretation to avoid reaching the constitutional issue, the Harlan Concurrence met the constitutional issue head on, *Id* at 345, as a means of "salvaging a congressional policy of long standing that would otherwise have to be nullified." *Id*. This is accomplished via the "the assumed grant of power to the courts to decide whether it more nearly accords with Congress' wishes to eliminate its policy altogether or extend it in order to render what Congress plainly did intend, constitutional." *Id* at 355-356.

i. The existence of a severability clause.

While the absence of such a provision would not foreclose the exercise of discretion in determining whether a legislative policy should be repaired or abandoned, its existence discloses an intention to make an act divisible and creates a presumption that, eliminating invalid parts, the legislature would have been satisfied with what remained. *Welsh v. United States*, 398 U.S. 333, 364, 90 S. Ct. 1792, 1809 (1970) (J. Harlan Concurring)(internal citations omitted). There is no severability clause in Title 19-A Part 2, which contains the section at issue. The absence of such a clause is not a bar to salvaging the policy, as stated, but would theoretically limit the scope of the remedy. Here, Tabarek is seeking the narrow remedy of extending the statute to the parties at bar. *See Desist v. United States*, 394

U.S. 244, 254 n.24, 89 S. Ct. 1030, 1036 (1969) n. 24 (the fact that the parties involved in the decision are the only litigants so situated who receive the benefit of the new rule is an unavoidable consequence of the necessity that constitutional adjudications not stand as mere dictum.)

ii. The intensity of commitment to the residual policy.

This element is described, in *Welsh*, in terms of longstanding tradition, dating back to colonial times. *Welsh v. United States*, 398 U.S. 333, 365, 90 S. Ct. 1792, 1810 (1970). The analysis also supposes that beliefs emanating from a religious source are held with great intensity. *Id.* As noted elsewhere, the statute at bar predates Maine's acceptance into the Union, and has been continuously maintained, updated, and expanded across the centuries. The intensity of the commitment is high. "When a policy has roots so deeply embedded in history, there is a compelling reason for a court to hazard the necessary statutory repairs if they can be made within the administrative framework of the statute and without impairing other legislative goals, even though they entail, not simply eliminating an offending section, but rather building upon it." *Id.*

iii. the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation.

This element is described relative to the existing administrative framework. *Welsh v. United States*, 398 U.S. 333, 365, 90 S. Ct. 1792, 1810 (1970). Frankly,

judicial “patchwork” in this instance will be administered just as the statute has been for the last 205 years. There is no additional administrative burden; administrative bodies in this field are as well-equipped as ever to continue administering the legislation as extended. Contrary to Appellee’s parade of horribles, the floodgates are not opening by expanding this underinclusive statute to the parties at bar. Naturally, if this truly is an issue, then the flexible standard for crafting relief can account for this.[10]

b. Retroactive and/or prospective

Guarantees not related to procedural rules "cannot, for retroactivity purposes, be lumped conveniently together in terms of analysis." *Gosa v. Mayden*, 413 U.S. 665, 678, 93 S. Ct. 2926, 2935 (1973) (citing *Robinson v. Neil*, 409 U.S., at 508). One formulation of the test, bearing in mind this caveat, is as follows: (a) the purpose to be served by the new standards, (b) the extent of the reliance on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards. *Gosa v. Mayden*, 413 U.S. 665, 679, 93 S. Ct. 2926, 2936 (1973)

i. The purpose to be served by the new standard

The purpose of the new standard is to avoid the unconstitutional elevation of two religious sects above all others in matters concerning statutory religious

[10] Notable cases involving extension include *Welsh; Moritz v. Commissioner*, 469 F.2d 466 (10th Cir. 1972), cert. denied (underinclusive on gender); *Califano v. Westcott*, 43 U.S. 76 (1979) (underinclusive on gender).

marriage ceremonies in the State of Maine. The further purpose is, as set forth in 19-A M.R.S. § 650, advancement of the compelling interests related to the monogamous family unit in the support of harmonious families and physical and mental health of children; the State has the compelling interest in promoting the moral values inherent in a monogamous marriage. Stated simply, the longstanding history of statutorily recognized religious marriage ceremonies in Maine promotes Maine's compelling interest as stated. The new rule serves to bring, at a minimum, the parties at bar under that umbrella in the remedy of their unconstitutional exclusion.

ii. Reliance

The record is unclear as to what extent Mainers have come to rely on the rule set forth in 19-A M.R.S. § 658. It is fair to say that Tabarek relied a great deal on the religious marriage, and its viability, in the conduct of her spiritual and marital affairs. It was reasonable to expect that her religious marriage, like that of the Quaker and Baha'I would be sanctioned under the statute.

iii. The administration of justice under a new rule

As set forth earlier in this brief, the new rule would operate just as the old rule has operated for the last two centuries. There is no additional administrative burden. Should Appellee's floodgates argument be a matter of concern, the Legislature is well-equipped to make any necessary adjustments. If the new rule should have

prospective application only, this could mitigate Appellee's concern. In any event, the new rule, expanding 19-A M.R.S. § 568 to religious marriages in the Shia Islam faith could be of prospective application only. Of course, Appellant requests that this extension of the statute apply to the parties at bar, per *Desist*, *supra*.

On the issue of extension or curtailment, the intensity of Maine's commitment to the statutory viability of religious marriages is the strongest factor weighing in favor of extension. Although there is no severability clause, the statute harkens back to before Maine was admitted to the Union and has been extended by the Legislature and preserved for centuries. There is little concern for disruption of a statutory scheme that has been in place for over 200 years. The statute should be extended.

On the issue of retroactive or prospective, the lofty purpose of equality of sects under Maine Constitution, Article I, Section 3 must weigh heavily in the analysis, together with the United States Constitution First Amendment protections. Within the flexible, equitable remedial powers, Appellant seeks only relief for the parties at bar. If this means that the new, inclusive, rule is prospective only, that is sufficient so long as the new rule is applied to the parties at bar. Thus limiting the remedy, any administrative floodgate could be averted while providing a concrete remedy in this matter.

WHEREFORE, Appellant, Tabarek Aldarraji prays this Court apply the rule contained in 19-A M.R.S. § 657 and find that the failure of the officiant to file the

marriage certificate does not affect the validity of the marriage; rule the historic statutory path to marital status codified at 19-A M.R.S. § 658 is a religious gerrymander odious to the Constitution, and underinclusive; that this Court assess the factors and extend the statutory process under 19-A M.R.S. § 658 to religious marriages in the Shia sect of Islam; give the new rule prospective application, including the parties at bar; order that the parties are legally married; reinstitute the divorce proceeding; and other relief.

Dated at Portland, Maine, this _____day of_____, 2025.

_____/S/ Colin W.B. Chard____
Colin W.B. Chard, Bar No.: 5477
Attorney for Plaintiff/Appellant

Robinson, Kriger, and McCallum
12 Portland Pier
Portland, ME 04101
(207) 772-6565

CERTIFICATE OF SERVICE

I, Colin W.B. Chard, Attorney for Appellant Tabarek Aldarraji, in the above matter, hereby certify that I have made service of the foregoing **Reply Brief** to the following persons by sending them two copies to the addresses below.

Mehron Buerger, Esq.
Rioux, Donahue, Chmelecki & Peltier
mehron@rdcplawyers.com
97A Exchange Street Suite 404
Portland, Maine 04101

And caused ten copies to be filed with:

Matthew Pollack, Esq.
Clerk of the Law Court
lawcourt.clerk@courts.maine.gov
Maine Superior Judical Court
205 Newbury Street Room 139
Portland, ME 04101

Dated at Portland, Maine this _____day of_____, 2025.

By: /s Colin W.B. Chard_____
Colin W.B. Chard, Esq.
Attorney for Appellant