

TEMPLATE

Motion for Summary Judgement to Dismiss Divorce Action Due to Unconstitutionality

This document should not be deemed legal advice of any type. Parties should consult with an attorney familiar with the law in the state in which parties married.

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Citations for Pennsylvania
Version__v4

IN THE COURT OF COMMON PLEAS OF [REDACTED] COUNTY, PENNSYLVANIA
FAMILY DIVISION

NAME PLAINTIF : Case Number: [REDACTED]
: :
Plaintiff, : :
: : MOTION FOR SUMMARY JUDGEMENT
V. : : TO DISMISS DIVORCE ACTION DUE TO
: : UNCONSTITUTIONALITY
: :
NAME DEFENDANT : :
: :
Defendant : :

MATTER BEFORE THE COURT .

1. Comes now the Defendant, [REDACTED], and moves the Court for a summary judgement to dismiss the case. The Court lacks subject matter jurisdiction of the parties' marriage because granting a divorce requested by the Plaintiff on the unilateral no-fault ground of alleged irretrievable breakdown, 23 Pa. C.S. § 3301(d), would be a violation of the constitutionally protected rights of the Defendant.

2. Parties were married according to the Rite of Catholic Marriage on [REDACTED] in the year [REDACTED]. The parties signed a state marriage license application and thereafter contracted Catholic marriage. The parties conceived and raised [REDACTED] children, who range in age from [REDACTED] to [REDACTED] years old.

3. The Catholic Code of Canon Law, and the Catholic doctrine shows that the Church has competence over cases of separation of spouses. For Catholics, civil divorce is a form of separation of spouses, about which the Church has rules and law.

4. On [REDACTED] in the year [REDACTED], the Plaintiff-Husband made a complaint for divorce on unilateral no-fault divorce ground and he asserted that the parties' marriage is irretrievably broken. The Defendant-Wife denies that the marriage is irretrievably broken. The Court is required to have a hearing in this circumstance. (See 23 Pa. C.S. § 3301(d)(1)(ii).) Parties on [REDACTED] in the year [REDACTED], signed an agreement to separate property and initiate a support schedule that shall be enforceable whether, or not, divorce is granted. Parties on [REDACTED] in the year [REDACTED], signed an agreement to separate property and initiate a support schedule that shall be enforceable whether, or not divorce is granted.

STATEMENT OF QUESTIONS INVOLVED

5. Whether the statutory provision, “Every religious society, religious institution or religious organization in this Commonwealth may join persons together in marriage when at least one of the persons is a member of the society, institution or organization, according to the rules and customs of the society, institution or organization,” 23 Pa. C.S. § 1503(b), means that those who solemnized their marriages in the Roman Catholic Rite of Catholic Marriage, or Order of Celebrating Matrimony are understood to have contracted marriage according to the rules and customs of the Roman Catholic Church.

6. Whether denying parties and clergymen a marriage licenses unless they agree to contract marriages that includes the *exit-plan-option* of unilateral no-fault divorce, 23 Pa. C.S. § 3301(d), is an unconstitutional infringement on the fundamental right to marriage and religious freedom, and unconstitutional impairment of obligations of contract.

7. Whether granting a divorce to a Plaintiff for no-fault ground, 23 Pa. C.S. § 3301(d), with a Roman Catholic marriage, against Defendant who denies irretrievable breakdown, is unconstitutionally impairing the obligations of *contracts*, in violation of article I, section 10, of the U.S. Constitution.

8. Whether granting a divorce to a Plaintiff for no-fault ground, 23 Pa. C.S. § 3301(d), against a Defendant with a Catholic marriage, who denies irretrievable breakdown, is unconstitutional because it violates the Defendant’s free exercise of *religion* protected in the 14th amendment of the U.S. Constitution (which incorporates the first amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940)); article I, section 3 of the Pennsylvania Constitution; and the Religious Freedom Protection Act, Act of Dec. 9, 2002, P.L. 1701, No. 214.

9. Whether granting a divorce to a Plaintiff for the no-fault ground, 23 Pa. C.S. § 3301(d), against a Defendant, who denies irretrievable breakdown, is interfering with the fundamental right of marriage of the Defendant, and thereby, after strict scrutiny analysis, violates the *due process clause* of the 14th amendment of the U.S. Constitution.

10. Whether a court’s determinations for *child custody*, parenting schedule, and child *support* interfere with Defendant’s fundamental right to parent the Defendant’s own children, and thereby, after *strict scrutiny analysis*, violates the due process clause of the 14th amendment of the U.S. Constitution.

11. Whether a court’s determinations for *child custody*, parenting schedule, and child support are an unconstitutional violation of the neutral principles of law because the *Church Law Body* has *competence* to determine the parties’ obligations toward each other resultant from their Roman Catholic marriage to which the parties contracted.

12. Whether a court’s determinations for *property* split, spousal *support*, alimony *pendent lite*, and alimony are an unconstitutional violation of the neutral principles of law because the *Church*

Law Body has competence to determine the parties' obligations toward each other resultant from their Roman Catholic marriage to which the parties contracted.

FACTS OPERATIVE .

13. "A contract which does not satisfy the requirements of subsection (a) but which is valid in other respects is enforceable: . . . (2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted" (13 Pa. C.S. § 2201(c)). For a Defendant in a Catholic Marriage, the *goods* include sharing her procreative powers to conceive and bear children with the Plaintiff, for whom she will forever provide a unified marital home, unless a legitimate basis for separation exist as defined by the rules and customs of the Catholic marriage contract. The Plaintiff did admit in the parties' property split and support agreement, signed on _____ in the year _____, the Plaintiff said they "contracted marriage on _____ in the year _____, at _____ Roman Catholic Church in _____, Pennsylvania" (See Exhibit XX).

14. Furthermore, Plaintiff admitted, by the oath he signed _____ in the year _____, that he is a practicing Catholic, who believes that marriage is permanent, lasting until death that requires him to support his spouse, and requires fidelity to his spouse. (See Exhibit XX). Document itself shows, that the priest explained to the plaintiff "the obligations and nature of marriage" prior to the Plaintiff of taking his oath. Plaintiff admitted that he intended to accept the obligations of Catholic marriage, and was entering marriage of his own free will. This oath reiterates the substantive obligations of all parties in a Catholic marriage covenant for which every priest is required to investigate parties before marriage. This oath is not purported by the Defendant to be a premarital agreement within the meaning of the Divorce Code. (See 23 Pa. C.S. § 3106.) Rather it is evidence of the parties meeting of the minds regarding their mutual intention to contract marriage according to the rules and customs of the Roman Catholic Church, including lifelong support.

15. The Plaintiff admitted on the parties' marriage license application that he was marrying in the Catholic denomination by the officiant Rev. _____, a Roman Catholic priest. The official record of the application is Reel _____ Page _____, Commonwealth of Pennsylvania, County of _____, number _____, filed on _____ in the year _____. (See Exhibit XX).

16. The Commonwealth of Pennsylvania, County of _____, has on record the official document, "Duplicate Certificate" (No. _____) signed but the Catholic Priest, Rev. _____, whereby he attested that the parties were united in marriage on on _____ in the year _____

_____ at the address of _____, which is the address of the Catholic Church. (See Exhibit XX)

17. Saint _____ Roman Catholic Church in _____, in the County of _____, has on record the marriage register of the church. The pastor, Rev. _____, on _____ in the year _____, certified that _____, [Plaintiff] and _____, [Defendant] were lawfully married on _____ in the year _____ according to the Rite of the Roman Catholic Church and in conformity with the laws of the Commonwealth of Pennsylvania. (Certificate of Marriage, _____ Church, See Exhibit XX)

18. The Defendant notes for the Court that the state marriage license record show the “parties were united in marriage, in accordance with license issued by the Clerk of the Orphan’s Court of _____ County, Pennsylvania.” The Plaintiff would be incorrect to assert that this language eliminates the Defendant’s right to have Plaintiff uphold his obligations in their Catholic marriage contract.

MEMORANDUM OF LAW .

APPLY THE LAW .

19. Pursuant to Pa. R.C.P. No. 1035.2, Defendant moves this Court for a summary judgment as a matter of law. There is no issue of material fact which can be established by additional discovery or expert report. Whenever it appears by suggestion of the parties that the court lacks jurisdiction of the subject matter . . . the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction . . . but if that is not possible, then it shall dismiss the action.” (See Pa. R.C.P. No. 1032(b).)

20. “[R]ights, whether legal or equitable, acquired under the laws of the United States, may be prosecuted in the United States courts, or in the State courts, competent to decide rights of the like character and class. (*Clafin v. Houseman*, 93 U.S. 130, 136–37 (1876).) “State judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights.” (*Goss v. Illinois*, 312 F 2d 257, 259 (7th Cir. 1963).) “[A]n act of the legislature, repugnant to the constitution, is void. . . . It is emphatically the province and duty of the judicial department to say what the law is.” (*Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).)

21. The Defendant challenges the Plaintiff to disclose the relationship between the right of marriage and the state treating marriage like a privilege that can be licensed. In other words, from where is the legislature finding the basis of the state’s authority to regulate marriage, separation, and divorce.

22. Pursuant to Pa. R.C.P. No. 235, and because the Defendant is alleging to be unconstitutional an Act of Assembly, the Defendant is giving notice thereof by registered mail to the Attorney General of Pennsylvania together with a copy of the pleading and is filing proof of the giving of the notice. (**See Exhibit 1**, shipping receipt).

SUBJECT MATTER JURISDICTION LOST IF MISAPPLY LAW

23. The Defendant alleges that the Court does not have jurisdiction over the parties' marriage, marriage contract, Catholic marriage contract, Catholic marriage covenant, cause of separation of spouse, or cause of invalidity of parties' marriage because to do so would be a violation of various constitutionally protected rights.

24. The Defendant is challenging the subject matter jurisdiction of the Court in the Plaintiff's complaint for divorce. Therefore, the burden of proof is on Plaintiff to prove jurisdiction. (*See McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 187 (1936)).

25. If a court makes judgments based on statutes that are unconstitutional or proceedings that violate constitutionally protected rights, subject matter jurisdiction is lost. "[T]he Supreme Court began to recognize a growing number of circumstances where courts were said to have acted beyond their jurisdiction because some constitutional violation had extinguished or 'voided' their jurisdiction." (*See Doyle, Charles. Federal Habeas Corpus: A Brief Legal Overview (CRS Report RS22432)*. Washington D.C.: Congressional Research Service, The Library of Congress, 2006 (citing *Ex parte Siebold*, 100 U.S. 371 (1880)).) When a trial court fails to ascertain what the law is, or fails to apply the law to the facts, the court will have abused its discretion and made errors, and any judgement therefrom will be void. In the absence of due process of law, a court's jurisdiction over the subject matter does not exist.

26. The Defendant has the right to challenge the subject matter jurisdiction of the Court over the action put forth by the Plaintiff. A defect in subject matter jurisdiction can be raised at any time: "Jurisdiction of subject matter can never attach nor be acquired by consent or waiver of the parties" (*McGinley v. Scott*, 401 Pa. 310, 316 (1960); *accord Daly v. School District of Darby Township*, 434 Pa. 286, 289 (1969); *In re Melograne*, 571 Pa. 490, 494 (2002).)

27. If a court determines at any time that it lacks subject-matter jurisdiction, and that no other state court has subject matter jurisdiction, then the court must dismiss the action. (*See Pa. R.C.P. No. 1032(b)*.)

STRICT SCRUTINY

28. Generally, there is a presumption of constitutionality of state statutes. (*See James v. Southeastern Pennsylvania Transportation Authority*, 505 Pa. 137, 142 (1984).) However, if a statute implicates a fundamental right, the statute does not receive a presumption of constitutionality; such statute must satisfy strict scrutiny, and there must be a compelling state interest in burdening that fundamental right, and there must be the necessity of the chosen means to achieve the compelling state interest. (*See id.* at 145 (citing *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973)).)

29. The Defendant argues that there is no compelling state interest in changing the parties' status from married to unmarried. In our current culture, the Plaintiff is free to socialize, travel, and stay with whomever he chooses, and there is no state interest served by ending his marriage with the Defendant. One imagines that the legislature enacted unilateral no-fault divorce because some people thought that it would be good to sever the marital status of any Plaintiff upon request, with no fault committed by the Defendant. Indeed, one of the explicitly stated intents of the legislation permitting no-fault divorce was to “[m]ake the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.” (Divorce Code, Act of Apr. 2, 1980, P.L. 63, No. 26, § 102(a)(1).) Yet no compelling state interest has been served by the resultant family breakdowns, with children being court-ordered to go back and forth between two household, with innocent fathers being unable to afford to have natural everyday contact with their children, with record-breaking-numbers of youths on anti-depressants and committing suicide, with the largest cause of poverty for woman being divorce. The unilateral no-fault divorce statutes encourage marital breakdown which harms the public interest.

30. Marriage is a fundamental right, and thereby can only be restricted by applying strict scrutiny principles. (*See Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584, 2598 (2015); *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978)).

31. Defendant recognizes that there is a right to marriage, but this is different than asserting that a party has a right to serial marriages, one, after another. Giving the Plaintiff freedom to enter subsequent marriages is violating the rights of the Defendant to marriage. The right to stay married is a fundamental right.

32. The right to religious freedom is a fundamental right, which cannot be infringed without applying strict scrutiny standards.

33. The “Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. (*Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054, 2060 (2000)). A Plaintiff, by invoking the unilateral no-fault divorce statute, invokes an bizzare state power to forcibly deprive an innocent Defendant of the natural everyday interactions with Defendant’s children.

34. The U.S. Supreme Court repeatedly finds that when a fundamental right would be implicated, the statutes no longer can be presumed to be constitutional until the strict scrutiny standard is

applied against the statute being opposed. (*See San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 16 (1973); *New Orleans v. Dukes* 427 U.S. 297, 303 (1976); *Foucha v. Louisiana*, 504 U.S. 71, 115 (1992) (Thomas, J., dissenting); *Weber v. Aetna Casualty and Surety Co.*, 406 U.S. 164, 172 (1972)).

35. The Supreme Court of Pennsylvania has held that “[t]he appropriate standard of review is determined by examining the nature of the classification and the rights thereby affected. In the first type of case, where the classification relates to who may exercise a fundamental right or is based on a suspect trait such as race or national origin, strict scrutiny is required. When strict scrutiny is employed, a classification will be invalid unless it is found to be necessary to the achievement of a compelling state interest.” (*Commonwealth v. Bell*, 512 Pa. 334, 344 (1986) (citations omitted).)

CONSTITUTIONAL PROBLEMS

STANDING NEEDED (LINK). -

36. The unilateral no-fault ground for divorce, 23 Pa. C.S. § 3301(d)(1)(ii), when denied by the Defendant, is wrongfully used by the Plaintiff in a civil action because he has no standing to bring a suit against the Defendant for harm done to him. The definition of “irretrievable breakdown” is “[e]strangement due to marital difficulties with no reasonable prospect of reconciliation” (23 Pa. C.S. § 3103), and it has nothing to do with whether, or not, the Defendant has caused harm to the Plaintiff.

37. The Pennsylvania Constitution, establishes the basis upon which a party can seek relief in a court. A Plaintiff “for an injury done him in his lands, good, person or reputation shall have remedy by due course of law, and right and justice administered.” (Pa. Const., art. I, § 11). There is no right for a Plaintiff to bring an action against a Defendant who has done the Plaintiff no injury. A pleading for a unilateral no-fault divorce is an action against the Defendant, when the Plaintiff is, by definition, required to make no claim of injury by the Defendant.

38. “The core concept, of course, is that a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby and has no standing to obtain a judicial resolution of his challenge.” (*William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 192 (1975).)

39. If a Plaintiff could claim that injury is caused by any Defendant who is relying on the Plaintiff to uphold the Plaintiff’s side of a contractual agreement, all contracts would be waived upon request by any disgruntled party who wanted to renege on his obligations.

VAGUE – DIFFERENT INTERPRETATIONS AMONG MARRIED .

40. [this is weak argument for PA Defendant] The ground for unilateral no-fault divorce, 23 Pa. C.S. § 3301(d), violates the Defendant’s right to due process protected by the 14th amendment to the U.S. Constitution, because the statute is vague. It is supposed to be “set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and observe, without sacrifice to the public interest, and are not impermissibly vague.” (See *US Civ. Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548 s, 413 U.S. 548. 579 (1973).) The statute shows “[I]rretrievable breakdown” is “estrangement due to marital difficulties with no reasonable prospect of reconciliation.” (23 Pa. C.S. § 3301.) For the Defendant, the estrangement is not due to marital difficulties; it is due to the Plaintiff choosing to renege on his marriage promises.

41. “A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” (*Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972).)

INTERFERE W/CONTRACT, NO GROUND AT ALL, .

42. The ground for unilateral no-fault divorce, 23 Pa. C.S. § 3301(d), wrongfully interferes with the intended obligations of parties in a contract and entangles courts in religious polity. Those who contract Catholic marriage willingly and voluntarily accept the obligations of marriage that are in Catholic doctrine, Canon Law, and custom. One party’s obligation is the other party’s right. According to the Catholic marriage contract, a Plaintiff has no basis for separation of spouses on the ground of “estrangement due to marital difficulties with no reasonable prospect of reconciliation.” (See 1983 Code cc.1151–55.)

43. The purported jurisdiction of the courts in cases of divorce and for the annulment of marriages, 23 Pa. C.S. §§ 3104(a), 3323(f), wrongfully interferes with the intended obligations of parties in a contract and entangles the Court with religious polity, in all the following matters: property rights, any postnuptial or separation agreement, spousal support, alimony, alimony pendente lite, care of children, child support, and the granting of a divorce.

44. The U.S. Constitution, art. I, § 10, restricts states from making laws against intended obligations of parties’ in a contract. The U.S. Supreme Court has held: “The lexical definition of ‘impair’ is ‘to make worse; to diminish in quantity, value, excellence, or strength; to lessen in power; to weaken; to enfeeble; to deteriorate’ . . . The obligation of a contract includes everything within its obligatory scope. Among these elements, nothing is more important than the means of enforcement. This is the breath of its vital existence.” (*Edwards v. Kearzey*, 96 U.S. 595, 600 (1877)).

45. The state cannot unilaterally change the definitions of words thereby impairing the obligations of parties in a contract. A U.S. Supreme Court decision illustrated the problems caused by legislators purporting to change the meaning of words.

A statute declaring that the word *ton* should thereafter be held, in prior as well as subsequent contracts, to mean half or double the weight before prescribed, would affect its construction. . . .

It cannot be doubted, either upon principle or authority, that each of such laws passed by a State would impair the obligation of the contract Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfilment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract ‘is the law which binds the parties to perform their agreement’ Any deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation.

(*Von Hoffman v. City of Quincy*, 71 U.S. (4 Wall.) 535, 552–553 (1866) (citations omitted).) Parties to a Catholic marriage never intended to have as grounds for separation of spouses the unilateral no-fault divorce ground.

46. The General Assembly is *de facto* redefining the word marriage, forcing upon the Defendant a unilateral no-fault divorce. The Canon Law Body of the Church should decide the obligations of the parties toward each other in accordance with the parties’ Catholic marriage contract. “Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life.” (1983 Code c.1135.) In an ordinary contentious cause for the separation of spouses, the tribunal’s sentence must “determine what obligations have arisen for the parties from the trial and how they must be fulfilled” (1983 Code c.1611, °1). In a tribunal’s sentence in a case challenging the validity of a marriage, the “parties are to be reminded of the moral and even civil obligations which may bind them both toward one another and toward their children to furnish support and education.” (See 1983 Code c.1689.)

INTERFERE WITH RELIGION – CANON LAW EXISTS

47. Were the Court to enter a decree of divorce upon request of the Plaintiff for no-fault grounds, such decree would be a violation of Pennsylvania’s Constitution, article I, section 3: “no human authority can, in any case whatever, control or interfere with the rights of conscience.” Limited grounds for separation of spouses were an intrinsic part of the Catholic marriage contract entered by the

parties, and to force upon the Defendant a *marriage contract* of which she did not enter is a violation of her rights of conscience.

48. Were the Court to enter a decree of divorce upon request of the Plaintiff, such decree would be contrary to the legislative intent of the Religious Freedom Protection Act, Act of Dec. 9, 2002, P.L. 1701, No. 214, § 2(1). State law can be challenged by a person whose free exercise of religion is substantially burdened by such law. “The General Assembly intends that all laws which it has heretofore enacted . . . shall be construed so as to avoid the imposition of substantial burdens upon the free exercise of religion without compelling justification.” (*Id.*, § 2(2).) The elements of strict scrutiny analysis are in the Act. When a person’s free exercise of religion is burdened by a state agency, that state agency must prove “by a preponderance of the evidence, that the burden is all of the following: (1) In furtherance of a compelling interest of the agency. (2) The least restrictive means of furthering the compelling interest.” (*Id.*, § 4(b).) The person who is so burdened may assert the violation in a judicial proceeding, (*see id.*, § 5(a)), and may do so without notice if the person’s free exercise of religion is imminent (*see id.*, § 5(c)(1)).

49. For the Defendant, she would not have started a family with a man unless the man agreed to uphold obligations encompassed in the Catholic marriage contract, including, among other things, permanence, fidelity, and mutual support. Both parties to a Catholic marriage have to agree to uphold these obligations, or the priest must refuse to solemnize their marriage. The state is not forcing him to adhere to any religious system; he voluntarily agreed to uphold the obligations under the Catholic marriage contract according to the rules and customs of the Catholic Church. However, when the state forces upon the Defendant a unilateral no-fault divorce, that was never an option in the parties’ marriage contract, the state is infringing upon her free exercise of religion, and purporting to power to impair and reverse the obligations accepted by parties to a Catholic marriage contract. The Defendant’s firmly held religious beliefs prevented her from starting a family under a marital contract that includes an *exit-plan-option* of unilateral no-fault divorce. If either the bride or groom preparing for marriage made known that he or she expected this *exit-plan-option* to be part of their marriage contract, the priest would have refused to allow the parties to marry in the Catholic Church. “The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament.” (1983 Code c.1056.)

50. Those who marry according to the rules of the Catholic Church have a Catholic marriage contract, and agreed to uphold the obligations of marriage as defined by the Church rules. These obligations include support, and supporting a common marital home. When a court issues a unilateral no fault divorce, and forces upon a Defendant a support plan, and otherwise, that is contrary to the parties’ Catholic contract, the Court is interfering with religious polity.

51. Were the Court to enter a decree of divorce upon request of the Plaintiff, the court would be wrongfully interfering with the covenant agreement that the Plaintiff and Defendant made with each other and the Church. Catholic marriage is both a covenant and contract. (1983 Code cc. 1055, §1; 1057, §1; 1063; 1058; Holy See, *Arcanum Divinae* Encyclical (1880).) The Court would be infringing upon religious freedom. Catholic marriages covenants include obligations toward the Church’s public good and cases of separation of spouses requires the intervention of the diocesan Promoter of Justice: “Cases concerning the separation of spouses also pertain to the public good; therefore, the promoter of justice must always take part in them according to the norm of canon 1433.” (1983 Code c.1696).

52. It is not within the Court’s jurisdictional authority to interpret and apply parties’ Catholic Code of Canon Law. However, the Court should determine whether there exists relevant and binding Catholic law applicable to the complaint raised by a party in the civil action, when both parties in a contract agreed to adhere to the Church’s rules. Parties who contract a Catholic marriage bind themselves to upholding the obligations of Catholic marriage encompassed in rules, customs, doctrine, Catechism, and Canon Law including, but not limited to, the following: 1983 Codex Juris Canonici (Code of Canon Law) (including, in particular, its canons 87, § 1; 104; 226, § 1; 1055, § 1; 1057, § 1; 1058; 1060; 1063; 1135; 1151; 1153, § 2; 1290; 1611; 1689; 1692, § 1; and 1696); 2000 Catechismus Catholicae Ecclesiae (Catechism of the Catholic Church) (including, in particular, ¶ 2383); Rite of [Catholic] Marriage (1970) (including, in particular, § 24, Statement of Intentions; and § 25, Consent); Third Plenary Council of Baltimore (1885) (including, in particular, art. 126); and *Arcanum Divinae* (encyclical) (1880) (including, in particular, § 23). Relevant excerpts from these authorities are included in the appendix to this brief. (See Exhibit 2).

CASE LAW CITATIONS

53. Were the Court to enter a decree of divorce upon request of the Plaintiff, the court would be wrongfully violating the establishment clause of the first amendment to the U.S. Constitution, as applied to the states by the 14th amendment. The unilateral no-fault divorce statute, 23 Pa. C.S. § 3301(d), which purports that state Court has jurisdiction over the obligations and rights of parties in a Catholic marriage contract, fails the *Lemon* test. “First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, finally, the statute must not foster ‘an excessive government entanglement with religion.’” (*Lemon v. Kurtzman*, 403 U.S. 602, 612–613 (1971).) The unilateral no-fault divorce statute does not have a secular purpose; its effect is to inhibit religion. The statute fosters an excessive governmental entanglement with religion.

54. Were the Court to enter a decree of divorce upon request of the Plaintiff, the Court would be violating the “deference rule.”

[W]henver the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. . . .

The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

(*Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727–729 (1871); see also Katherine L. Pomerleau, *Deference Deferred: The Subversion of the Deference Rule in Pennsylvania in View of the United States Supreme Court’s Recent Decision in Hosanna-Tabor*, 73 U. Pitt. L. Rev. 721, 724 (2012).) After the first amendment became applicable to the states through the due process clause of the 14th amendment, the deference rule subsequently became tied to a Constitutional basis. and the Supreme Court explained that “The [*Watson v. Jones*] opinion radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” (See *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 115–16 (1952).)

55. The U.S. Supreme Court held that “[t]he fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.” (*Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708 (1976))

56. Were the Court to enter a decree of divorce upon request of the Plaintiff, the Court would be violating the neutral-principles method. A New York court recognized that a marriage contract entered in a religious ceremony was still an enforceable contract for which the religious doctrinal issues must be left to the interpretation of the authoritative church law body, and explained the U.S. Supreme Court decision that courts must follow: “The ‘neutral-principles’ method requires a civil court to ‘take

special care to scrutinize the [religious] document in purely secular terms, and not to rely on religious precepts' (*Jones v Wolf*, 443 U.S. [595,] 604 . . .). If interpretation of the document 'require[s] the civil court to resolve a religious controversy, . . . resolution of the doctrinal issue' must be deferred to the 'authoritative ecclesiastical body.'"

57. Were the Court to enter a decree of divorce upon request of the Plaintiff, the Court would be violating the duty to defer to the relevant canonical body decisions for which only that body has competence to judge. "A court may apply neutral principles of secular law to the dispute at hand. When that process requires a court to determine the validity of a church decision, the court ordinarily must discern from the relevant canonical law what body is authorized to make a particular decision within the church, and what decision that body has reached. Having done so, the court may not inquire whether the decision was made arbitrarily or whether it conflicts with the ecclesiastical precepts of the organization." (*Little v. First Baptist Church, Crestwood*, 475 U.S. 1148, 1149 (1986) (citations omitted).)

58. Civil courts have no competence or jurisdiction to interpret and weighing Church doctrine. "A determination whether such decisions are fraudulent, collusive, or arbitrary would therefore not answer the questions posed by the state standard. To reach those questions would require the civil courts to engage in the forbidden process of interpreting and weighing church doctrine. Even if the general church had attempted to apply the state standard, the civil courts could not review and enforce the church decision without violating the Constitution." (*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 451 (1969).)

59. Parties who enter a contract to abide by Church rules are bound to follow the Church's rules, just like parties' who contract to abide by rules of a club or civil associations. If the Court were to enter a decree of divorce upon request of the Plaintiff, the court is wrongfully failing to uphold the parties' Catholic marriage contract. "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations." (*Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16–17 (1929) (footnotes omitted).)

60. The Free Exercise Clause's protection is not limited to churches; it has been extended to various religiously-affiliated institutions, including schools. In *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 457(D.C. Cir. 1996), a Dominican Sister was denied tenure at Catholic University. She sued the university under Title VII for sexual discrimination. *Id.* at 460. The court found for the university, reasoning that the application of Title VII to her employment required an intrusion by the court into religious affairs. *Id.* at 465. In *Little v. Wuerl*, 929 F.2d 944 (3rd Cir. 1991), a protestant teacher was fired from a Catholic school when she remarried. All employee contracts incorporated the school's

handbook by reference. *Id.* at 946. The handbook stated that an example of a violation of the “just termination clause” was entry into a marriage not recognized by the Church. *Id.* The teacher failed to have her first marriage annulled before remarrying and the school dismissed her. *Id.* at 946. The court upheld the dismissal stating:

Title VII of the Civil Rights Act of 1964 . . . prohibits employers from discriminating on the basis of religion. Application of this prohibition to the Parish's decision would be constitutionally suspect because it would arguably violate both the free exercise clause and the establishment clause of the first amendment. . . . Application of Title VII's prohibition against religious discrimination to the Parish's decision would also be suspect because it arguably would create excessive government entanglement with religion in violation of the establishment clause. *Id.* at 947, 948.

61. Courts have also upheld this principle in the context of religious charitable institutions. In *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989), a minister was fired from a not-for-profit religious organization where he had worked for forty years. The court upheld the religious organization’s decision, reasoning that “[b]ecause of the difficulties inherent in separating the message from the messenger -- a religious organization's fate is inextricably bound up with those whom it entrusts with the responsibilities of preaching its word and ministering to its adherents. . . .” *Id.* at 1578. In *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 107 S.Ct. 2862, 97 L.Ed.2d 273 (1987), a nonprofit gymnasium, operated by two nonprofit corporations affiliated with the Mormon Church, required its employees to obtain a “temple recommend” certifying that the employees were members of the Church and eligible to attend its temples. *Id.* at 330. The gym was open to the public. *Id.* Plaintiff, a building engineer who had worked for the gym for sixteen years, was discharged for failing to qualify for a “temple recommend.” *Id.* at 331. He filed suit against the gymnasium and the corporation for violation of Title VII of the Civil Rights Act of 1964. *Id.*

62. The Act stated: “This subchapter shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” *Id.* at n.1. The Supreme Court held that the Act does not violate the Establishment Clause as applied to this case because:

- (1) the Act, as extended to nonreligious activities, serves the permissible purpose of minimizing governmental interference with the decision making process in religions, in that it relieves organizations of the burden of predicting which of their activities a secular court might consider religious;
- (2) a law is not invalid simply because it allows churches to advance religion, where the government itself is not advancing religion through its own activities and influence;
- (3) any advancement of religion achieved by the gymnasium in this case cannot fairly be attributed to the government; and

(4) the Act does not impermissibly entangle church and state but rather effectuates a more complete separation of the two. *Id.* at 334-339.

The Court later concluded that:

Undoubtedly, Mayson's freedom of choice in religious matters was impinged upon, but it was the Church (through the COP and the CPB), and not the Government, who put him to the choice of changing his religious practices or losing his job. . . . [A]ppellee Mayson was not legally obligated to take the steps necessary to qualify for a temple recommend, and his discharge was not required by statute. *Id.* at 337.

Courts have acknowledged the power of Church Law Bodies to judge their own affairs.

STATUTE OF FRAUDS NOT APPLY .

63. Because a Catholic marriage contract is subject to general contract rules, the Defendant rebuts any assertion that the statute of frauds makes a Catholic marriage contract unenforceable. Generally, a contract intended to be in force more than one year is not enforceable unless it is signed. The Defendant notes that the statute of frauds has exceptions.

WRITING NOT REQUIRED FOR ALL MARRIAGES .

64. If the Plaintiff were to argue that the statute of frauds frees him from obligations of his Catholic marriage contract because he did not sign a contract, the Defendant points out that this argument cannot be accepted. If only parties who signed their marriage contract were recognized as having been married, many, if not most parties who marry in Pennsylvania would, therefore, not have entered marriage contracts. The statutes in Title 23, Part I, Chapter 15, "Marriage Ceremony." shows that solemnizing of a marriage may be undertaken without a signed, written marriage contract (*see* 23 Pa. C.S. § 1503), and the Commonwealth recognizes that parties have contracted marriage who have not signed a marriage contract. Marriage, by definition, is "A civil contract by which one man and one woman take each other for husband and wife" (*see* 13 Pa. C.S. § 1102).

65. PA law show marries by church rules .

66. Pennsylvania recognizes that marriage is a civil contract. (*See* 23 Pa. C.S. § 1102). The act of obtaining a marriage license does not, itself, constitute a contract, and the examination required upon application relates only to information required by the Commonwealth relating to a future "contemplated marriage" to which the applicants will contract on the day the marriage is solemnized. (*See* 23 Pa. C.S. § 1306.)

67. A Catholic priest would violate the Marriage Law if he were to officiate at a Catholic marriage ceremony without requiring the parties to have obtained a marriage license. (*See* 23 Pa. C.S. § 1503(c)). If requiring a marriage license was paramount to granting the civil forum jurisdiction to determine cases of separation of spouses and relieve a party of his obligations promised in marriage, no priest could, in good conscience of his faith, church, and the religious laws related thereto, abide by the statute. If such were the case, then the priest would be violating his religious beliefs. Parties marrying in the Catholic Church undergo an investigation by their priest in accordance with the Codex Iuris Canonici (Code of Canon Law) to ensure that they understood, considered, and agreed to the obligations of Catholic Marriage; otherwise there would be an impediment to marriage (*see* 1983 Code cc.1066–70). No priest can agree to grant to the civil forum jurisdiction over separation of spouses’ cases, especially cases in which a Plaintiff could allege the right to renege on his marital obligations because he alleges the marriage is irretrievably broken. Only the bishop “after having weighed the special circumstances” has competence to even allow any party to approach the civil forum. (*See id.* c.1692; Third Plenary Council of Baltimore, art. 126.) For Catholics, civil divorce is merely a cause of separation of spouses, and the legitimate grounds for separation of spouse are delimited by the Codex Iuris Canonici (Code of Canon Law) and canonical jurisprudence. (*See* 1983 Code c.1151–53.)

68. Pennsylvania recognizes that marriage is a religious entity as evidenced by the form required of the marriage license itself: “To any person authorized by law to solemnize marriage: You are hereby authorized to join together in holy state of matrimony, according to the laws of the Commonwealth of Pennsylvania.” (23 Pa. C.S. §1310.) By using the word “holy” in the statute, the legislature intended the Commonwealth to recognize that marriage is religious, by its nature.

69. Pennsylvania recognizes that marriages are contracted by the rules and customs of parties’ church because it authorizes religious ministers, priests and rabbis to solemnize a marriage. “The following are authorized to solemnize marriages . . . (6) A minister, priest or rabbi of any regularly established church or congregation.” (23 Pa. C.S. § 1503(a).) “Every religious society, religious institution or religious organization in this Commonwealth may join persons together in marriage . . . according to the rules and customs of the society, institution or organization.” (23 Pa. C.S. § 1503(b).)

70. The Commonwealth of Pennsylvania is obligated to recognize that foreign forums have competence to decide between spouses their property rights, spousal support, alimony, future care of children, child support, and other matters pertaining to the marriage. (23 Pa. C.S. §§ 3104(a, d), 5405.); The Catholic Law Body is a forum that has competence to decide these elements in cases of annulment, dissolution, and separation of spouses, according to the canon law. Furthermore the Vatican is a foreign country. (*See* 1983 Code cc.1151–55, 1692 (separation of spouses), 1073–123, 1141–50, 1671–91 (annulment).) A Pennsylvania court need not determine those matters. “After the dissolution or annulment of a marriage in a foreign forum where a matter under subsection (a) has not been decided, a

court of this Commonwealth shall have jurisdiction to determine a matter under subsection (a) to the fullest extent allowed under the Constitution of the United States.” (23 Pa. C.S. § 3104(d).) In other words, after the matters in subsection (a) are determined by the foreign forum, the Pennsylvania court is not required to decide them.

71. When Catholic parties contemplate marriage, sign their state marriage license application, and contract marriage at ceremony with Catholic priest as officiant, the Pennsylvania gives deference and respect to the religious elements of marriage contracts. If courts were to subsequently interfere with the intended obligations of a Catholic marriage, by substituting its contrived idea of obligations and rights (including unilateral no-fault divorce, which is contrary to the doctrines and laws of the parties’ religion) it would be changing the meaning of the word marriage. Just as the *Von Hoffman* court held that a statute cannot change the meaning of the word *ton* to be thereafter held to mean half or double the weight prescribed before, the court cannot retroactively change the word marriage to mean something different than the meaning known by the parties when they contracted marriage.

72. WHEREFORE, Defendant requests this honorable Court to enter a decree dismissing the case.

A PRAYER FOR THE RELIEF DESIRED .

73. The Defendant prays that the Court dismisses the Plaintiff’s Complaint for Divorce, and orders the Plaintiff to uphold any obligations toward that Defendant that the parties’ Church Law Body determines are owed to the Defendant pursuant to Roman Catholic Code of Canon Law and doctrine.

Date

Signature of **NAMED DEFENDANT**

Address
City State Zip
E-mail

CERTIFICATE OF SERVICE TO BY FIRST CLASS MAIL .

I, _____, state that on the date of _____ I did mailed, via First Class Mail a copy of this Motion for Summary Judgement to Dismiss Divorce Action

for Lack of Subject Matter Jurisdiction Due to Unconstitutionality to the Plaintiff's Attorney named
_____ at address _____.

Date

Signature of **NAMED DEFENDANT**

PROPOSED FORM OF DECREE .

.

Defendant's Exhibit 2

Church Law Body's Rules Roman Catholic Church

ECCLESIASTIC AUTHORITIES

PRIMARY

a) The Code of Canon Law (1983)

Can. 87 §1. A diocesan **bishop**, whenever he judges that it contributes to their spiritual good, is able to dispense the faithful from universal and particular disciplinary laws issued for his territory or his subjects by the supreme authority of the Church. He is **not able to dispense**, however, **from procedural** or penal **laws** nor from those whose dispensation is specially reserved to the Apostolic See or some other authority.

Can. 104 Spouses are to have a common domicile or quasi-domicile; **by reason of legitimate separation or some other just cause**, both can have their own domicile or quasi-domicile.

Can. 226 §1. According to their own vocation, those who live in the marital state are bound by a special duty to **work through marriage** and the family to build up the people of God.

Can. 1055 §1. The matrimonial **covenant**, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized. §2. For this reason, a valid matrimonial **contract** cannot exist between the baptized without it being by that fact a sacrament.

Can. 1057 §1. The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent. §2. Matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable **covenant** in order to establish marriage.

Can. 1058 All persons who are not prohibited by law can **contract** marriage.

Can. 1060 Marriage possesses the favor of law; therefore, in a case of doubt, **the validity of a marriage must be upheld** until the contrary is proven.

Can. 1063 Pastors of souls are obliged to take care that their ecclesiastical community offers the Christian faithful the assistance by which the matrimonial state is preserved in a Christian spirit and advances in perfection. This assistance must be offered especially by: . . . 4/ help offered to those who are married, so that faithfully preserving and

protecting the conjugal **covenant**, they daily come to lead holier and fuller lives in their family.

- Can. 1066 **Before a marriage** is celebrated, it must be evident that nothing stands in the way of its valid and licit celebration.
- Can. 1067 The conference of bishops is to establish norms about the examination of spouses and about the marriage banns or other opportune means to accomplish the **investigations** necessary before marriage. After these norms have been diligently observed, the pastor can proceed to assist at the marriage.
- Can. 1070 If someone other than the pastor who is to assist at marriage has conducted the **investigations**, the person is to notify the pastor about the results as soon as possible through an authentic document.
- Can. 1135 **Each spouse has an equal duty** and right to those things which belong to the partnership of conjugal life.
- Canon 1151. Spouses have the duty and right to preserve conjugal living **unless a legitimate cause excuses them**.
- Can. 1153, §2. §2. In all cases, when the cause for the separation ceases, **conjugal living must be restored unless ecclesiastical authority has established otherwise**.
- Can. 1290: The general and particular provisions which **the civil law in a territory has established for contracts** and their disposition are to be observed with the same effects in canon law insofar as the matters are subject to the power of governance of the Church **unless the provisions are contrary to divine law or canon law provides otherwise**, and without prejudice to the prescript of can. 1547.
- Can. 1611 The **sentence must**: ... 1^o decide the controversy deliberated before the tribunal with an appropriate response given to the individual doubts; 2^o **determine what obligations have arisen for the parties** from the trial and how they must be fulfilled [from Book VII, Processes; Part II, The Contentious Trial; Section 1, The Ordinary Contentious Trial; Title VII, The Pronouncements of the Judge (Note: A case of separation of spouses could be conducted via the ordinary contentious trial process)].
- Can. 1689 In **the sentence the parties are to be reminded of the moral and even civil obligations** which may bind them both toward one another and toward their children to furnish support and education. [from Title: Marriage Processes; Chapter 1. Cases to Declare the Nullity of Marriage; Art. 7, General Norms]
- Can. 1692 §1. Unless other provision is legitimately made in particular places, a decree of the diocesan bishop or a judicial sentence can decide the personal separation of baptized

spouses according to the norm of the following canons. §2. Where an ecclesiastical decision has no civil effects or if a civil sentence is not contrary to divine law, **the bishop** of the diocese of the residence of the spouses, **after having weighed the special circumstances, can grant permission to approach the civil forum.** §3. If a case concerns only the merely civil effects of marriage, the judge, after having observed the prescript of §2, is to try to defer the case to the civil forum from the start [From Book VII Processes; Part III, Certain Special Processes; Title I, Marriage Processes, Chapter II. Cases of Separation Of Spouses].

Can. 1696 [from Book VII Processes/Procedures] Cases concerning the separation of spouses also pertain to the public good; therefore, the **promoter of justice** must always take part in them according to the norm of can. 1433.

Catechism of the Catholic Church (2000)

2383. The separation of spouses while maintaining the marriage bond can be legitimate in certain cases provided for by canon law (footnote no. 176 Cf. CIC, canons 1151-1155). If civil divorce remains the only possible way of ensuring certain legal rights, the care of the children, or the protection of inheritance, it can be tolerated and does not constitute a moral offense (CCC Second Edition).

The Rite of Catholic Marriage (1970)

(24) Statement of Intentions. The priest then questions them about their freedom of choice, faithfulness to each other, and the acceptance and upbringing of children: “N. and N., have you come here freely and without reservation to give yourselves to each other in marriage? Will you love and honor each other as man and wife for the rest of your lives?” The following question may be omitted if, for example, the couple is advanced in years. “Will you accept children lovingly from God, and bring them up according to the law of Christ and his Church? Each answers the questions separately.”

(25) Consent. The priest invites the couple to declare their consent: H-1 “Since it is your intention to enter into marriage, join your right hands, and declare your consent before God and his Church.” They join hands/ (A) The bridegroom says: “I, N., take you, N., to be my wife. I promise to be true to you in good times and in bad, in sickness and in health. I will love you and honor you all the days of my life.” The bride says: “I, N., take you, N., to be my husband. I promise to be true to you in good times and in bad, in sickness and in health. I will love you and honor you all the days of my life.” ... (B) ... (The Rite of Marriage. New York, NY: Catholic Book Publishing Co., 1970.)

Art. 126 Third Plenary Council of Baltimore for all USA (1885)

We lay down the precept to all those, who are married, that they not enter civil tribunals for obtaining separation from bed and table, without consulting ecclesiastical authority. But if anyone should have attempted it, let him know that he incurs grave guilt and is to be punished through the judgment of the bishop. [Note, the law about penalty was reorganized by the 1983 Code of Canon Law, but the procedural requirement was not abrogated].

Holy See, *Arcanum Divinae* Encyclical (1880)

23) Let no one, then, be deceived by the distinction which some civil jurists have so strongly insisted upon – the distinction, namely, by virtue of which they sever the matrimonial contract from the sacrament, with intent to hand over the contract to the power and will of the rulers of the State. . . A distinction, or rather severance, of this kind cannot be approved; for certain it is that in Christian marriage the contract is inseparable from the sacrament, and that, for this reason, the contract cannot be true and legitimate without being a sacrament as well. For Christ, our Lord added to marriage the dignity of a sacrament; but marriage is the contract itself, whenever that contract is lawfully concluded. 24) Neither, therefore, by reasoning can it be shown, nor by any testimony of history be proved, that power over the marriages of Christians has ever lawfully been handed over to the rulers of the State. 29) Truly, it is hardly possible to describe how great are the evils that flow from divorce (Pope Leo XIII).

SECONDARY,

Exegetical Commentary, Spanish (1996)

“A estas diferentes circunstancias aludem los dos últimos párrafos del c. 1692 los cuales pueden sistematizarse en atención a los siguientes supuestos: a) En los países cuya legislación permite prever que la sentencia dictada en esta materia no será contraria al Derecho divino, los esposos pueden solicitar la licencia al Obispo de su diócesis de residencia para acudir al fuero civil; b) En los países en los que la decisión eclesiástica de separación personal de los cónyuges no podrá producir efectos jurídico-civiles, porque el Estado no le reconoce ningún valor, los esposos podrán solicitar la licencia para acudir al fuero civil. En estos casos parece que la licencia podrá obtenerse incluso en los supuestos en que se pueda prever que la sentencia civil contraria el Derecho divino. En efecto, no solo se encuentra la partícula disyuntiva “vel” entre este supuesto y el anterior, sino que además parece tratar-se de un problema de estricta justicia” (João Carreras escreve a este respeito comentando esse segundo parágrafo, en *Comentario Exegético al Código de Derecho Canónico*, Vol. IV,2, EUNSA, Pamplona España, pp 1969 e s)

[(English Translation of Spanish) "To these different circumstances alludes the last two paragraphs of c. 1692, which can be systematized according to the following assumptions: a) In countries whose legislation makes it possible to foresee that the sentence pronounced in this

matter will not be contrary to divine law, spouses can apply for the license with the Bishop of their diocese of residence to go to civil jurisdiction; b) In countries in which the ecclesiastical decision of personal separation of the spouses cannot produce legal civil effects because the State does not recognize any value in it, the spouses may request the license to go to civil jurisdiction. In these cases, it seems that the license may be obtained even in cases where it can be expected that the civil sentence run counter to divine law. In fact, not only is the disjunctive particle 'vel' found between this assumption and the previous one, but it also seems to be a problem of strict justice" (In this regard, commenting on this second paragraph João Carreras writes, in Exegetical Commentary on the Code of Canon Law, Vol. IV, 2, EUNSA, Pamplona Spain, pp 1969 & ff.)]

Exegetical Commentary, English (2004)

Since the transformation of the obligatory content of the bond is not limited to the civil effects of marriage, c. 1692 § 1 implicitly establishes that cases of personal separation of the baptized must be taken to the canonical forum, "unless lawfully provided otherwise in particular places." This has been the case, for example, in the decree of the CBI [Conference Bishops Italy], which, in art. 55, lays out that "normally, the cases of separation between spouses are treated before the civil judicial authority, although without exception there exists the right of the faithful to approach the ecclesiastical jurisdiction when they are bound by a religious bond or when reasons of conscience require it."

As can be seen in comparing c. 1692 § 1 and in the CBI, distinct positions are possible, according to each country's legislation relative to marriage and the family, as well as any concordat relationships between the nation and the Church. The last two paragraphs of c. 1692 allude to these different circumstances, which can be systematized in the following suppositions: a) In countries that permit the anticipation that the sentence issued in this matter will not be contrary to the divine law, the spouses can solicit the permission of the bishop of their diocese of residence to go to the civil forum. b) In the countries in which the ecclesiastical decision of personal separation of the spouses does not produce juridical-civil effects, the spouses may ask permission to go to the civil forum. In these cases, it seems that permission could be obtained even for situations where it can be foreseen that the civil sentence will be contrary to divine law (Exegetical Commentary Code of Canon Law. Woodridge, IL: Midwest Theological Forum, 2004. p. 1898).

Commentary, Canon Law Society of America (2000)

While recognizing that marriage is the most intimate and personal of relationships, the Church refuses to treat marriage as a purely private matter between the spouses alone. It is also an institution which has a societal impact. A separation represents at least the temporary failure of a marriage and has a particularly profound effect on the wellbeing of any children born of

the marriage. Thus, spouses may not take the initiative to terminate their common life unless there is a legitimate cause. Canons 1692-1696 outline the process by which ecclesiastical authority determines the existence of a legitimate cause and, if one is proven, permits a separation of the spouses (New Commentary on the Code of Canon Law. Commissioned by the Canon Law Society of America. New York: Paulist Press, 2000 p. 1375-1376)

Italian Commentary (1996)

can. 1153. La separazione temporanea. . . . Questi motivi giustificano la separazione, che tuttavia, per se, DEV'ESSERE AUTORIZZATA dall'ORDINARIO DEL LUOGO(il Vescovo Diocesano: can. 1692 para 2) mediante decreto, poiche essa, anche se motivate, non si reduce a un semplice fatto private dei coniugi. Per la natura stessa del matrimonio e per la sua rilevanza sociale e religiosa, richiede l'intervento della competente autorita', negli stessi casi di separazione temporanea, anche allo scopo di evitare possibili decisioni arbitrarie o avventate. Se la cosa fosse urgente, e attendere la decisione dell'Ordinario costituisse un pericolo, il coniuge innocente puo' separarsi anche di sua iniziativa, presentando nello stesso tempo formale istanza all'Ordinario. Cessando la causa di separazione, si deve ristabilire in ogni caso la convivenza coniugale, tranne che l'autorita ecclesiastica disponga diversamente (Chiappetta, Luigi. Il codice di Diritto Canonico: Commento giuridico-pastorale, III Libro VII e Indice Analetico, Seconda edizione. Roma: Dehoniae, 1996. p. 420).

[(English Translation) can. 1153. Temporary separation. These reasons justify the separation, which, however, in itself, is AUTHORIZED BY THE ORDINARY OF THE PLACE (the Diocesan Bishop: can 1692 para 2) through decree, since it, even if motivated, does not be reduced to a simple private fact of spouses. For the very nature of marriage and for its social and religious relevance, it requires the intervention of the competent authority, in the same cases of temporary separation, also in order to avoid arbitrary or abusive decisions. If it were urgent, and waiting for the Ordinary's decision to be a danger, the innocent spouse can be separated from his own initiative, while at the same time presenting a formal instance to the Ordinary. By ceasing the cause of separation, in each case, marital cohabitation must be reestablished, unless the ecclesiastical authority places it differently.]

TABLE OF CONTENTS WITH LINKS TO BOOKMARKS IN DOCUMENT.

Memoranda of Law

a) [Matter](#) before the Court:

State the particular pleading (motion, petition, objection, exception, application, etc.) before the court for disposition, and the particular relief requested therein.

b) [Statement of Question\(s\)](#) involved:

State the issue(s) in question form containing factual context sufficient to present the praecipe matter to be decided by the Court, each susceptible of a yes or no answer, each followed by the answer desired or advocated.

c) [Facts](#): State the operative facts.

d) [Arguments](#):

State the reason(s) why the court should answer the questions involved as proposed, including citations of the authorities relied on. An authority shall not be cited for general reference but in all cases shall be immediately preceded or followed by its relevant holding or particular proposition for which it stands.

[apply](#) the law

[subject](#) matter jurisdiction lost if misapply law

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e) [Relief](#):

State the specific action(s) requested of the court.

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