NOT FOR THE CARE OF *ALL* SOULS: WHY TENNESSEE'S OUTLAW OF SOLEMNIZATIONS PERFORMED BY ONLINE-ORDAINED MINISTERS VIOLATES FOURTEENTH AMENDMENT EQUAL PROTECTION

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I. Introduction

When the Tennessee legislature first passed marriage statute § 36-3-301 in 2012, it vested the ordination power to take the "care of souls" of all couples seeking to be wed in "any such minister, preacher, pastor, priest, rabbi or other spiritual leader" who considerately, deliberately, and responsibly took marriage vows into the harbor of their solemnization. But, on May 21, 2019, the Governor of Tennessee, Bill Lee, signed into law Public Chapter 415, a bill that amended the state's marriage statute § 36-3-301 (a)(2) to include the language "[p]ersons receiving online ordinations may not solemnize the rite of matrimony."[1] With the brush of a pen the addition of this single sentence sent ripples through the community as couple's seeking officiation from an online-ordained minister realized the state was eliminating a piece of their future.[2]

In response to the § 36-3-301 (a)(2) amendment, the Universal Life Church ("ULC"), the largest online-ordaining ministry in the country, filed a challenge to the law in the U.S. District Court for the Middle District of Tennessee, alleging it was unconstitutional because it "favored one religion over another."[3] Although the law was set to take effect on July 1, 2019, on July 3 Chief District Judge Waverly Crenshaw "ordered all parties to maintain the status quo and ordered a trial on the constitutional issues for later this year."[4] When issuing the temporary order to stay implementation of the amended language, Judge Crenshaw voiced his opinion that the law

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[1] TENN. CODE ANN. § 36-3-301 (West 2019).

[2] Christine Hauser, *Tennessee Says Internet-Ordained Ministers and Marriage Don't Mix*, N.Y. TIMES (July 20, 2019), https://www.nytimes.com/2019/07/20/us/tennessee-internet-ministers-gay-marriages.html.

[3] *Id.*

[4] Joanna L. Grossman, *When Friends Preside Over Weddings: Tennessee Fights the Online Ministers*, VERDICT (Sept. 10, 2019), https://verdict.justia.com/2019/09/10/when-friends-preside-over-weddings-tennessee-fights-the-online-ministers.

presented "serious constitutional issues" and questioned the state's assertion that the amendment was rationally related to a legitimate state interest."[5]

Opponents to the law view the legislation as a targeted attack on LGBTQIA+ and minority rights because it makes it exceedingly more difficult for nontraditional and economically disadvantaged couples to wed.[6] However, this article proposes that the law violates the Fourteenth Amendment Equal Protection Clause ("Equal Protection") for the sole reason that the amendment's explicit discrimination against persons seeking to vest the "care of [their] souls" in an on online-ordained minister of their choice bears no rational relationship to any legitimate state interest.[7] The case is anticipated to go to trial during the Court's 2019 winter session and this article provides an analysis of the precedential case law to assert that the ULC will prevail solely because the Court is likely to find that the additive language is not rationally related to any legitimate state interest proffered by the Tennessee legislature.[8]

First, this article will 1) provide a brief overview of Tennessee's marriage statute § 36-3-301 and Public Chapter 415's legislative progression, 2) discuss prior challenge's to the officiant qualification stipulations in § 36-3-301, 3) examine how non-traditional ministries such as ULC have been treated under other jurisdiction's marriage statutes, and finally 4) analyze recent challenges to marriage statutes brought on Equal Protection grounds. This article will then analyze ULC's pending challenge to Tennessee's Public Chapter 415 against the outlined legislative backdrop and conclude by asserting that the Court will likely hold the amendment to
§ 36-3-301 (a)(2) unconstitutional in violation of the Equal Protection rights of all couples in the state of Tennessee who seek to rest the "care of [their] souls" in their chosen online-ordained minister.[9]

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[5] Associated Press, *Judge Says Tennessee Marriage Law Has Constitutional Issues*, CITY NEWS (July 3, 2019), https://www.citynews1130.com/2019/07/03/judge-says-tennessee-marriage-law-has-constitutional-issues/.

[6] Christine Hauser, *Tennessee Says Internet-Ordained Ministers and Marriage Don't Mix*, N.Y. TIMES (July 20, 2019), https://www.nytimes.com/2019/07/20/us/tennessee-internet-ministers-gay-marriages.html.

[7] TENN. CODE ANN. § 36-3-301 (West 2019).

[8] Hauser, *supra* note 6.

[9] TENN. CODE ANN. § 36-3-301 (West 2019).

II. Legal Background

A. Tennessee Marriage Statute § 36-3-301 and the Legislative Progression Towards Public Chapter 415

Before May 21, 2019 Tennessee's marriage statute § 36-3-301 stated in relevant part "[a]ll regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief, more than eighteen (18) years of age, having the care of souls. . .may solemnize the right of matrimony."[10]
The statute further stipulates:

> (2) In order to solemnize the rite of matrimony, any such minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs must provide for such ordination or designation by a *considered, deliberate, and responsible act*.[11]

However, on May 21, 2019 Tennessee Governor Bill Lee signed Public Chapter 415's one sentence amendment into law and the statute § 36-3-301 now contains an addition to § 36-3-301 (a) (2) which reads "[p]ersons receiving online ordinations may not solemnize the rite of matrimony." [12] The language was added during the state legislature's 2019 session and although the legislature's floor debates are not publicly accessible on this issue, the state's Office of the Attorney General ("Attorney General") has repeatedly indicated in advisory opinions its disapproval of nontraditional officiants such as ULC ministers.

The state's outlook on nontraditional marriage officiation was first made explicit in 2015 when the Attorney General issued an administrative opinion that emphasized "persons ordained by the Universal Life Church are not qualified under Tenn. Code Ann. § 36-3-301 to solemnize a marriage" because "[o]rdination is not done in conformity with the customs of a religious organization and, more importantly, is not in any way related to the statutory requirement that the person ordained be a spiritual leader."[13] The

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[10] *Id.*
[11] *Id.* (emphasis added).
[12] Grossman, *supra* note 4.
[13] Tenn. Op. Att'y Gen. No. 15-14 (Feb. 6, 2015).

Attorney General affirmed its stance in a 2019 advisory opinion that stated "online ordination that requires no more than a click of the mouse would not satisfy the requirement of ordination pursuant to a considered, deliberate, and responsible act." [14]

Despite the Attorney General's explicit disapproval for nontraditional officiation practices, to date only one Tennessee case has explicitly challenged the qualification requirements for valid officiation dictated in the solemnization language of § 36-3-301. Specifically, in *Aghili v. Saadatnejadi* the plaintiff-appellee husband appealed to the Court of Appeals of Tennessee, Middle Section, after the trial court held that his and defendant wife's marriage was invalid because the officiator was "not qualified to perform the marriage under Islamic law." [15] On appeal, the court reasoned that "since courts look to the tenets of the particular religion to determine whether a particular person is a regular minister having care of souls" the husband bore the burden of proving the chosen officiator was not qualified under Islamic law.[16] However, the court relied on a university religion professor's expert opinion that under Islamic law "[o]ne is not required to have an official position in a religious institution such as a mosque (masjid) in order to be qualified to perform such ceremonies," the Court of Appeals reversed summary judgment and held that the marriage was valid under Tennessee state statute § 36-3-301.[17]

B. Outside Jurisdictions Have Produced Contradictory Precedent on Nontraditional Ministry Challenges to State Marriage Statue's Officiation Restrictions

Challenges to state marriage statute's officiation restrictions have produced contradictory precedent across other jurisdictions such as Mississippi, Virginia, and New York. For example, in *Matter of Last Will & Testament of Blackwell* the Supreme Court of Mississippi held that a marriage officiated by a ULC ordained minister was valid under its state marriage statute despite acknowledging that "ULC is hardly a conventional church by Bible Belt standards." Mississippi recognized that although the ULC was unconventional, its mission to "bring people of all religions together

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[14] Tenn. Op. Att'y Gen. No. 19-08 (June 20, 2019) (internal citations omitted).
[15] Aghili v. Saadatnejadi, 958 S.W.2d 784, 785 (Tenn. Ct. App. 1997).
[16] *Id.* at 787.
[17] *Id.* at 788.

instead of separating them" constituted a "spiritual leader of a religious body" within the meaning of its marriage statute. [18]

In contrast, in *Cramer v. Commonwealth* the Supreme Court of Virginia affirmed the trial court's conclusion that UCL ministers were not authorized to officiate weddings under the state's marriage statute because it "[did] not believe that the General Assembly ever intended to qualify, for licensing to marry, a minister whose title and status could be so casually and cavalierly acquired." [19] Similarly, in *Ravenal v. Ravenal* the New York Supreme Court held a marriage officiation performed by a ULC minister was invalid because the "Universal Life Church, Inc., is not an ecclesiastical body of denomination or order; indeed, it is entirely non-ecclesiastical and non-denominational," and therefore, not recognized under the state law.[20] However, in reasoning the *Ravenal* court admitted that "[t]he constitutional guarantee of freedom of religious worship carries with it the right to have one's marriage solemnized by a minister of one's own faith," yet squared this notion with its holding by arguing that the ULC ministers were not "clergyman or minister[s] of any religion" per the statutory requirements.[21]

Relying on *Ravenal*, in *Rubino v. City of New York* the New York Supreme Court held that the city's refusal to register ULC minister's as officiants under the state's marriage law was not a violation of their Fourteenth (or First) Amendment rights because the state had an interest in "protecting the rights and duties derived from marriage;" and therefore, refusal was not arbitrary.[22] The ULC ministers initially brought the action because they believed the state was "prohibiting them from exercising a right which their church specifically grants them: the right to perform marriages."[23] Additionally, in *Ranieri v. Ranieri* the New York Supreme Court, Appellate Division directly disagreed with the Supreme Court of Mississippi and held that a couple's marriage was invalid because it was officiated by a ULC minister whom the state's statute did not authorize.[24] While directly contrasting Mississippi in its holding,

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[18] *In re* Will of Blackwell, 531 So. 2d 1193, 1194-96 (Miss. 1988).
[19] 202 S.E. 2d 911, 915-17 (1974).
[20] 338 N.Y.S. 2d 324, 328 (Sup. Ct. 1972).
[21] *Id*. at 326.
[22] 480 N.Y.S.2d 971, 972 (Sup. Ct. 1984).
[23] *Id*.
[24] 539 N.Y.S.2d 382, 383 (1989).

the court unsurprisingly aligned its reasoning with cases such as *Cramer*, *Ravena*l, and *Rubino*.[25]

Examining the contrasting analyses of multiple jurisdictions outside Tennessee provides necessary insight into the persuasive authority the Court may rely on when considering the state's rational basis defense. However, recent developments in Equal Protection challenges to state marriage ordination requirements must be considered to contextually assert that the Court is likely to hold Public Chapter 415 is not rationally related to any legitimate state interest.

C. Supreme Court of the United States' Fourteenth Amendment Equal Protection Foundation and How Rational Basis Review Decided Recent Challenges to State Statute Solemnization Restrictions

The Supreme Court of the United States has held that when a state government fails to prove it has a legitimate interest in a law that is rationally related to furthering its purported interest it violates Equal Protection. Expressly, in *Romer v. Evans* the Court held that a Colorado state statute that prohibited legislative protection for homosexuals violated Equal Protection because "its sheer breadth [was] so discontinuous with the reasons offered for it that the amendment seem[ed] inexplicable by anything but animus toward the class it affects; it lack[ed] a rational relationship to legitimate state interests." [26]

Further, in *Obergefell v. Hodges* the Court held that it was a violation of Equal Protection and Due Process for a state to deny same-sex couples the fundamental right to marry.[27] The Court reasoned that "in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged." [28]

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[25] *See also* Alexandra Marin, *Internet-Ordained Ministers and Marriage in Pennsylvania: Bucks County and York County Disagree on Legality of Marriage According to Pennsylvania Marriage Act*, 10 RUTGERS J. L. & RELIGION 18, 2009.

[26] 517 U.S. 620, 635 (1996).
[27] Obergefell v. Hodges, 135 S. Ct. 2584, 2608 (2015).
[28] *Id*. at 2603.

Accordingly, the Court ruled in favor of the plaintiffs concluding that "[t]hier plea is that they do respect [the institution of marriage], respect it so deeply that *they seek to find its fulfillment for themselves*," a plea granted by the Constitution.[29]

In recent years, jurisdictions outside Tennessee have held on Equal Protection challenges to state marriage statutes. Particularly, in *Ctr. for Inquiry, Inc. v. Warren,* the Eastern District of Texas ruled on whether the state's marriage statute was unconstitutional when a secular nonprofit alleged its Equal Protection rights were violated because the statute prohibited its members from solemnizing marriages by only allowing "religious officiants and certain government officials to lawfully solemnize marriage ceremonies." [30] The nonprofit's mission was to foster "the pursuit of ethical alternatives to religion" and asserted that the statute failed rational basis review because it treated those seeking secular marriage more favorably than non-secular individuals.[31]

However, the Eastern District of Texas reasoned that this secular pursuit was not prohibited by the statute because it still "provides alternatives for secular individuals who do not wish to be married by a religious official by providing a list of secular individuals who may solemnize a marriage," such as justices of the peace and government officials.[32] In holding, the court stated that the statute passed rational basis review because "it is unclear that the state is intentionally treating them differently" by the language provided.[33]

In contrast, in *Marion*, the Seventh Circuit struck down a provision of Indiana's marriage statute as unconstitutional when a nonprofit humanist group challenged it on Equal Protection grounds. The humanist group asserted that because the statute "includes religious officials designated by religious groups but omits equivalent officials of secular groups such as humanist societies," it violates its First Amendment and Equal Protection rights.[34] The humanist society's beliefs centered on "promot[ing] ethical living without belief in a deity" and "maintains that its methods and

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[29] *Id.* at 2608.
[30] Ctr. for Inquiry, Inc. v. Warren, No. 3:18-CV-2943-B, 2019 U.S. Dist. LEXIS 138839, at *1 (N.D. Tex. Aug. 16, 2019).
[31] *Id.*
[32] *Id.* at *14.
[33] *Id.*
[34] Ctr. for Inquiry, Inc. v. Marion Cir. Ct. Clerk, 758 F.3d 869, 871 (7th Cir. 2014).

values play the same role in its members' lives as religious methods and values play in the lives of adherents."[35]

The court reasoned that because Indiana's statute allowed traditional and other non-traditional affiliations to legally solemnize marriage in the state (such as ULC online-ordained ministers and Quakers) it would not only be "hypocritical" - but unconstitutional - to prohibit other non-traditional fundamental belief systems from exercising the same power under the same law.[36] In reasoning, the court further emphasized that "[t]he Supreme Court also has forbidden distinctions between religious and secular beliefs that hold the same place in adherents' lives." [37]

Thus, the court concluded that "the current statute discriminates arbitrarily among religious and ethical beliefs" by depriving humanists of a "ceremony that celebrates *their* values" and reversed and remanded on the ground that the statute violated not only the First Amendment, but the Equal Protection Clause of the Fourteenth Amendment.[38] These recent developments in Equal Protection challenges to state marriage statute's officiation restrictions must not be ignored by the Court.

III.Discussion

A. Public Chapter 415's Amendment to Tennessee Statute § 36-3-301 Violates the Equal Protection Rights of All Couples Seeking to Vest the Care of Their Souls in the Considered, Deliberate, Responsible Hands of Their Chosen Online-Ordained Minister.

Against the legislative backdrop of multiple jurisdictions and recent developments in Equal protection challenges to statutory restrictions on marriage solemnization, the Court is likely to align with the principles set forth by the Supreme Court and hold that the targeting of all couples seeking to vest the care of their souls in an online-ordained minister violates Fourteenth Amendment Equal Protection guarantees. Just as the Supreme Court applied rational basis review and empowered persons to fulfill and define their identity *for themselves* in *Romer* and *Obergefell* by striking down

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[35] *Id.*

[36] *Id.* at 874-75.

[37] *Id.* at 873 (citing to Welsh v. United States, 398 U.S. 333 (1970) (the Court held "serious and sincere moral system must be treated the same as theistic religion for the purpose of conscientious objection").

[38] *Id.*

state attempts to constrict individual rights, here the Court must find that Public Chapter 415 disempowers individual couples from choosing in whom to vest the care of their souls.

Although this article does not propose that Tennessee statute § 36-3-301 is targeting LGBTQIA+ persons explicitly as in *Obergefell*, the issue and reasoning remain the same because statute § 36-3-301 explicitly identifies one class of persons to be treated unequally under the law. Tennessee statute § 36-3-301 explicitly denies the right of marriage to a specific group of persons – those persons that find the "care of their souls" to come from a chosen online-ordained officiant licensed by unconventional organizations including, but not limited to, plaintiff ULC. Just as in *Obergefell*, the plaintiffs here plead for the same relief – equal protection of their right to respect and fulfill the sacred institution of marriage in the way they choose - *for themselves*.[39]

Here, in the context of Tennessee statute § 36-3-301, the Court is likely to similarly apply rational basis review, and in light of the proceeding Equal Protection case law, will likely conclude that Public Chapter 415 violates the Equal Protection rights of all Tennessee couples seeking officiation from their personally selected online-ordained ministers because prohibiting online ordination is not rationally related to any legitimate state interest.[40] Thus, the Court should view the ULC plaintiffs and affected couples as a "class of one," defined as a "discrete group of people, who do not themselves qualify as a suspect class, alleging the government has singled them out for differential treatment absent a rational reason" and conclude that the statute § 36-3-301 violates the Equal Protection rights of this "class of one" the Tennessee legislature has undisputedly targeted. [41]

Although online-ordained ministers, or those choosing to be ordained by an online minister are not a suspect class in and of themselves, within the meaning of Equal Protection they are a class of one specifically discriminated against by statute § 36-3-301 because there is no rational basis related to any legitimate end.

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[39] *Id.*

[40] *See also* McCarver v. Ins. Co. of State of Pennsylvania, 208 S.W.3d 380, 385 (Tenn. 2006) (reasoning that "a legislative enactment passes rational basis review if any possible reason can be conceived to justify the classification" when it upheld the validity of a worker's compensation statute holding the law's classification did not violate article XI, S8 of the Tennessee constitution) (citing Stalcup v. City of Gatlinburg, 577 S.W.2d 439, 441-42 (Tenn. 1978)) (internal citations omitted).

[41] *Id.*

However, Tennessee case law has never ruled on an Equal Protection challenge to statute § 36-3-301's ordination requirements and therefore the analysis now turns to recent developments in other state jurisdictions.

Further, as exemplified in *Aghil*, Tennessee itself has held that the care of souls must be defined from the viewpoint of the religion itself and not solely by the detached Tennessee legislature. While *Aghili* did not directly address the validity of online-ordained ministers, the case exemplifies how the ordination qualifications set forth in § 36-3-301 are intended to be applied – *from the viewpoint of the religion that the couple themselves decided to vest the "care of [their] souls*." [42] If the Court of Appeals determined the validity of an Islamic officiator based on the opinion of one expert, then the Court here must be consistent with state precedent and look *to the beliefs of the couples* seeking to be married by the online-ordained ministers the couples have chosen – not the baseless and irrational opinion of the state legislature. *Aghili* provides a strong foundation for the Court to build its rational basis review of ULC's challenge to Public Chapter 415, but a broader precedential analysis can be disseminated from other jurisdiction's case law that addresses nontraditional officiants including ULC ministers.

B. Tennessee's Explicit Targeting of the Class of One - All Couples Seeking Officiation by Online-Ordained Ministers – Is Not Rationally Related to Any Legitimate State Interest

Not only does Public Chapter 415 directly contradict the Tennessee court's holding in *Aghil* and the Equal Protection foundation solidified by the Supreme Court of the United States, it is also unsupported by the persuasive authority produced by multiple jurisdictions. Unlike in *Rubino* where the ministers asserted a violation of their right to *perform* marriages, the persons of Tennessee assert the right to *choose how their marriage is officiated*.[43] Just as the court in *Blackwell* recognized the inherent fundamental beliefs driving the ULC ministers and thus upheld the couple's marriage as valid, the court should recognize the validity of the fundamental beliefs of the couples in Tennessee seeking officiation by online-ordained ministers and the constitutional

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[42] TENN. CODE ANN. § 36-3-301 (West 2019) (emphasis added).
[43] Hauser, *supra* note 2.

rights violated by prohibiting them from making the choice that aligns with their personal beliefs.

Further, dissimilar to the Texas statute at issue in *Warren*, in Tennessee the ULC is not asserting that the general language of statute § 36-3-301 that lists – as in Texas – those that can officiate, but rather, that the added language expressly targets and discriminates by actively prohibiting *a specific group* – as opposed to broadly defining who is allowed. In contrast to the broad language of the Texas marriage statute, the Tennessee legislature has become unmoored from legitimacy by targeting a "class of one" without any rationally related backing from its own courts or other.[44]

Although the court held in favor of the defendant Texas government by granting its motion to dismiss the plaintiff's claim that the statute violated its Equal Protection rights, the court's reasoning supports the opposite result in ULC's pending challenge to the recently amended Tennessee marriage statute § 36-3-301. In reaching its conclusion that the Texas statute passed rational basis review under its application of the "class of one" analysis, the court reasoned that the government had a legitimate interest in "ensuring the respect, solemnity, and gravity of marriage ceremonies in the state" and that the statute "rationally serves that purpose by limiting secular officiants to current and retired judges and by leaving it up to the religious organization—any religious organization—to determine who is authorized in accordance with its belief system to solemnize marriages. [45]

Here, statute § 36-3-301 explicitly restricts *any religious organization* such as the ULC from "determin[ing] who is authorized in accordance with its belief system to solemnize marriages" because it directly prohibits individuals identifying with the values of the ULC from determining who can "care for their souls" within the meaning of Tennessee's marriage law. Therefore, in line with the Texas court's reasoning, the Tennessee government's interest in enforcing the amended language is *not* legitimate and must be found to fail rational basis review. Thus, regardless of the fact that Public Chapter 415's amendment to statute § 36-3-301 also violates the Establishment and Free Exercise clauses, it can – and must – be struck down as unconstitutional in violation of Equal Protection alone.

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[44] *Ctr. for Inquiry, Inc.*, 2019 WL 3859310 at *14 (unpublished).
[45] *Id.* at *15.

Rather, the pending complaint is similar to the Seventh Circuit's holding in *Marion* because the language added to the Tennessee statute § 36-3-301 discriminates arbitrarily between traditionally recognized fundamental belief systems and belief systems that celebrate *the individual couple's values* by honoring their marriage vow through a nontraditional online-ordained minister. Further, the Equal Protection violation in the case at hand goes beyond even that of the Indiana government because the language is not just *omitting* the inclusion of a fundamental belief system – but actively targeting persons whose values align with online-ordained ministers.

IV.Conclusion

The amending language to Tennessee marriage statute § 36-3-301 (a)(2), "persons receiving online ordinations may not solemnize the rite of matrimony," is not rationally related to any legitimate state interest because it is overbroad in its restriction while simultaneously targets a class of one. Against the backdrop of the binding Tennessee state law and the persuasive developments adjudicated across multiple other jurisdictions, the U.S. District Court for the Middle District of Tennessee is likely to hold that Public Chapter 415 violates the Fourteenth Amendment Equal Protection rights of all Tennessee couple's seeking officiation by online-ordained ministers, including those ordained by plaintiff ULC. The detached Tennessee legislature cannot determine who is considered, deliberate, and responsible enough to care for the souls of each unique couple seeking to be officiated by an online-ordained minister – only the souls *themselves* can determine what vessel is capable of harboring their sacred vows.