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Joanna L. Grossman

*Maurice A. Deane School of Law at Hofstra University*

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# Verdict

November 21, 2011

[Joanna L. Grossman](#)

## Can Laypersons Ordained Online as Universal Life Church Ministers, or the Like, Officiate at Weddings? In Some States, the Answer Is No



Can a “Pastafarian” minister who was ordained online by the Church of the Flying Spaghetti Monster (ordination available [here \(http://www.venganza.org/ordination/\)](http://www.venganza.org/ordination/)) solemnize marriages in the U.S.? How about a minister of the Universal Life Church, ordained online without a fee and with no prerequisites? Or ministers of any number of other religions that may not have any belief system, and that will ordain anyone who wants to be ordained?

The answer depends on each state’s marriage laws and, in particular, on the statutory definition of an authorized officiant. Perhaps surprisingly, though, marriages are solemnized by ministers of these religions even in states where there is good reason to believe such ministers do not have the authority to preside over a valid wedding ceremony.

As I discussed in **Part One** (<http://verdict.justia.com/2011/11/01/can-universal-life-church-ministers-officiate-at-weddings-in-some-states-the-answer-is-no>) of this series of columns, valid marriages require a license, witnesses, and solemnization by a person who has been granted the legal—not simply the religious—authority to preside over weddings. Moreover, during the wedding, the officiant must obtain the express consent of the parties to marry and then declare them to be married.

The failure to satisfy any one of these requirements can render the marriage invalid—and subject to annulment by a court. It can also affect other legal proceedings in which rights or obligations turn on the existence of a valid marriage. It is thus important to know whether an officiant you have selected to marry you in fact has the legal authority to do so.

In this column, I will discuss cases from several states that have invalidated marriages that were solemnized only by ministers ordained through the mail or online, with a special focus on New York, where the validity of such marriages is especially doubtful.

### The World of Mail-Order and E-Mail-Order Ministries

As I discussed in greater detail in Part One of this two-part series of columns, the king of online ministries is the

Universal Life Church (ULC), which has ordained over 20 million ministers since its founding in the early 1960s in Modesto, California. The ULC has no fixed set of beliefs; its only mantra is that ministers must “do that which is right.” Its website states that ministers have the authority to perform marriages, and the site includes a state-by-state rundown of marriage laws. However, the site neglects to mention the court opinions that have been issued in as many as four states (and that are discussed below) that have ruled ULC marriages invalid.

Because the ULC is by far the largest provider of ordinations, online or otherwise, its ministers have been the subject of all or virtually all of the litigation about online ordination and marriage. But the questions of what constitutes a religion, who qualifies as a minister, and whether the state has any business delegating a legal function to clergy of any religion must be answered more generally.

Other unconventional churches also ordain ministers that ostensibly could perform weddings. Some adhere to a set of more or less religious beliefs, but have an unconventional structure and ordain ministers by request. Others seem unconventional across the board. The Church of Body Modification, for example, is all about body piercing. The Church of the Flying Spaghetti Monster (FSM) is at least satirically theistic, worshipping a Flying Spaghetti Monster who is said to have created the universe.

FSM began in 2005 as an open letter by Bobby Henderson to the Kansas State Board of Education demanding equal time for his theory of creation if schools were to begin teaching intelligent design alongside evolution. FSM then evolved into an online ministry that now ordains ministers, who, according to the website, have begun to perform weddings. (It also sells mugs, bumper stickers, and t-shirts with catchy “pastafarian” sayings like “he boiled for your sins,” “carbo diem,” and “touched by his noodly appendage”). The only “dogma allowed,” according to the website, is the “rejection of dogma.” FSM members believe that pirates have gotten a bad rap, that every Friday is a religious holiday, that beer is good, and that life should not be taken too seriously.

Putting its penchant for satire aside, this Church, like the ULC, ordains ministers online without any prerequisites at all. In its FAQs, the FSM website offers this defense for FSM ministers whose authority is challenged: “FSM is a real, legitimate religion, as much as any other. The fact that many see this is as a satirical religion doesn’t change the fact that by any standard one can come up with, our religion is as legitimate as any other. And that is the point.”

Can FSM—or ULC—ministers solemnize marriages that are legally valid? The answer to that question is “It depends.”

### **The Validity of Marriages Conducted by Ministers Ordained Online: A Checkered Landscape**

As I discussed in Part One of this series, the Supreme Court of Mississippi ruled that the ULC was “enough of a religious body,” and one of its ministers “enough of a spiritual leader” to validate a marriage. By contrast, though, the Virginia Supreme Court refused to recognize a ULC minister as a valid officiant given how “casually and cavalierly” the status was acquired.

Moreover, there are several other states in which the validity of marriages presided over by ULC ministers has been challenged.

A 1980 North Carolina case, *State v. Lynch*, involved the prosecution of a man for bigamy. James Lynch had first married Sandra, and then, without divorcing Sandra, had also married Mary Alice. For this, he was charged with bigamy. His defense was that his marriage to Sandra, which had been solemnized by her father, a ULC minister, was invalid.

The North Carolina Supreme Court reversed his conviction, holding that because the marriage between James and Sandra was not valid, James was not guilty of bigamy. Although the court in *Lynch* said that the state does not have the power “to declare what is or is not a religious body or who is or is not a religious leader within the body,” it nonetheless held that “A ceremony solemnized by a Roman Catholic layman in the mail order business who bought for \$10.00 a mail order certificate giving him ‘credentials of minister’ in the Universal Life Church, Inc.—whatever that is—is not a ceremony of marriage to be recognized for purposes of a bigamy prosecution in

the State of North Carolina.”

To protect the expectations of other married couples who had used ULC ministers, the North Carolina state legislature adopted a law to make clear that pre-existing ULC marriages were all valid as long as they had not already been specifically invalidated by a court. As to marriages after that date in 1981, the statute was silent. The implication was that such marriages could no longer be celebrated in North Carolina. Moreover, a later North Carolina case suggested, but did not definitively rule, that ULC marriages are no good there.

In Utah, the legislature passed a statute in 2001 prohibiting mail-order or Internet ministers from solemnizing marriages. Doing so, moreover, was deemed a crime punishable by up to three years in prison. But this law was challenged shortly thereafter. A ULC minister, J.P. Pace, who had performed several marriages in Utah challenged the law on a variety of federal constitutional grounds. The court rejected his free exercise claim—holding that there is no constitutional right to solemnize civil marriages—but upheld his due process claim because the law employed arbitrary means to protect the integrity of marriages, especially since it seemed to allow for the possibility of ministers being ordained by fax or telephone.

In Pennsylvania, trial courts have reached different conclusions about the validity of ULC marriages. A 2007 case from York County, *Heyer v. Hollerbush*, ruled that a mortgage was invalid because the couple’s marriage was solemnized by a ULC minister. But three other courts have held to the contrary in similar cases.

### **Marriage Law in New York: ULC Marriages are Vulnerable to Challenge**

The first challenge to the validity of a ULC-solemnized marriage took place in New York in 1972. In that case, *Ravenal v. Ravenal*, Richard Ravenal sought an annulment of his marriage to Cathy on the grounds that the ULC minister who presided over their wedding did not have the authority to solemnize marriages under New York law. The minister was a guitar-playing folk-singer, as well as a member, along with the parties, of an “encounter group.”

New York’s Domestic Relations Code provides that valid marriages may be solemnized by a “clergyman or minister of any religion.” The statute borrows the definition of clergyman from another provision of the code, which defines “church” to include both incorporated and unincorporated churches—the latter as a “congregation or society, or other assemblage of persons who are accustomed to statedly meet for divine worship or other religious observances. . . .”

A “clergyman” or “minister” is defined by the Religious Corporations Law to include “a duly authorized pastor, rector, priest, rabbi, and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.”

Does a minister ordained by mail or online by the ULC meet this standard? The trial court in *Ravenal* concluded that he does not. Prior cases had held that the constitutional guarantee of free exercise of religion includes the “right to have one’s marriage solemnized by a minister of one’s own faith,” and that a minister need not necessarily be “ordained,” as long as he or she is “recognized by his church and congregation as a minister.” But still, the court held, the ULC minister who performed the Ravenals’ wedding did not meet the standard.

The court was unsure whether the ULC was a “religious denomination,” and the ULC’s lack of any doctrine or set of beliefs did nothing to earn it the benefit of the doubt. The court found no record of the church’s existence in New York. And the court was clearly not impressed with the flimsy mechanism by which anyone could become a minister, nor the fact that over a million people had already claimed that “status”. It deemed the ULC “entirely nonecclesiastical and nondenominational.” And, it held, the Ravenals’ officiant—whose authority, the court commented, “rests solely on his having obtained in the mail the card entitled “Credentials of Ministry”—did not qualify as a “clergyman,” particularly given the “absence of an actual church or stated meeting place for worship or any form of religious observance, presided over or directed by a person regarded by such a group as its minister.”

A dozen years later, a group of ULC-ordained ministers sued the New York City clerk's office for refusing to register them as officiants qualified to perform marriages. New York City is unusual in requiring officiants to register in advance, and, at the time this case was brought, it refused to register ULC ministers.

The ministers challenged the constitutionality of the clerk's exclusion of them, but, before a trial court in New York County, they lost on all counts. In the 1989 case of *Rubino v. City of New York*, the court refused to find a violation of the First Amendment's free exercise of religion clause in the clerk's policy. The First Amendment does not provide absolute protection for conduct (as opposed to religious beliefs). Moreover, the court noted, there is no recognized free exercise right to perform marriages. And there is nothing in the constitution requiring the state to "bless" religious acts.

The court also rejected the claim that the city clerk's policy was sufficiently arbitrary to violate Due Process. Given that a court in the same county had interpreted the relevant statute to exclude ULC ministers as authorized officiants, the court held that it was distinctly non-arbitrary for the city clerk's office to refuse to register such ministers as officiants. The court also held that the state has a strong interest in protecting the "rights and duties derived from marriage" and in protecting individuals from "the possibility that those marriages might be declared invalid or annulled" because of the officiant's religious credentials.

The final New York opinion concerning the validity of ULC marriages came from an appellate court. In *Ranieri v. Ranieri* (1989), the court held that a marriage solemnized by a ULC minister was void for that reason. This mattered to the couple at issue because the parties had executed two prenuptial agreements "in contemplation of marriage" that would have no effect if no valid marriage had ever been created.

The court in *Ranieri* cited the opinions in *Rubino* and *Ravenal* with approval even though those opinions were not binding on an appellate court. The *Ranieri* court also discussed at length the opinions from North Carolina and Virginia that ruled that ULC ministers were unqualified, under the law of those states, to solemnize marriages. In the end, the court concluded that New York's relatively restrictive definition of church and clergyman meant that a ULC minister could not meet the standard, and that the failure to have utilized an authorized officiant was fatal to the marriage's validity.

### **What is the Status of ULC Marriages Celebrated in New York?**

Several years ago, the New York City Clerk's office reversed its policy and began allowing ULC ministers to register with that office as officiants. But does the city clerk's view of New York marriage law make any difference? It is certainly not definitive. State courts are the interpreters of state statutes, and a state's highest court has the final say. If courts say that a ULC minister does not satisfy the statutory definition of an authorized officiant, the clerk's office has no power to override that interpretation.

New York's highest court—the Court of Appeals—has never weighed in on the ULC minister question. But three lower courts have, and one of the decisions is binding upon all the trial courts in the Second Department. Together, these rulings suggest that those who rely on the services of a ULC minister to solemnize their marriages do so at their own risk.

This is particularly so given the ruling in *Ranieri*, in which the appellate court ruled that the marriage was *void*—that is, invalid *per se*, whether or not a court ever declares it so—rather than merely *voidable*—that is, capable of being annulled by a court. A void marriage has no effect even if no court ever decrees it a nullity. Parties to such a marriage cannot rely on an estoppel or claim rooted in reliance on the city clerk's view of applicable marriage law. It also means the marriage is invalid even if neither party choose to nullify it.

### **Why the Validity of A Marriage Matters**

Although James Lynch benefitted from the court's ruling that his ULC marriage was invalid—he was spared a conviction for bigamy based on a subsequent marriage—many whose marriages are declared invalid will suffer.

The husband in *Ranieri* learned the hard way that the legal validity of a marriage can matter. The woman he thought he had married had promised in a prenuptial agreement to pay him \$90,000 within 90 days of the

wedding. But when the marriage was declared invalid because of the officiant, the prenuptial agreement became unenforceable, because the marriage it contemplated never came into existence.

Others may find themselves on the receiving end of an annulment petition, brought by a spouse who has figured out that he or she has an easy way out of the marriage. At the altar, no one is thinking about what happens when the marriage turns sour. (A classic study by Lynn Baker and Robert Emery found that while most people know that the divorce rate hovers around 50 percent, almost everyone assesses their own risk of divorce at or near zero.) And if the parties remain happily married—and neither needs an easy escape—the validity of the marriage may never be tested in court.

However, the validity of a marriage is relevant to any number of legal issues, including, but not limited to wrongful death lawsuits; inheritance rights; survivor's rights under insurance, pensions, and governmental programs; and tax liability. And a marriage that is void rather than voidable, as discussed above, is even more vulnerable. Thus even bona fide marital bliss is no guarantee that the validity of the marriage will never be tested in court. A question about the officiant's authority to solemnize will hover like a dark cloud over the marriage.

## Conclusion

The fact that there are several states in which ULC marriages have been declared invalid suggests that would-be spouses ought to, at a minimum, be more cautious in selecting an unconventionally-ordained officiant. And this is especially true in states like New York, in which marriage laws have a strict definition of “clergy,” or in which courts have expressed concern about the validity of such marriages.

But these cases also raise an important question: Should state legislatures be in the business of delegating a legal function to religious officials in the first place? And, if they do, should they pick and choose among religions or among “ministers” within those religions? Arguably, the answer to both questions is no.

Civil marriage is a legal status with important consequences. If the state chooses to require legal formalities like a license, an officiant, a ceremony, and paperwork to make it official, then it should rely on public officials to make sure the requirements are met. That makes more sense than relying on religious status as a proxy for one's capability to implement the state's marriage requirements, and as a tool to impress upon couples the seriousness of the legal act of getting married. There is no reason that civil and religious marriages need to be intertwined in the way they often are. Couples who want a religious wedding can always stop at city hall en route to the church.

But if the state is going to delegate the job of “marriage officiant” to religious officials, then it ought to tread carefully in drawing lines among religions or among religious officials. Whether the state can constitutionally draw these kind of lines is a thorny and unresolved question. (The Supreme Court, this term, is considering a case about the scope of the ministerial exception under Title VII that involves exactly this type of question.) Perhaps the Mississippi Supreme Court was right to be contented by its standard requiring merely “enough of” a religion and “enough of” a minister for a marriage license to be valid. Anything more precise threatens the important line between church and state.



Joanna L. Grossman, a Justia columnist, is the Sidney and Walter Siben Distinguished Professor of Family law at Hofstra University. She is the coauthor of [Inside the Castle: Law and the Family in 20th Century America](#) (Princeton University Press 2011), co-winner of the 2011 David J. Langum, Sr. Prize for Best Book in American Legal History, and the coeditor of [Gender Equality: Dimensions of Women's Equal Citizenship](#) (Cambridge University Press 2009). Her columns focus on family law, trusts and estates, and sex discrimination.

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