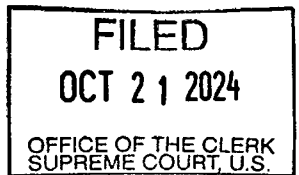


24-5844

No.

ORIGINAL

IN THE  
Supreme Court of the United States



KIMBERLY EDELSTEIN,

Petitioner

v.

MAX EDELSTEIN,

Respondent

On Petition For Writ Of Certiorari  
To Court of Appeals for the Twelfth District of Ohio

PETITION FOR WRIT OF CERTIORARI

Kimberly Edelstein  
Pro se  
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Carey, OH 43316  
(614) 975-2400

### QUESTIONS PRESENTED

1. Does the Ohio court's decision to invalidate a Jewish Ketubah as an unenforceable "promise to marry" and void as against public policy conflict with decisions of other state courts that have recognized religious marriage contracts as valid and enforceable agreements, thereby creating a significant split among state courts on an important federal questions concerning religious liberty and contract rights that must be resolved by the U.S. Supreme Court?

2. Should religious marriage contracts, that protect women of faith-based communities, be deemed valid under the First Amendment's Free Exercise Clause, the liberty and property protections of the Fifth and Fourteenth Amendments, and be enforceable under neutral principles of contract law consistent with the U.S. Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979)?

3. Does the Ohio court's refusal to apply neutral principles of law to interpret and enforce a Jewish Ketubah conflict with the U.S. Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979), which held that courts may resolve disputes involving religious entities by applying neutral principles of law without violating the Establishment Clause?

### LIST OF PARTIES

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The following parties are the original Plaintiffs: S.E., a minor, and Kimberly Edelstein, Individually and a Parent of S.E., a minor. The following parties are the original Defendants: Menachem Edelstein, aka Max Edelstein, Eliott Edelstein, and Amanda Wright. Only Kimberly Edelstein, Individually and Menachem Edelstein, aka Max Edelstein are parties in this proceeding. S.E., a minor was involved in the state Appellate Court case, but is not involved in this Petition as his mother, Kimberly Edelstein, is pro se and can only represent herself. None of the parties are corporate entities requiring a corporate disclosure pursuant to Rule 29.6 and thus there is no parent or publicly held companies owning 10% or more of a corporation's stock.

#### RELATED CASES

- S.E., a minor, et al. v. Amanda Wright, et al., No. 23CV096112, Warren County Court of Common Pleas, General Division, Ohio. Motion to Dismiss Defendant Menachem Edelstein, aka Max Edelstein, granted July 26, 2023. Unpublished.
- S.E., a minor, et al. v. Max Edelstein, No. 2023-08-064, Court of Appeals for the Twelfth District of Ohio. Judgment entered March 25, 2024. Published at 2024-Ohio-1090.
- S.E., a minor, et al. v. Max Edelstein, No. 2024-0500, Supreme Court of Ohio. Jurisdiction declined July 23, 2024. Published at 174 Ohio St.3d 1547, 2024-Ohio-2718, 238 N.E.3d 114.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☒ reported at 2024-Ohio-1090; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the Warren County Common Pleas court appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Ohio Supreme Court, which appeal was not accepted for review, appears at Appendix C and is reported at 174 Ohio St.3d 1547, 2024-Ohio-2718, 238 N.E.3d 114.

## JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was July 23, 2024.  
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the U.S. Constitution provides that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. *USCS Const. Amend. 1.*

2. The Fifth Amendment to the U.S. Constitution provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, accepting cases arising in the land or Naval forces, or in the Militia, when an actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. *USCS Const. Amend. 5.*

3. Section 1 of the 14th Amendment to the U.S. Constitution provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*USCS Const. Amend. 14, Sec.1.*

4. Ohio Revised Code §2305.29 provides that:

No person shall be liable in civil damages for any breach of a promise to marry, alienation of affections, or criminal conversation, and no person shall be liable in civil damages for seduction of any person eighteen years of age or older who is not incompetent, as defined in section 2111.01 of the Revised

*Code. Oh. Rev. Code §2305.29.*

5. Ohio Revised Code §3103.05 provides that:

(A) A husband or wife may enter into any agreement or transaction with either of the following:

(1) the other spouse, subject to the general rules that control the actions of persons occupying the confidential relations with each other;

(2) with any other person, which either might if unmarried.

(B) An agreement under division (A)(1) of this section that alters the legal relations between the spouses shall comply with section 3103.061 of the Revised Code. *Oh. Rev. Code 3103.05.*

6. Ohio Revised Code §3103.06 provides that:

(A) A husband and wife may, by any contract with each other, do any of the following:

(1) Enter into a postnuptial agreement that alters their legal relations with each other;

(2) Modify or terminate an antenuptial or postnuptial agreement or any other agreement that alters their legal relations with each other;

(3) Agree to an immediate separation and make provisions for the division of property and support of either of them and their children during the separation.

(B) An agreement under division (A)(1) or (2) of this section shall comply with section 3103.061 of the Revised Code. *Oh. Rev. Code §3103.06.*

7. Ohio Revised Code §3103.061 provides that:

Any agreement altering legal relations between spouses established under division (A)(1) of section 3103.05 or division (A)(1) or (2) of section 3103.06 of the Revised Code shall be valid and enforceable, with or without consideration, if all of the following apply:

- (A) The agreement is in writing and signed by both spouses;
- (B) The agreement is entered into freely without fraud, duress, coercion, or overreaching;
- (C) There was full disclosure, or full knowledge, and understanding of the nature, value, and extent of the property of both spouses;
- (D) The terms do not promote or encourage divorce or profiteering by divorce." *Oh. Rev. Code §3103.061.*

### STATEMENT OF THE CASE

This case arises from a Jewish Marriage Contract, called a Ketubah, that was entered into by two Orthodox Jews, Elliott Edelstein ("Mr. Edelstein") and Kimberly Edelstein ("Petitioner"). When Mr. Edelstein<sup>1</sup> breached that agreement, Petitioner brought an action in the Warren County Court of Common Pleas in Warren County, Ohio for breach of contract and various other torts, including intentional interference with a contractual relationship by Respondent, Max Edelstein ("Respondent"). Respondent filed a Motion to Dismiss, which the trial court granted, based on a state statute, Oh. Rev. Code §2305.29 which forbids civil damages for the breach of a "promise to marry." Petitioner filed an appeal to the Twelfth District Court of Appeals. Respondent did not file an Appellee Brief. The Court of Appeals affirmed the judgment of the trial court dismissing the Petitioner's Complaint as to Respondent. The Court of Appeals ruled that neither Respondent, nor any person (including the husband), could be liable for civil damages arising from a Ketubah and that the Complaint raised amatory claims of a breach of a promise to marry

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<sup>1</sup> The Petitioner's husband, who signed the Ketubah, had defaulted on his Answer and a Motion for Default Judgment was before the trial court at the time the appeal was filed to the Twelfth Appellate District Court in Ohio. The trial court declared it lost jurisdiction when the Notice of Appeal was filed and placed a stay on all other claims. Appellant filed a Motion to lift the stay as to the defaulting party on the basis that the trial court retains jurisdiction "not inconsistent with the court of appeals' jurisdiction to reverse, modify, or affirm the judgment" (See, *Yee v. Erie County Sheriff's Department*, 51 Ohio St.3d 43), but the trial court denied Appellant's motion. The claims against the two remaining Defendants at the trial court level are currently stayed pending review of this Petition for Writ of Certiorari.

and alienation of affection, which are prohibited under the Ohio Revised Code §2305.29. Petitioner sought review by the Ohio Supreme Court and, again, Respondent did not file a Response. The Ohio Supreme Court denied discretionary review on July 23, 2024.

The Ohio Court of Appeals erred in ruling that a Ketubah was not an enforceable contract. The Court of Appeals also erred in its application of Ohio Revised Code §2305.29 to the Ketubah and mischaracterized this important religious contract as a mere promise to marry and, thus, a prohibited amatory claim. The highest state court to address the merits disregarded law from the U.S. Supreme Court under *Jones v. Wolf*, 443 U.S. 595 and its progeny. The state court further disregarded the liberty and property rights under the First, Fifth, and Fourteenth Amendments to the U.S. Constitution afforded to these women, often victims of domestic violence. Therefore, it is necessary to appeal to the U.S. Supreme Court to settle the question of these womens' right to contract for their and their childrens' survival and, ultimately, their freedom to remarry (See, Sup. Ct. R. 10(c)). Furthermore, states are divided in their treatment of these contracts with California and Ohio finding them void against public policy and several East Coast states finding them akin to prenuptial agreements and/or valid contracts to be reviewed under neutral contract principles (See, Sup. Ct. R. 10(b)).

## REASONS FOR GRANTING THE PETITION

### A. Background

Across this country, there are faith-based communities consisting of Jewish and Muslim citizens. In Ohio these faith-based communities with Jewish and Muslim citizens exist in Cleveland, Cincinnati, Columbus, and Toledo. These two religious groups utilize marriage contracts in the exercise of their religion.

Living in faith-based communities carry certain challenges. For example, a citizen's religious requirements may not be understood by the secular community and may be seen as incompatible with American society. One such example relates to the power differential between men and women in religious communities. Although American society treats men and women equal, in religious communities women have a subservient position to men.<sup>1</sup> Regardless of how critically the secular world views this power dynamic between men and women in religious communities, it exists and is an integral part of religious women's lives, making them more vulnerable to instances of coercive control or domestic violence.<sup>2</sup>

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<sup>1</sup> These religions are tradition-based and adhere to an antiquated dynamic between the sexes, with the male having the more dominant, decision-making role and the female having the more submissive, obedient role in these communities. Although this power differential is more prominent in the Islamic Communities than in the Jewish Communities, in traditional religious practices surrounding life-cycle events, such as marriage, the strict adherence to tradition emphasizes this power differential.

<sup>2</sup> Fortune, M. and Eger, C. (2006 March). *Violence Against Women and the Role of Religion*. Harrisburg, PA:VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. <http://www.vawnet.org>. See also, The National Center on Domestic and Sexual Violence in the Jewish Community ([www.jwi.org](http://www.jwi.org)) and See also, "American Muslim Women and Domestic Violence." [www.domesticshelters.org/articles/race-gender-religion-immigration/american-muslim-women-and-domestic-violence](http://www.domesticshelters.org/articles/race-gender-religion-immigration/american-muslim-women-and-domestic-violence) (Aug. 2, 2017).

In the interaction between men and women in these religious communities, this power differential is emphasized in the institution of marriage,<sup>3</sup> where a husband holds the power to divorce, but the wife is prohibited to initiate a divorce. To address the unequal power differential in this important relationship, these religions have historically viewed marriage not as a sacrament, as the Christians do, but a purely contractual arrangement. This contractual arrangement equalizes the naturally unequal power dynamic between men and women by placing strict financial obligations on the men for the care and support of the women for their lifetime in exchange for the benefits provided by the woman, i.e. care, support, providing a home, providing a respectable status for the man in the community, providing children, etc. This contractual relationship is memorialized with formal documents executed in formal ceremonies before witnesses and the contracts contain all the formalities of secular contract formation to be valid and binding, to wit: offer and acceptance (i.e. mutual assent/intent and mutually bargained for terms), contractual capacity, consideration, a writing, witnessed and acknowledged by two people, signed by both parties. In Jewish tradition, the contract is called a Ketubah and, in Muslim tradition, the contract is called a Mahr Agreement. These contracts effectively discourage divorce by placing high financial penalties on the husband for seeking a divorce which would leave a wife and the parties' children unprotected and not financially cared for. In discouraging divorce, these contracts

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<sup>3</sup> Marriage is a practical endeavor for Jews and Muslims rooted in concerns for the financial support of the wife and for equalizing the power differential that exists between men and women. In fact, upon entering the state of marriage these women that live a faith-based life gain an equal footing with the men by virtue of the marriage contract.

prevent a situation where the wife is abandoned and unable to support the parties' children. In the Jewish religion, the Ketubah is also designed to prevent domestic violence abuse from being committed by Jewish men against Jewish women. Historically, the Ketubah accomplished this goal by protecting women from being abandoned by their husbands and the contracts are specifically designed with consideration of this power dynamic. Religious law provides that the husband, therefore, must provide for the financial care and support of the wife during her lifetime and in the event he chooses to divorce her. This is part of the compensation given to the wife to ensure that, in her weaker position, the wife has some power in the relationship. Thus the wife's power is in that she binds the husband financially to her and he must continue that financial support even if he decides he no longer wishes to be married. This may seem an unfair arrangement to secular society, but the Jewish wife is unable to seek a divorce. Therefore, she enters the marriage without any ability to leave in exchange for continued support upon the husband seeking a divorce, which support is much like spousal support provided by a secular court.

To understand this aspect of the Jewish marriage contract and its importance as a recognized contract by secular courts, one must understand the Jewish divorce document, called a Get. In Jewish communities, men have the option to divorce their wives but women are forbidden from divorcing their husbands. Therefore, all the power to end the marriage, and determine the future of the wife, resides with the Jewish husband. A Get is a document that releases the wife from her

obligations under the Ketubah (it is, therefore, considered a necessary counterpart to the Ketubah). If a Jewish husband refuses to give his wife a Get, she is not considered released from the marriage and she is deemed a "chained woman" (called an Agunah). This status of a "chained woman" comes with it a humiliating stigma within the Jewish community and a prohibition against sexual relationships with any other men or to remarry in the Jewish religion to another man. Thus, not only is the Agunah prevented from remarrying to find another man to financially support her and her children, but she is prohibited even from sexual relations with another man and consigned to a life of solitude. If an Agunah has sexual relations with a man who is not her husband, even if the ex-husband is remarried to another woman, the Jewish wife is labeled an adulteress and any children the Agunah has with another man are deemed illegitimate and prohibited themselves from marrying within the Jewish religion.<sup>4</sup> To the secular world, this is a scenario much akin to that experienced by Hester Prynne in *The Scarlet Letter*, who is shunned within the religious community and suffers greatly for that status.

What is an increasing problem in the Jewish community are husbands who breach the marriage contract and then refuse to give a Get to their wife to release the wife. This is done as a form of coercive control and spousal abuse and it is recognized as such in many states. The Jewish husband will often withhold the Get for more favorable civil divorce terms, for custody, for financial gain from the wife, or to be let out of his obligation to support his wife under the Ketubah.

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<sup>4</sup> See, "Boston Agunah Taskforce," at [www.brandeis.edu/fbi/research/projects/gcd/boston-agunah-taskforce/index.html](http://www.brandeis.edu/fbi/research/projects/gcd/boston-agunah-taskforce/index.html).

This has been such a problem in the Jewish community that rabbis often get involved to force the husband to execute the Get for the wife so that she can be remarried. Due to the serious ramifications of a Get refusal, in Israel, a "Get Refuser" can be put in jail until he agrees to sign the Get.<sup>5</sup> In New York, the legislature recognized the significance of these religious contracts and enacted what is commonly called the "Get law," N.Y. Dom. Rel. Law §253, which prohibits a final judgment in a civil divorce unless the divorcing parties take steps to remove any barriers to remarriage. This law is applied to encourage the issuance of a Get and punitive measures can be taken by courts in New York to ensure this law is followed by Jewish husbands. See, *Perl v. Perl*, 126 A.D.2d 91. This law was created as it is understood that protecting religious women and preserving their dignity, rights, and the ability for them to remarry is an important aspect of preventing abuse and coercive control.<sup>6</sup>

Without access to secular contract laws, women who enter into religious marriage contracts will remain in a vulnerable position and be unable to sue for damages for a breach of the marriage contract. Furthermore, the marriage contract is the Jewish woman's most significant protection in a divorce and for state courts to arbitrarily negate these contracts under spurious "public policy" arguments means that these religious women are denied the ability to use the Ketubah as

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<sup>5</sup> See, Meir Gorodetsky's story, "Longest Jailed Israeli Divorce Refuser Freed After 19 Years" at [www.timesofisrael.com/longest-jailed-israeli-divorce-refuser-freed-after-19-years/](http://www.timesofisrael.com/longest-jailed-israeli-divorce-refuser-freed-after-19-years/)

<sup>6</sup> "Dinah, JFCS Partner with JWI to Address Abuse in Orthodox Communities," by Sasha Rogelberg, [www.jewishexponent.com](http://www.jewishexponent.com) (March 1, 2023); See, Comment by Rachel Yakobashvili, Dinah Director of Programs and Partnerships, Philadelphia, "Refusing a Get is really demoralizing to the survivor of the situation...It's a more insidious way that abusers manipulate situations in order to assert power, dominance and control that isn't recognized by the court system."

leverage to obtain a Get, thus subjecting the women to continued abuse and the aforementioned long-term consequences.

In Petitioner's case, Mr. Edelstein refused to sign a Get after abandoning the marriage. Petitioner initiated this lawsuit in the trial court to persuade Mr. Edelstein to sign the Get, which Mr. Edelstein promptly did. After the trial court deemed the Ketubah an invalid contract, Mr. Edelstein was emboldened to interfere with the delivery of the Get to prevent the completion of the Jewish divorce and free Petitioner. This experience demonstrated to Petitioner the importance of the leverage that the Ketubah has to quickly end the coercive control and abuse committed by a husband and to prevent a husband from holding his wife a hostage as an Agunah long after the husband has left the marriage. Clearly, the ability to be able to sue on these contracts is a powerful motivator for the Get Refuser to cease the abuse and extortion and simply sign and deliver the document needed to free the wife they no longer want. Petitioner approaches this Honorable Court and begs for help and to restore the dignity of women like her, who in the free exercise of their religious beliefs, find themselves in an abusive situation that can only end if the Ketubah is enforced as a valid contract.

Although secular society has the attitude is that in America there are no barriers to remarry, this ignores the reality for women in faith-based communities. Whether the restriction on a faith-based person is self-imposed, imposed by the community in which they live, or imposed under civil law, the effect is the same -- women's rights, to have a future free from the restraint of her prior husband, are

affected. This right to obtain a divorce is already memorialized in every state under secular domestic relations policy and would be in compliance with that public policy. Furthermore, asking this Court to recognize these marriage contracts as contracts subject to neutral contract principles also fulfills the existing public policies regarding the ability to contract and the prevention of domestic violence abuse.

B. The Ohio Decision Conflicts with *Jones v. Wolf* and Incorrectly Categorized a Ketubah as a Promise to Marry and Void as Against Public Policy

In this case, the Ohio Common Pleas Court and the Ohio Court of Appeals regarded these marriage contracts as unenforceable agreements under Ohio law, citing to Oh. Rev. Code §2305.29, which prohibits civil liability for a breach of a promise to marry or alienation of affection. Although only one party who is alleged to have engaged in the intentional interference with a contractual relationship was part of the appeal, the Court further determined that no party can be sued for a breach of the Ketubah (Appendix A, P.18, ¶38), including the husband who willingly entered into the contract. The Court of Appeals, incorrectly and contrary to *Jones v. Wolf*, further cited to a trial court decision in New York to hold that it would have to engage in a review of religious doctrine to interpret the contract. This was an overreach and an abuse of discretion, as the decision of the Court of Appeals negated these contracts which have a history of governing relationships in these faith-based communities for over 2,000 years, further stripping these religious women of the little power they possess in their lives. The Court of Appeals researched the issue of these contracts, yet failed to understand them, ignored the

interplay between these two types of marriage contracts, failed to acknowledge the reality of coercive control as it applies to the Get document, and neglected to consider that a Jewish marriage is based on contracts and not a sacrament. The Court of Appeals' decision disregarded that there is considerable thought and purpose that goes into these religious marriage contract. Instead, the Court of Appeals took exception to the large amount of damages Petitioner is owed under the Ketubah and that lifetime support was agreed to by the husband, who had contractual capacity and was given consideration for the mutually bargained for benefit.

By its ruling, the Court of Appeals focused on an antiquated law,<sup>7</sup> Oh. Rev. Code §2305.29, that has no applicability, whatsoever, to a written contract, such as a Jewish Ketubah. In fact, the Respondent did not even point to this law in his Motion to Dismiss. Ohio Revised Code §2305.29 provides that:

No person shall be liable in civil damages for any breach of a promise to marry, alienation of affections, or criminal conversation, and no person shall be liable in civil damages for seduction of any person eighteen years of age or older who is not incompetent, as defined in section 2111.01 of the Revised Code. *Oh. Rev. Code §2305.29.*

That law was addressed first, sua sponte, by the trial court. This error in applying a law related to a "promise to marry" was then perpetuated by the Appellate Court, but it remains, nonetheless, an error in application. Not only have the lower courts misapplied an old statute and relied on improper case law, there are multiple differences between a Ketubah and a promise to marry, or marital vows as a

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<sup>7</sup> Oh. Rev. Code §2305.29 was created in 1978, over 46 years ago, and has not appeared in case law (except for this case) for the past seven years, since 2016.

promise to marry, that were not considered. First, the history of prohibiting promises to marry and amatory claims are not rooted in, nor have they ever been related to, these religious contracts. Oh. Rev. Code §2305.29 has also never been applied to a prenuptial agreement.<sup>8</sup> It is obvious the statutory intent did not anticipate application of the statute to religious written contracts and the court's decision to make this application is not supported by legislative intent. Therefore, it is an aberrant application of the statute.

Additionally, the plain language of Section 2305.29 contains nothing to indicate it was intended to be applied to written marriage contracts. The language of the statute prohibits "civil damages for any breach of a promise to marry, alienation of affection, or criminal conversation," and no liability for seduction of an incompetent adult. *Oh. Rev. Code §2305.29*. Clearly, this statute relates to prohibiting civil liability for acts involving damage to a person's feelings. Even the common name "Ohio Heart Balm Law" indicates that this is a law to address scenarios where there are feelings involved.<sup>9</sup> As expressed above, marriage in Jewish law and tradition is not a sacrament or a relationship built on feelings, but a relationship deliberately based on practical concepts and contractual obligations to protect the parties. Jewish marriages are formalized by a written contract that is executed after the engagement, or "promise to marry." Therefore, a Ketubah is not a

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<sup>8</sup> There are only 57 cases in the Lexis legal database that address Oh. Rev. Code §2305.29 and none of those cases involve a written contract or agreement or a Ketubah. Section 2305.29 has simply never been applied to a written agreement or a Ketubah until Petitioner's case.

<sup>9</sup> Appellants note that although three claims are for Intentional Infliction of Emotional Distress, these are rooted in the breach of contract and intentional interference with a contractual relationship. Therefore, amatory claims are different than Appellants' claims.

promise to marry. Promises to marry are generally not put in writing and, thus, lack this formality attached to a contract. Furthermore, the case the trial court based its decision upon, *Allen v. Bryan*, 2013-Ohio-1917, related to marital vows, which are spoken and also not memorialized in writing with the formalities of a contract. The Ketubah is distinctly different from the subject matter and purpose of Oh. Rev. Code §2305.29. Marriage contracts are often difficult for Christians or secular courts to understand because a marriage that is a sacrament may be based on faith concepts, but there are no practical legal obligations contingent upon those faith-based vows. This is where Jewish and Islamic marriages differ significantly from Christian or secular marriages. Marriages in those religious communities are strictly based in practical legal obligations between the contracting parties designed to ensure the longevity of the marriage and protect the parties by disincentivizing divorce.

The appellate court decision incorrectly stated that marriage contracts are illegal in Ohio, when there are some marital agreements that are legal. In Ohio, marital agreements, such as prenuptial, or antenuptial, agreements, are well recognized. There are three statutes in Ohio that establish that marital agreements, or agreements between spouses, are valid: Oh. Rev. Code §§3103.05, 3103.06, and 3103.061. Oh. Rev. Code §3103.05 provides that:

(A) A husband or wife may enter into any agreement or transaction with either of the following:

- (1) the other spouse, subject to the general rules that control the actions of persons occupying the confidential relations with each other;
- (2) with any other person, which either might if unmarried.

(B) An agreement under division (A)(1) of this section that alters the legal relations between the spouses shall comply with section 3103.061 of the Revised Code. *Oh. Rev. Code 3103.05.*

Ohio Revised Code §3103.06 provides that:

(A) A husband and wife may, by any contract with each other, do any of the following:

- (1) Enter into a postnuptial agreement that alters their legal relations with each other;
- (2) Modify or terminate an antenuptial or postnuptial agreement or any other agreement that alters their legal relations with each other;
- (3) Agree to an immediate separation and make provisions for the division of property and support of either of them and their children during the separation.

(B) An agreement under division (A)(1) or (2) of this section shall comply with section 3103.061 of the Revised Code. *Oh. Rev. Code §3103.06.*

Ohio Revised Code §3103.061 provides that:

Any agreement altering legal relations between spouses established under division (A)(1) of section 3103.05 or division (A)(1) or (2) of section 3103.06 of the Revised Code shall be valid and enforceable, with or without consideration, if all of the following apply:

- (A) The agreement is in writing and signed by both spouses;
- (B) The agreement is entered into freely without fraud, duress, coercion, or overreaching;
- (C) There was full disclosure, or full knowledge, and understanding of the nature, value, and extent of the property of both spouses;
- (D) The terms do not promote or encourage divorce or profiteering by divorce." *Oh. Rev. Code §3103.061.*

In essence, a contract is a promissory agreement between two or more persons that creates, modifies, or destroys a legal relation. In Ohio, a contract must contain an offer, acceptance, contractual capacity, manifestation of mutual assent, and consideration. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985. The Ketubah contract at issue was entered into by two consenting adults with contractual capacity and it is a manifestation of mutual assent, as evidenced by the parties' signatures on the document and their participation in the contract

procedure. There is language in the Ketubah contract showing offer (for example: food, clothing, necessities, jewelry, gold, silver, shelter, and livelihood), acceptance ("The responsibility of this marriage contract and this addition I have accepted upon myself"), and consideration (i.e. definite sums of money and silver). The reason why such elements are significant are because they demonstrate intent and purpose, making the contract enforceable on the specific terms. As the Ketubah contract has all of the elements necessary for a valid contract, it should have been seen as such. Based on the domestic relations statutes, Ohio recognizes contracts between spouses and contracts related to marriage, such as antenuptial and postnuptial agreements. Therefore, not only are religious wedding agreements not prohibited in Ohio, but they are actually supported by the current law.

To address whether the Ketubah at issue violated Ohio public policy, one need only review the applicable case law to see that the Ketubah is not a "promise to marry" like that described in the trial court's supporting case, *Allen v. Bryan*, 4th Dist. No. 12CA15, 2013-Ohio-1917, citing to *Wischmeier v. Wischmeier*, and 8th Dist. Nos. 44915, 44063, 1983 WL 5773, \*5 (See. Appendix B, P.6). *Allen v. Bryan* is a case where a husband filed a breach of contract action for the wife's breach of the parties marital vows. The *Allen* Court determined that "the marital relationship itself is a contract only metaphorically. It is more properly understood as consensual status sanctioned by law." See, *Allen*, supra at \*9.

The *Allen* case was inapplicable as vows addressed in the *Allen* case were made, verbally, during the wedding ceremony and consisted of a promise to "love,

honor, and support one another for better or for worse, for richer or for poorer, in sickness and in health, as long as we both shall live." *Id.* This general verbal commitment that is made in secular or Christian wedding ceremonies is based on the concept that marriage is a sacrament, i.e. that it is a holy union sanctioned by God. Marriage, for a Jewish couple conducted under Jewish law, is not a sacrament, but a contractual relationship, and has been so for thousands of years. To facilitate the marriage, the parties enter into a written contract which sets forth the legal obligations the parties have towards one another. It is not merely a "promise to marry" or even akin to a "promise to marry." The parties actually engage in the process of having their obligations written in contract form and then have the contract formalized with a special procedure. The Ketubah contract is entered into prior to the wedding ceremony<sup>10</sup> during a separate formal ceremony, it requires two witnesses who sign for attestation purposes, it contains specific language that the parties acknowledge that the contract is legally binding ("all is valid and binding"), and it contains all the elements that are required under civil law for a contract. Therefore, the Ketubah was misclassified by the trial court. What the trial court considers a mere "promise" is certainly more than the Christian or secular verbal expression "at the altar." For these reasons, *Allen* is inapplicable.

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<sup>10</sup> Jewish and Muslim couples enter into a premarital agreement as a precursor to a wedding ceremony. Due to the contract being entered into prior to the marriage, some states, such as New Jersey, New York, and Connecticut, have determined that the Jewish Ketubah contract and the Islamic Mahr agreement are valid prenuptial agreements. However, in Ohio, it is suggested that this type of premarital contract entered into under Islamic law, is a "general contract." See, *Zawahiri v. Alwattar*, 2008-Ohio-3473, 2008 Ohio App. LEXIS 2928. Although the two types of agreements are similar in nature, there has not been a case that addresses the Ketubah contract in the same manner as the Mahr agreement in Ohio.

### C. The Ohio Decision Conflicts with Decisions of Other State Courts

It should also be noted that the view across the United States differs on whether a Ketubah is a valid contract or whether it is a contract that is void as against public policy. Because there is no Ohio<sup>11</sup> law on point, Petitioner asked the state courts to look towards jurisdictions where there are large Jewish communities. It is in the courts of these states that the issue before this Court has been addressed. The large Jewish communities in the United States include New York, New Jersey, Connecticut, California, Florida, and Illinois. A review of the case law from these jurisdictions shows adherence to *Jones v. Wolf* and that courts can apply neutral principles of contract law to agreements entered into by adults in conjunction with religious ceremonies.

The argument that such contracts cannot be reviewed by secular courts because it violates The Establishment Clause fails because the First Amendment allows for disputes involving religious situations, parties, or documents if the court can resolve these disputes by applying traditional secular legal principles. *Jones*, supra 443 U.S. at 605-606. In fact, the Free Exercise Clause requires that people should not be discriminated against by courts based on the religious nature of their practices. Therefore, religiously motivated contracts should be interpreted the same as secularly motivated documents. *Id.* A neutral principles approach extends to the type of private agreements such as religious marriage agreements, including

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<sup>11</sup> The one Ohio case regarding a religious prenuptial agreement involved a Mahr provision in an Islamic prenuptial agreement. The court found the argument based on the Ohio Constitution moot because that marriage contract was not a valid prenuptial agreement due to it being entered into under coercion.

Ketubahs. See, *Light v. Light*, (New Haven Dist., Dec. 6, 2012), 2012 Conn. Super. LEXIS 2967; *Avitzur v Avitzur* (1983), 58 N.Y.2d 108. Contrary to the Ohio Court of Appeals, no specialized knowledge of religious text is necessary to address the contract provisions of Petitioner's Ketubah simply because the Ketubah states it is entered into in accordance with Jewish law and custom. The contract at issue here binds Mr. Edelstein to provide tangible items to Petitioner for her life. This is non-religious by nature and warrants consideration under secular contract principles.

"In resolving disputes involving religion, a court may apply objective, well-established principles of secular law, or neutral principles of law, which do not entail a consideration of doctrinal matters." *Light*, supra at \*20-21 (citations omitted). The United States Supreme Court has ruled that

"in holding that a State may adopt any approach to resolving religious disputes which does not entail consideration of doctrinal matters, specifically approved the use of the "neutral principles of law" approach as consistent with constitutional limitations. This approach contemplates the application of objective, well-established principles of secular law to the dispute, thus permitting judicial involvement to the extent that it can be accomplished in purely secular terms."

*Avitzur v Avitzur* (1983), 58 N.Y.2d 108, 114-115, citing to *Jones*, supra 443 U.S. at 603 (Citations omitted). It should be noted that marriage agreements in conjunction with Islamic<sup>12</sup> and Jewish wedding ceremonies do not preclude review by a secular court. See, *Odatella v. Odatella*, 355 N.J. Super 305 (Passaic Cty. 2002). Furthermore, "that the obligations undertaken by the parties to the Ketubah are grounded in religious belief and practice does not preclude enforcement of its

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<sup>12</sup> *Odatella* is a case where there was an Islamic marriage license that contained a Mahr Agreement that was an agreement arrived at within the context of a religious ceremony and which provided that the husband owed the wife a certain sum.

secular terms." *Avitzur*, supra at 58 N.Y.2d at 115. Courts in New York, with the largest Jewish population, have specifically found that "nothing in law or public policy prevents judicial recognition and enforcement of the secular terms of a religious marriage agreement." *Id.*

Some states have collaterally addressed the leverage of a Ketubah within the context of an existing prenuptial agreement securing the Get for the wife by requiring payments to the wife until the Get is signed by the husband, enforcing arbitration before a religious court,<sup>13</sup> or even ordering specific performance of the terms of the Ketubah, as in Illinois. See, *In re Marriage of Goldman*, 196 Ill. App.3d 785; *Schneider v. Schneider*, 408 Ill. App.3d 192; *Parbeen v. Bari*, 337 So.3d 343 (4th Dist. 2022).<sup>14</sup> In Connecticut, courts have found that "[e]nforcement of the prenuptial agreement has the secular purpose of enforcing a contract between the parties." *Light*, supra at \*19. Therefore, a

"determination as to whether the prenuptial agreement is enforceable would not require the court to delve into religious issues. Determining whether the defendant owes the plaintiff the specified sum of money does not require the court to evaluate the proprieties of religious teachings. Rather, the relief sought by the plaintiff is simply to compel the defendant to perform a secular obligation, i.e., spousal support payments, to which he contractually bound himself." *Id.*

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<sup>13</sup> Under Jewish tradition a religious court, called a Bet Din, manages the Jewish divorce and presides over cases where a Get is refused by the husband. However, these tribunals are not always an available or practical avenue for Jewish women. Petitioner seeks the secular courts to apply neutral contract principles to the Ketubah so that the wife will have the ability to obtain the damages contracted for and the power differential will be more equal for the parties in negotiating the execution of the Get.

<sup>14</sup> *In re Marriage of Goldman*, 196 Ill. App.3d 785, Illinois found that specific performance of the Ketubah did not violate the Establishment Clause; See, *Schneider v. Schneider*, 408 Ill. App.3d 192 where specific performance of the terms of the Ketubah (i.e. granting of a Get by the husband) were granted to wife by summary judgment. See also *Parbeen v. Bari*, 337 So.3d 343 (4th Dist. 2022) from Florida which views the Mahr Agreement as a valid enforceable prenuptial agreement.

New York courts have also opined that a Ketubah is akin to a prenuptial agreement and the relief sought in a religious prenuptial agreement is simply to compel a party to perform a secular obligation to which he contractually bound himself. In this regard, "no doctrinal issue need be passed upon, no implementation of a religious duty is contemplated, and no interference with religious authority will result." *Avitzur*, supra 58 N.Y.2d at 115.

Conversely, California courts have recognized Ketubahs but have found that the substantial financial settlement in a Ketubah is unenforceable because it encourages divorce and are, thus, void as against public policy. *In re Marriage of Noghery*, 169 Cal. App.3d 326 (6th Dist. 1985); *In re Marriage of Dajani*, 204 Cal. App.3d 1387 (4th Dist. 1988). In so ruling, California courts neglect the fact that the Ketubah does not encourage divorce, but is designed to discourage divorce. Under Jewish law and tradition, the husband seeks a divorce by giving a Get. Since it is the wife that benefits from a payment but cannot initiate a divorce and the husband who can initiate the divorce, but is financially obligated for doing so, the Ketubah actually prevents divorce by disincentivizing the only party who can initiate a divorce, the husband, from pursuing divorce. Therefore, the argument that the Ketubah is unenforceable because it violates public policy is incorrect.

Although some states view the Ketubah as akin to a prenuptial or antenuptial agreement, other states view them as void against public policy. In reality, the Ketubah is similar to these other marital agreements governed by secular law. Ketubahs can contain provisions for conduct during the marriage and

they can contain consequences for the husband who abandons the marriage. As the treatment of these contracts vary across the United States, there is an opportunity for this Court to resolve the issue of whether these marriage contracts are valid and to direct the state courts to apply neutral contract principles to them.

D. Religious Marriage Contracts Should be Deemed Valid Under the First Amendment's Free Exercise Clause and the Liberty and Property Protections of the Fifth and Fourteenth Amendments

Finally, the decision of the Ohio Court of Appeals involves substantial constitutional questions and the state court decided Petitioner's case in a way that conflicts with the neutral principles directive in *Jones v. Wolf*

The decision failed to properly address the First Amendment issues and the application of neutral principles of law. Instead, the appellate court relied on a few cases from other parts of the country, misapplying the holdings from those cases to the fact pattern in this case. Under the First Amendment to the Constitution and Article I, Section 7 of the Ohio Constitution citizens are allowed to engage in the free exercise of their religion and that free exercise should not be prohibited or infringed upon by the government or courts. If part of the religious practices require its followers to enter into written contracts among themselves, governmental entities, such as the courts, may not prohibit that practice, especially where the religious contract comports with public policy<sup>15</sup> by supporting the longevity of marriage and stability of the home. Arbitrarily negating this important religious ritual and component of Jewish marriages violates the First Amendment Free

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<sup>15</sup> Contracting for financial support is not a prohibited topic for a contract in Ohio, as is evidenced by Ohio's recognition of prenuptial/antenuptial agreements and separation agreements.

Exercise Clause and is anti-Semitic. Every United States citizen has the right to the free exercise of their religion. To negate the ability of persons living in faith-based communities to contract with one another over important life events, especially where those contracts are necessary to prevent abuse, diminishes their civil rights and ultimately the quality of their lives. This is particularly true due to the unique nature of the Ketubah and its interrelationship with the Jewish divorce document (the Get) and the power differential inherent in the Jewish marriage.

The other part of the First Amendment issue is The Establishment Clause, which prohibits governmental entities from establishing a religion through their laws. For persons living in faith-based communities, there are times where they must appeal to the secular courts to protect their right to exercise their religious beliefs. Petitioning a court to protect constitutional rights or uphold private contracts between religious individuals and/or pertaining to religious matters does not automatically invoke The Establishment Clause. In fact, the Establishment Clause is not invoked in this regard because Petitioner is not seeking to have one religion established over another. Petitioner is simply asking for religious marriage contracts to be recognized as valid contracts if they contain the elements of a valid contract and to have secular contract law applied to these contracts. Again, these types of marriage contracts may seem foreign in American society. However, as implied by the liberty and property protections afforded in the Fifth and Fourteenth Amendments to the U.S. Constitution, every citizen has a right to contract under

whatever terms they see fit for whatever legal purpose they see fit and to have secular courts rule on breaches of those contracts.

The U.S. Supreme Court has found that contracts that are entered into between religious persons and/or have religious subject matter, can be addressed by a secular court without a violation to the Establishment Clause. See, *Jones v. Wolf*, 443 U.S. 595, which adopted the "neutral principles of law" approach when addressing contracts related to religious institutions or entities. The neutral principles of law are "secular legal rules whose application to religious parties or disputes do not entail theological or religious evaluations." *Light v. Light*, 2012 Conn. Super. LEXIS 2967 at \*10, citing to *Encore Productions, Inc. v. Promise Keepers*, 53 F.Supp.2d 1101, 1112 (D.Colo. 1999). The rationale is that, while the First Amendment's Establishment Clause to the U.S. Constitution prohibits government from establishing a religion, the First Amendment's Free Exercise Clause permits a civil court to "resolve disputes involving religious institutions, parties or documents if, but only if, the court can do so by applying traditional secular legal principles and without delving into and deciding controverted matters of religious law, doctrine, practice or faith." *Tilsen v. Benson*, 2019 Conn. Super. LEXIS 2475 at \*6.

In Ohio, courts have applied *Jones v. Wolf* to contracts or circumstances involving property issues arising between religious institutions. There has been no application of the concept of "neutral principles of law" to other types of contracts between religious persons. It should be noted that the courts in states that have

not anticipate a response from Respondent who has only actively participated with the filing of one Motion to Dismiss over one year ago.


### CONCLUSION

There currently exists conflicting treatment of religious marital agreements across the United States that should be resolved by this Court. State courts in New York, New Jersey, Connecticut, Florida and Illinois recognize religious marriage agreements as valid contracts to which neutral contract principles can apply, which is consistent with *Jones v. Wolfe*. However, Ohio and California courts have found the Ketubah as void against public policy and have disregarded *Jones v. Wolfe*. The Ketubah, Get, and Mahr Agreements are necessary and important for women in faith-based communities to be treated as valid contracts. Their validity and recognition by secular courts will affect the power differential, restore the dignity for these women, and protect these women from coercive control and domestic violence. Furthermore, the failure of some states to apply neutral contract principles to these agreements is discriminatory and a violation of the constitutional protections provided for these minorities under the First Amendment. This court has an opportunity to protect religious women and children in this country by recognizing and upholding these marriage contracts and directing all courts to treat them with neutral principles of law in accordance with precedent from this Court.

For the reasons discussed above, this case involves matters of public and great general interest and substantial constitutional questions. The Petitioner requests that this court accepts this case so that this important issue for these

minority women and their families will be reviewed on the merits. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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