

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

**GITANJALI DEANE AND LISA POLYAK;** \*  
**ALVIN WILLIAMS AND NIGEL SIMON;** \*  
**TAKIA FOSKEY AND JOANNE RABB;** \*  
**JODI KELBER-KAYE AND STACEY KARGMAN-KAYE;** \*  
**DONNA MYERS AND MARIA BARQUERO;** \*  
**JOHN LESTITIAN;** \*  
**CHARLES BLACKBURN AND GLEN DEHN;** \*  
**STEVEN PALMER AND RYAN KILLOUGH;** \*  
**PATRICK WOJAHN AND DAVID KOLESAR; AND** \*  
**MIKKOLE MOZELLE AND PHELICIA KEBREAU,** \*

Plaintiffs,

v.

Case No. \_\_\_\_\_

\*

**FRANK CONAWAY, IN HIS OFFICIAL CAPACITY AS** \*  
**BALTIMORE CITY CIRCUIT COURT CLERK;** \*  
**ROSALYN PUGH, IN HER OFFICIAL CAPACITY AS** \*  
**PRINCE GEORGE'S COUNTY CIRCUIT COURT CLERK;\*** \*  
**EVELYN ARNOLD, IN HER OFFICIAL CAPACITY AS** \*  
**ST. MARY'S COUNTY CIRCUIT COURT CLERK;** \*  
**DENNIS WEAVER, IN HIS OFFICIAL CAPACITY AS** \*  
**WASHINGTON COUNTY CIRCUIT COURT CLERK; AND\*** \*  
**MICHAEL BAKER, IN HIS OFFICIAL CAPACITY AS** \*  
**DORCHESTER COUNTY CIRCUIT COURT CLERK,** \*

Defendants.

\*

\* \* \* \* \* \* \* \* \* \* \* \*

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Gitanjali (Gita) Deane and Lisa Polyak, Alvin Williams and Nigel Simon, Takia Foskey and Joanne (Jo) Rabb, Jodi Kelber-Kaye and Stacey-Kargman-Kaye, Donna Myers and Maria Barquero, John Lestitian, Charles Blackburn and Glen Dehn, Steven (Steve) Palmer and Ryan Killough, Patrick Wojahn and David (Dave) Kolesar, and Mikkole (Mikki) Mozelle and Phelicia (Lisa) Kebreau, by their undersigned

counsel, file this Complaint for Declaratory and Injunctive Relief against Defendants Frank Conaway, in his official capacity as Baltimore City Circuit Court Clerk, Rosalyn Pugh, in her official capacity as Prince George's County Circuit Court Clerk, Evelyn Arnold, in her official capacity as St. Mary's County Circuit Court Clerk, Dennis Weaver, in his official capacity as Washington County Circuit Court Clerk, and Michael Baker, in his official capacity as Dorchester County Circuit Court Clerk, and in support thereof state as follows:

### **Introduction**

1. Marriage is the established social structure in which two people commit to a shared life. When two people enter into a marriage, they express their commitment in a way that is universally honored as a commitment of the highest order. Moreover, when two people enter into a marriage, they and their children are assured uniform recognition as a family unit.

2. Marriage is also a complex legal structure that reflects the extraordinary commitment made by married couples. Laws concerning property and finance reflect the reality that two people who make the commitment at the heart of marriage function generally not as two individuals but as one couple. Laws concerning decision making in times of medical crisis reflect the understanding that, when a married person is incapacitated, it is generally his or her spouse who is in the best position to know what he or she would want for himself or herself. And laws concerning dying and death acknowledge that the person most central in a married person's life is generally his or her

spouse. These are but a few of the hundreds of ways in which laws have been built up around marriage to protect married couples and their children.

3. In the past, marriage was a much more exclusive and restrictive institution than it is today. Marriage equality was selectively denied to disfavored groups based on disability, religion, class, and race. The history of the nation includes laws prohibiting epileptics from marrying and laws restricting interfaith marriage. It also includes prohibitions on marriages of slaves and indentured servants. And, little more than half a century ago, laws prohibiting interracial marriages were still on the books in thirty states. Moreover, as a historical matter, marriage was far from an equal partnership. Married women were legally incapable in matters of property and finance, and married men were legally less capable in matters of child rearing. The historical subordination of women to men within the institution of marriage was further reflected in such laws as those that permitted only a husband to sue for loss of consortium. Both socially and legally, marriage has evolved to redress such exclusions, restrictions, and inequalities.

4. The history of Maryland is no different. In the past, coverture ensured that married women had no legal identity separate from that of their husbands. In addition, marriage was conditioned on solemnization by clergy of only select religious faiths. Marriage was also prohibited between two slaves or indentured servants or between a slave or indentured servant and a free person. Moreover, Maryland has the shameful distinction of being the first colony to prohibit interracial marriages; its anti-miscegenation laws, which were first enacted in 1664, were not repealed until 1967. In

Maryland, the institution of marriage has evolved, just as it has evolved elsewhere in the nation, to remedy such discrimination.

5. The Maryland statutory code does not permit marriages of lesbian and gay couples. It is this selective denial of marriage equality to this disfavored group that has led to this action.

6. Plaintiffs are nine Maryland lesbian and gay couples and one Maryland gay man who seek to protect themselves and their children by availing themselves of marriage, the social status that marriage confers on married couples and their children, and the hundreds of rights, responsibilities, benefits, and obligations that marriage affords to married couples and their children. Plaintiffs' life stories present snapshots of the discrimination that lesbian and gay families throughout Maryland confront because lesbian and gay couples are not permitted to marry. They are representative of the needs – acute and chronic, numerous and various – of the thousands of lesbian and gay families throughout Maryland, all of which flow from the exclusion of lesbian and gay couples from marriage. As Plaintiffs' life stories demonstrate, these needs range from the safeguard of intestate succession when a partner dies without a valid will, to the right to medical decision making when a partner is incapacitated, to access to an employer-sponsored health plan when a partner is uninsured. The exclusion of lesbian and gay couples from marriage necessarily excludes them and their children from hundreds of rights, responsibilities, benefits, and obligations that are predicated on marriage under the laws of Maryland. These include protections such as the right of one spouse to decide how to dispose of the body of the other, the ability of one spouse to sue for the wrongful

death of the other, and the exception that permits the spouse of a Medicaid beneficiary to keep his or her house when the state seeks to foreclose on the house to recoup the cost of the Medicaid beneficiary's long-term care. Above and beyond such tangible harms, there is an immeasurable dignitary harm to lesbian and gay couples and their children when the laws of their state make their families strangers to society. The exclusion of lesbian and gay couples from marriage stigmatizes them and their children as second-class citizens.

7. The Maryland Constitution does not tolerate such unjustified discrimination against a disfavored class. The exclusion of lesbian and gay couples from marriage violates the most basic constitutional guarantees of equality for all Marylanders.

### **Jurisdiction and Venue**

8. The Court has jurisdiction over this action pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 1-501, 3-403, 3-406.

9. Venue is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201(b) because there is no single venue applicable to all Defendants under Md. Code Ann., Cts. & Jud. Proc. § 6-201(a), and Defendant Conaway carries on his regular business in Baltimore City.

### **Plaintiffs**

#### **Gita Deane and Lisa Polyak**

10. Gita and Lisa, a lesbian couple, reside in Baltimore City, Maryland. They love each other and wish to be married to each other.

11. But for the fact that Gita and Lisa are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or

marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

12. Gita, age 42, is the learning specialist for a local college. Lisa, age 43, is a civilian engineer for the United States Army Medical Department. They are raising two daughters, ages 8 and 5, and attend a Presbyterian church.

13. Gita and Lisa met as college classmates in 1979 and committed to a lifelong relationship in 1981. They moved to Maryland in 1983 to pursue their graduate degrees.

14. In the mid-1980s, Gita, then a citizen of India, faced the prospect of deportation upon expiration of her student and practical training visas. Because they were not recognized as spouses, Gita and Lisa worried about whether they would be able to remain together as a couple. They consulted with three different immigration lawyers at a cost of thousands of dollars without meaningful progress toward any assurance that Gita could remain permanently in the United States.

15. In 1987, Gita received a deportation notice, allowing her only 30 days in which to leave the country. Gita and Lisa were terrified, realizing how little control they had over their future. At the eleventh hour, Gita found an employer to sponsor her, allowing her to remain in the country on a work visa.

16. In 1989, the United States Embassy in India granted Gita an interview for a permanent resident visa. Gita and Lisa said goodbye at the airport without knowing whether Gita would be able to return home. A few weeks later, Gita was issued a permanent resident visa.

17. In 1994, Gita finally became a citizen of the United States. The ordeal had cost Gita and Lisa over \$10,000 and 6 years of their lives, an ordeal that they would have been largely spared had they been recognized as spouses, because a citizen of the United States, such as Lisa, can sponsor a spouse who is a foreign national for permanent residency in the United States.

18. Gita and Lisa decided to have children together. Lisa became pregnant through donor insemination and gave birth to their first daughter in 1996. Subsequently, Gita became pregnant by the same means and gave birth to their second daughter in 1999.

19. In 1999, by order of a Maryland court, Gita and Lisa secured second-parent adoptions of their daughters respectively. Their daughters were issued birth certificates listing both Gita and Lisa as their parents by the Maryland Department of Health and Mental Hygiene.

20. In September of 2003, Gita cut back to part-time employment to care for their daughters. As a part-time employee, Gita has no health benefits. As a same-sex partner, she is ineligible to enroll in Lisa's employer-sponsored health plan, even though Lisa pays for family coverage. Gita and Lisa have had to pay for expensive private health insurance to ensure that Gita's health needs are covered.

21. Gita and Lisa and their daughters have experienced humiliation and inconvenience because Gita and Lisa cannot marry and thereby assure that they and their daughters are recognized as a family unit. In April of 2004, Gita and Lisa and their daughters returned to the country from an overseas family reunion. Upon re-entry, Gita and Lisa were not permitted to complete a single customs forms for their entire family

because they are not a married couple. Lisa completed one customs form listing herself and their daughters, and Gita completed another customs form listing only herself. Lisa and their elder daughter proceeded through the checkpoint without incident. Gita and their younger daughter, however, were stopped and questioned, and Gita was forbidden from proceeding through the checkpoint with her own daughter. Eventually, a customs official recognized that Gita and Lisa and their daughters were a family unit. Gita and Lisa and their daughters would not have experienced such humiliation and inconvenience had Gita and Lisa been permitted to complete a single customs form, as married couples are permitted to do.

22. The legal sanction of Gita and Lisa's relationship through the institution of marriage would greatly diminish the stigma that their daughters will otherwise bear, simply because their parents are a same-sex couple. It would also afford Gita and Lisa's daughters important protections, rights, and benefits that they will otherwise be denied, simply because their parents are a same-sex couple.

Alvin Williams and Nigel Simon

23. Alvin and Nigel, a gay couple, reside in Upper Marlboro in Prince George's County, Maryland. They love each other and wish to be married to each other.

24. But for the fact that Alvin and Nigel are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

25. Alvin, age 49, is a dentist in private practice. He is retired from the United States Army Medical and Research Development Command, where he served as a research dental officer. Nigel, age 35, is a program manager for the United States Environmental Protection Agency. Previously, he was a military police specialist in the United States Army National Guard and a personnel technician for the United States Virgin Islands Water and Power Authority.

26. Alvin and Nigel are active in their community. They attend a Baptist church oriented to the African-American community. In addition, Alvin is the chairperson of the board of directors of a community-based HIV services organization that is committed to reducing HIV infection in the African-American community. Nigel is a member of the board of directors.

27. Alvin and Nigel met in a discussion group for African-American gay men in 1997, and it was love at first sight. They discovered many common bonds and, soon thereafter, Nigel moved in with Alvin, who has resided in Maryland since 1987.

28. Alvin and Nigel have explored their shared religious faith together and that faith is a vital part of their family life. In 2000, they celebrated their love for each other with a holy union ceremony in the presence of 300 family members and friends.

29. Alvin and Nigel decided that their strong commitment to each other would provide a solid foundation for a family. In September of 2002, Nigel adopted their son, now age 6, by order of a Maryland court. In August of 2003, Alvin secured a second-parent adoption of their son by order of a Maryland court. Alvin and Nigel are currently working toward the adoption of two more children, siblings ages 8 and 6.

30. Throughout their relationship, Alvin and Nigel have had to be diligent about trying to create alternative legal protections to try to ensure their family's security because they have been unable to marry. They recognize, however, that these alternative legal protections are no substitute for all of protections that marriage would afford.

31. Alvin and Nigel have long felt as married as anyone who loves and lives with his or her spouse for over 7 years, and shares with him or her in the joys and responsibilities of raising a child and creating a home. But they recognize that feeling married and actually being secure on account of the protections that married couples and their children enjoy are two different things. Alvin and Nigel want their family to have the sense of security that comes with the knowledge that their relationship is recognized by their community and by the laws of their state.

Takia Foskey and Jo Rabb

32. Takia and Jo, a lesbian couple, reside in Baltimore City, Maryland. They love each other and wish to be married to each other.

33. But for the fact that Takia and Jo are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

34. Takia, age 29, is a part-time administrative assistant for a hospital laundry services company. Jo, age 37, is a Maryland Transit Administration bus driver in Baltimore City. They are raising Takia's daughter and son from previous relationships, who are 11 years old and 6 years old respectively and consider both Takia and Jo to be

their parents. Takia has resided in Maryland since 1999, while Jo has done so since 1998. They are Baptist.

35. Takia and Jo met in March of 2003 while Takia and her children were boarding the bus that Jo was driving. Takia was immediately taken with the kindness that Jo demonstrated toward her children. Takia and Jo began dating and, soon thereafter, moved in together. On June 26, 2004, Takia and Jo celebrated their love for each other with a commitment ceremony.

36. Takia and her children do not have health insurance, which causes great anxiety for Takia and Jo.

37. Until September of 2003, Takia and her children qualified for Medicaid coverage. Takia and her children no longer qualify for Medicaid coverage because Takia now earns too much. At the same time, Takia and Jo earn too little to afford private health insurance for Takia and her children.

38. Takia and her children do not have health benefits through her employer because she is a part-time employee. Takia does not have health benefits through Jo's state employer because it does not offer domestic partner health benefits. Because Maryland law does not permit Takia and Jo to marry, Takia's children are also ineligible to enroll in Jo's state employer-sponsored health plan.

39. Takia suffers from adenomyosis, a medical condition involving the reproductive system, and, in August of 2003, underwent surgery related to that condition. Medicaid covered the cost of the surgery itself, but, soon after the surgery, Takia lost her Medicaid coverage. Because Takia has since been uninsured, Takia and Jo have incurred

out-of-pocket post-surgical medical expenses, and Takia has foregone follow-up medical care.

40. Takia's son suffers from asthma. Because Takia's son is now uninsured, Takia and Jo have incurred out-of-pocket medical expenses related to Takia's son's medical condition.

41. In September of 2003, Jo was rushed to a local hospital for emergency gallbladder surgery. Takia sought to participate in discussions with hospital staff about Jo's medical care, and simply to be by Jo's side. Hospital staff, however, instructed Takia to sit in the waiting room because, according to hospital staff, she was not a member of Jo's family. Hospital staff refused to inform Takia of the medical procedures that they were performing on Jo, or even to tell Takia whether Jo would be okay. This caused great anxiety for Takia, especially because she knew that Jo was heavily medicated and therefore unable to make informed decisions for herself.

42. Takia and Jo have decided to have a child together but cannot afford the costs of donor insemination. If they were a married couple, Jo's state employer-sponsored health plan would cover such costs.

43. Takia and Jo live with the possibility of a vehicular accident while Jo is performing her duties as a bus driver. If Jo were killed in such an accident, the death benefits that are available to stabilize the surviving families of Maryland Transit Administration employees who are killed on the job would not be available to Takia and her children because Takia and Jo are not permitted to marry.

44. Takia and Jo seek for themselves and their children the same sense of security that married couples and their children enjoy.

Jodi Kelber-Kaye and Stacey Kargman-Kaye

45. Jodi and Stacey, a lesbian couple, reside in Baltimore City, Maryland. They love each other and wish to be married to each other.

46. But for the fact that Jodi and Stacey are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

47. Jodi, age 40, is a professor at the University of Maryland Baltimore County. Stacey, age 36, is a naturopathic doctor and acupuncturist in private practice. They are raising two sons, ages 6 and 1, and are Jewish.

48. Jodi and Stacey met in an airport in 1993. They discovered many common bonds and, soon thereafter, committed to a lifelong relationship.

49. Jodi and Stacey decided to have a child together. Through donor insemination, Jodi became pregnant and, in 1998, gave birth to their first son.

50. Jodi and Stacey moved to Maryland in 2000 to be closer to their extended family and to allow Stacey to secure a second-parent adoption of their first son by order of a Maryland court, which she did in January of 2001.

51. In January of 2001, Stacey was unexpectedly hospitalized for 10 days. As Stacey was returning from surgery, a nurse physically pushed Jodi out of the room

despite her repeated protests that Stacey was her partner and that Stacey would want her to be there to comfort her in her time of need.

52. Jodi and Stacey seek to ensure that they can care for and advocate for each other when they need each other the most. They do not want to find themselves arguing with hospital staff or rushing home to dig up their health care proxies when they should be by each other's side. They want to be certain that the medical decisions that they make for each other in medical emergencies will be respected and implemented.

53. Jodi and Stacey decided to have another child together. Through donor insemination, Jodi became pregnant and, in May of 2003 at a state hospital, gave birth to their second son 6 weeks premature.

54. Jodi and Stacey again experienced discrimination by a nurse who did not recognize their relationship. This time, it threatened the well-being of their second son. While Jodi was in post-delivery recovery, their second son was whisked away to a nursery for premature infants. Stacey, a naturopathic doctor, followed to advocate on his behalf. A nurse attempted to shut her out of discussions about his care, repeatedly and hostilely asking, "Just who are you?" and failing to understand that she was a family member. The nurse stood down only when Jodi was compelled to join them in order to confirm what Stacey had said. Jodi and Stacey's realization of the ease with which their ability to protect their sons could be compromised detracted from what was otherwise one of most joyous occasions of their shared life.

55. Jodi and Stacey are fearful about their family's vulnerability during medical crises. If they were permitted to marry, they would be much more likely to be recognized as medical decision makers for each other and their sons.

56. Stacey is self-employed. As a same-sex partner, she is ineligible to enroll in Jodi's state employer-sponsored health plan, even though Jodi pays for family coverage. Jodi and Stacey have to pay for expensive private health insurance to ensure that Stacey's health needs are covered.

57. Jodi and Stacey are in the process of purchasing a house together. The law affords married couples greater security as joint homeowners because only married couples can establish a tenancy by the entirety.

58. Because Jodi and Stacey cannot marry, they and their sons are at constant risk that they will not be recognized as a family unit.

Donna Myers and Maria Barquero

59. Donna resides in Hollywood in St. Mary's County, Maryland. Maria resides in Costa Rica. They are a lesbian couple. They love each other and wish to be married to each other.

60. But for the fact that Donna and Maria are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

61. Donna, age 29, is a freelance writer for www.about.com. She used to work as a compliance officer for the United States Food and Drug Administration. Maria, age

35, works for a travel agency in Costa Rica. She used to work for an investment firm in the United States.

62. With limited exception, Donna has resided in Maryland since the age of 3. She currently resides on the family farm in Southern Maryland on which she was raised, but spends much of her time in Costa Rica.

63. In 1990, Maria obtained a student visa that permitted her to study in the United States. After completing her college and graduate studies, she remained in the United States on a work visa until February of 2003.

64. Donna and Maria met playing roller hockey in 1999 and struck up a close friendship. In June of 2002, they began dating and, soon thereafter, moved in together. They intend to spend the rest of their lives together.

65. Because Donna was unable to marry Maria and sponsor her for permanent residency in the United States, Maria had to return to Costa Rica upon expiration of her work visa. Since then, their lives have been completely uprooted. In order to be together with her life partner, Donna gave up her job at the United States Food and Drug Administration and now spends much of her time with Maria in Costa Rica on a series of tourist visas. Maria occasionally visits Donna in the United States on a tourist visa. They face tremendous uncertainty about their future together, not for lack of love or commitment, but rather because there is currently no place in the world where they may permanently and legally reside together. In light of this uncertainty, they cannot start a family together, although they would like to do so. They would not face this uncertainty if they were recognized as spouses.

66. Donna and Maria incur significant costs traveling to visit each other and communicating with each other while they are apart.

67. To be together with her life partner, Donna gave up a steady income, employer-sponsored health benefits, and an opportunity to pursue a master's degree in public health. The fact that she is now uninsured is of particular concern to her as a survivor of both a spinal tumor and a broken neck. Moreover, both her decreased earnings and her uncertain future led her to give up an opportunity to purchase at a discount a parcel of the family farm in Southern Maryland on which she was raised. In doing so, she gave up an opportunity to ensure that, in the future, she and her family will be able to live on the family farm along with her parents and her sisters and their families.

68. Donna suffers dignitary harm on account of the fact that the law effectively requires her to choose between her life in Maryland and her relationship with Maria, simply because they are not recognized as spouses.

John Lestitian

69. John, a gay man, resides in Hagerstown in Washington County, Maryland.

70. John is not married to another person. He is over the age of 17. He has the capacity to consent to marry.

71. John, age 38, has devoted his professional life to law enforcement. He is now the Chief Inspector of the Office of Code Compliance for the City of Hagerstown. Previously, he was a police officer.

72. John is Catholic, and at one point studied at seminary. John's now-deceased partner James (Jim) Bradley was also Catholic.

73. John and Jim spent 13 years in a loving, committed relationship. They began dating in 1990. Soon thereafter, John proposed a lifelong commitment to Jim, and Jim accepted. They planned a holy union ceremony for the following year. They planned a Catholic service, selecting scripture and music for the occasion. They arranged for a Catholic priest to perform the service. They encountered difficulty when a print shop refused to print their invitations, but, in the end, their holy union ceremony before 80 people was everything that they wanted it to be.

74. In 1993, John and Jim moved to Maryland, and John purchased their first house. In 2000, they relocated to Hagerstown so that John could pursue his graduate studies. This time, Jim purchased their house.

75. Jim suffered from depression. In July of 2003, he committed suicide.

76. After Jim's death, John discovered that Jim's will, which attempted to leave him Jim's estate upon Jim's death, was invalid for lack of the signature of a second witness. John was terrified, recognizing that the law provides no failsafes for surviving same-sex partners, as it does for surviving spouses by virtue of intestate succession law.

77. When John notified Jim's family of Jim's death, they stated that Jim's body was to be sent to them for a funeral and burial out of state. Jim's wish, however, was for a funeral and cremation in Maryland, as memorialized in detail in Jim's invalid will. John felt duty-bound to fulfill Jim's wishes. Because Jim was not his spouse, however, John was not legally empowered to do so. Even as he was grieving, John had to negotiate a compromise with Jim's family, which largely allowed Jim's wishes to be fulfilled.

78. In light of Jim's invalid will, John was also not legally empowered to fulfill Jim's wish that he serve as executor of Jim's estate. Again, John had to negotiate with Jim's family to allow him to serve in this capacity.

79. John cannot afford to purchase from Jim's estate the house that he and Jim shared because, as executor of Jim's estate, he has a fiduciary duty to sell the house for as much as the market can bear. He has had to move out of his own house as a result.

80. Perhaps the most crushing moment for John was the moment when he observed legal documents related to the administration of Jim's estate that characterized his relationship to the decedent merely as "friend."

81. Unlike a surviving spouse, John had to pay state taxes on half of the balance of the joint bank accounts that he had shared with Jim since 1991.

82. Jim designated John as the beneficiary of his retirement account. Unlike a surviving spouse, John was precluded from rolling over the funds into his own retirement account. Instead, he was required to take a lump sum distribution, for which he was then penalized.

83. The government has exacerbated the pain that John has suffered over the past year by reminding him at every turn of the fact that it does not deem his 13-year relationship with Jim to be worthy of recognition.

84. John seeks the right to marry because, when entering into a relationship with another same-sex partner, he wants the security that comes with the failsafes that are built into marriage.

85. John also seeks the right to marry because he risks discrimination fostered by the stigmatizing message about the worth of lesbian and gay people that his government sends to his community by excluding them from the right to marry.

Charles Blackburn and Glen Dehn

86. Charles and Glen, a gay couple, reside in Baltimore City, Maryland. They love each other and wish to be married to each other.

87. But for the fact that Charles and Glen are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

88. Charles, age 71, retired in 1995 after a 25-year career as a fundraiser for the Baltimore Symphony Orchestra, a University of Maryland environmental laboratory, and The Johns Hopkins School of Medicine. During the 1960s, prior to his career as a fundraiser, he was active in the civil rights movement in the South, first as a Unitarian minister and then as a field director for the American Civil Liberties Union. Glen, age 66, retired in 1995 after a 31-year career as a legislative affairs specialist for the United States Social Security Administration. Charles has resided in Maryland since 1975, while Glen has done so since 1966.

89. Charles and Glen are active in their community. Since their retirement, they have become even more active in their respective Unitarian and Lutheran churches. In addition, Charles has chaired the Architectural Review Committee of the Bolton Hill Historic District.

90. Charles and Glen met in 1978 and recognized almost immediately the potential for a meaningful relationship in light of their intellectual and cultural compatibility, complementary personalities, similar tastes, and shared interests. Soon thereafter, Charles moved in with Glen, and they created a home together. Their love for each other has only deepened after over 25 years of companionship and shared experiences. They intend to spend the rest of their lives together.

91. As Charles and Glen have grown older, they have become increasingly aware that, despite the alternative legal arrangements that they have made for themselves, they cannot procure for themselves all of the protections that come with marriage. If they were married, they would enjoy parity in health and pension benefits as well as inheritance and other tax equity. Each is concerned about his right to visit the other in the hospital as well as his authority to fulfill the other's medical and burial wishes. They are fearful that, despite their commitment to remain together until the end, they will be separated in a retirement community or a nursing home because they are not recognized as spouses.

92. Charles and Glen believe that anything short of civil marriage for same-sex couples would perpetuate second-class citizenship for lesbian and gay families. While they respect the freedom of religious organizations to decline to perform religious wedding ceremonies for same-sex couples, they believe that such religious freedom cannot prevent their state from recognizing their relationship. They believe that, rather than undermining the institution of marriage, a commitment such as theirs honors it. They believe that they, too, are entitled to the dignity and respect that marriage bestows.

Steve Palmer and Ryan Killough

93. Steve and Ryan, a gay couple, reside in East New Market in Dorchester County, Maryland. They love each other and wish to be married to each other.

94. But for the fact that Steve and Ryan are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

95. Steve, age 32, is a nurse in the intensive care unit of a local hospital. He also works part-time as a paramedic for the City of Cambridge's Emergency Medical Services. Ryan, age 30, is the public relations coordinator and a paramedic for the City of Cambridge's Emergency Medical Services. He also works part-time for other emergency medical services. He previously served in the United States Navy. Steve and Ryan are lifelong Marylanders.

96. Steve and Ryan met in the workplace in 1995. At that time, Steve was the manager of an ambulance company, and Ryan was a part-time paramedic at one of its bases. Each did not know that the other was gay. Living in small Eastern Shore communities and working with volunteer fire departments, each safeguarded his sexual orientation from public disclosure. In 1998, they spotted each other at a gay nightclub and began dating that very evening. Soon thereafter, they fell in love and moved in together. They intend to spend the rest of their lives together.

97. Steve and Ryan have since disclosed their relationship to the firefighters with whom they work. The firefighters have proven themselves to be more concerned

with their paramedic skills than with their relationship. Notwithstanding the acceptance that they have enjoyed among their colleagues, Steve and Ryan recognize that they still risk discrimination fostered by the stigmatizing message about the worth of their relationship that their government sends to their community by excluding them from marriage.

98. Steve and Ryan designed and constructed their home together. They purchased their trucks and their boat, on which they enjoy the Chesapeake Bay, together. Their lives, financial and otherwise, are completely entwined.

99. In the summer of 2000, Steve enrolled in nursing school. In doing so, he left full-time employment as a paramedic and, as a result, lost his health benefits. As a same-sex partner, he was ineligible to enroll in Ryan's employer-sponsored health plan throughout the course of his studies. Steve and Ryan had to pay for expensive individual health insurance to ensure that Steve's health needs were covered. Steve has since completed his course of studies and is now employed as a nurse.

100. In the fall of 2004, Ryan will enroll in nursing school. He will cut back to part-time employment and, as a result, will lose his health benefits. As a same-sex partner, he will be ineligible to enroll in Steve's employer-sponsored health plan. Steve and Ryan will have to pay for expensive individual health insurance to ensure that Ryan's health needs are covered.

101. If Steve and Ryan were rushed to the very hospital for which Steve works with a medical emergency, neither would be assured the right to visit the other or to make medical decisions on behalf of the other because they are not married.

102. Steve and Ryan's Methodist minister wishes to solemnize their civil marriage. Steve and Ryan seek the license that would allow them to be civilly as well as religiously married by their minister.

Patrick Wojahn and Dave Kolesar

103. Patrick and Dave, a gay couple, reside in College Park in Prince George's County, Maryland. They love each other and wish to be married to each other.

104. But for the fact that Patrick and Dave are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

105. Patrick, age 28, is an attorney for an HIV services provider. Dave, age 26 and a lifelong Marylander, is a civilian engineer for the United States Naval Research Laboratory.

106. Patrick and Dave met in a coffee shop in January of 2001 and, soon thereafter, began dating. On the second anniversary of their meeting, Patrick proposed a lifelong commitment to Dave, and Dave accepted. They agreed to declare their love for and devotion to each other before their families, friends, community, and God.

107. Patrick and Dave are religious. They attend a Catholic mass oriented toward members of the lesbian, gay, bisexual, and transgender community. They intend to celebrate their love for each other with a religious ceremony.

108. Patrick and Dave believe that marriage is an important religious and social commitment. They also recognize that marriage is an important legal commitment that

brings with it numerous protections that serve to foster stable households. Because Maryland law does not permit Patrick and Dave to marry each other, they are denied these protections and their salutary effect.

109. One protection that comes with marriage is the right of one spouse to oversee the medical care of the other when he or she is incapacitated. This is a benefit of particular importance to Patrick and Dave. In 1996, Dave nearly died as the result of a strep infection in his sinuses that spread to his brain, coupled with meningitis. Doctors at The Johns Hopkins Hospital gave him a 5 percent chance of survival, but he miraculously survived experimental medical procedures without any long-term impairment. Due to the rareness of his case, however, doctors have been unable to predict whether he will suffer any ill effect later in his life. As a result, Patrick and Dave live in fear that there will be a recurrence of the condition or an emergence of some latent consequence. Compounding their anxiety, they are fearful that Patrick's relationship to Dave will not be recognized in this time of need, depriving Patrick of the ability to care for and visit with Dave. If they were married, they would automatically enjoy the rights to medical decision making and hospital visitation under such circumstances.

110. Marriage also brings with it access to legal arrangements that better protect co-ownership of property. Patrick and Dave co-own a house without the additional security of a tenancy by the entirety. In addition, they have had to bear the expense of establishing inheritance rights through wills.

111. Most of all, Patrick and Dave wish for their relationship to enjoy the same social recognition as well as legal recognition as the relationships of their heterosexual

peers. Their relationship can attain this level of respect only through the institution of marriage.

Mikki Mozelle and Lisa Kebreau

112. Mikki and Lisa, a lesbian couple, reside in Riverdale in Prince George's County, Maryland. They love each other and wish to be married to each other.

113. But for the fact that Mikki and Lisa are a same-sex couple, Maryland law would permit them to marry each other. They are not related to each other by blood or marriage. Neither is married to another person. Each is over the age of 17. Each has the capacity to consent to marry, and each consents to marry the other.

114. Mikki, age 28, is an advertising traffic manager for a local television station. Lisa, age 36 and a lifelong Marylander, is a teacher within the Prince George's County public school system. They are raising Lisa's son from a former marriage, who is 14 years old and considers both Mikki and Lisa to be his parents. They are expecting another son in October of 2004. They attend a non-denominational church oriented toward African-American members of the lesbian, gay, bisexual, and transgender community.

115. Mikki and Lisa met through a mutual friend in 1999 and struck up a close friendship. On Valentine's Day of 2002, Mikki informed Lisa that she was prepared to commit to a lifelong relationship with Lisa and to form a family with Lisa and her son. Soon thereafter, Mikki moved in with Lisa and her son. In August of 2003, Mikki and Lisa celebrated their love for each other with a commitment ceremony.

116. Mikki and Lisa decided to have a child together. Through donor insemination, Lisa became pregnant and is now 26 weeks pregnant with another son. Mikki is actively involved in the pregnancy.

117. After the birth, Mikki intends to secure a second-parent adoption. Until she does so, however, she will not have any legal ties to the son whom she and Lisa decided to bring into the world. If Lisa were to become incapacitated during this time period, Mikki would not have any legal rights to make decisions on behalf of her own son.

118. With their elder son preparing to start high school and their younger son preparing to start life, Mikki and Lisa seek to protect their sons from harm and to ensure their happiness. They want their sons to know a stable family and home. Marriage would contribute significantly to such stability. They want their sons to feel proud of who they are and where they come from. Marriage would contribute significantly to such a sense of dignity. They are fearful that their exclusion from marriage serves to stigmatize their sons.

119. Mikki and Lisa do not want their sons to bear a burden greater than that of their peers in caring for their parents as they grow older, simply because government programs designed to assist older persons – ranging from Lisa’s county pension plan to Social Security benefits – do not recognize same-sex relationships. Because, as wage earners and taxpayers, Mikki and Lisa have borne their fair share of the costs of these programs, they believe that they and their sons should enjoy their fair share of the benefits of these programs.

## **Defendants**

120. Frank Conaway is sued in his official capacity as Clerk of the Circuit Court for Baltimore City, Maryland. Among other duties, Defendant Conaway has a duty to issue marriage licenses to qualified couples.

121. Rosalyn Pugh is sued in her official capacity as Clerk of the Circuit Court for Prince George's County, Maryland. Among other duties, Defendant Pugh has a duty to issue marriage licenses to qualified couples.

122. Evelyn Arnold is sued in her official capacity as Clerk of the Circuit Court for St. Mary's County, Maryland. Among other duties, Defendant Arnold has a duty to issue marriage licenses to qualified couples.

123. Dennis Weaver is sued in his official capacity as Clerk of the Circuit Court for Washington County, Maryland. Among other duties, Defendant Weaver has a duty to issue marriage licenses to qualified couples.

124. Michael Baker is sued in his official capacity as Clerk of the Circuit Court for Dorchester County, Maryland. Among other duties, Defendant Baker has a duty to issue marriage licenses to qualified couples.

## **General Allegations**

125. The Maryland statutory code does not permit marriages of same-sex couples. In particular, Md. Code Ann., Fam. Law § 2-201 provides that “[o]nly a marriage between a man and a woman is valid in this State.”

126. On July 1, 2004, Plaintiffs Deane and Polyak properly tendered to the office of the Baltimore City Circuit Court Clerk all of the paperwork and fees necessary

to obtain a marriage license. The office of the Baltimore City Circuit Court Clerk refused to issue a marriage license to Plaintiffs Deane and Polyak for the sole reason that they are a same-sex couple.

127. On July 2, 2004, Plaintiffs Williams and Simon properly tendered to the office of the Prince George's County Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Prince George's County Circuit Court Clerk refused to issue a marriage license to Plaintiffs Williams and Simon for the sole reason that they are a same-sex couple.

128. On June 28, 2004, Plaintiffs Foskey and Rabb properly tendered to the office of the Baltimore City Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Baltimore City Circuit Court Clerk refused to issue a marriage license to Plaintiffs Foskey and Rabb for the sole reason that they are a same-sex couple.

129. On June 29, 2004, Plaintiffs Kelber-Kaye and Kargman-Kaye properly tendered to the office of the Baltimore City Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Baltimore City Circuit Court Clerk refused to issue a marriage license to Plaintiffs Kelber-Kaye and Kargman-Kaye the sole reason that they are a same-sex couple.

130. On June 30, 2004, Plaintiffs Myers and Barquero properly tendered to the office of the St. Mary's County Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the St. Mary's County Circuit Court

Clerk refused to issue a marriage license to Plaintiffs Myers and Barquero for the sole reason that they are a same-sex couple.

131. On June 29, 2004, Plaintiffs Blackburn and Dehn properly tendered to the office of the Baltimore City Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Baltimore City Circuit Court Clerk refused to issue a marriage license to Plaintiffs Blackburn and Dehn for the sole reason that they are a same-sex couple.

132. On June 29, 2004, Plaintiffs Palmer and Killough properly tendered to the office of the Dorchester County Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Dorchester County Circuit Court Clerk refused to issue a marriage license to Plaintiffs Palmer and Killough for the sole reason that they are a same-sex couple.

133. On July 2, 2004, Plaintiffs Wojahn and Kolesar properly tendered to the office of the Prince George's County Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Prince George's County Circuit Court Clerk refused to issue a marriage license to Plaintiffs Wojahn and Kolesar for the sole reason that they are a same-sex couple.

134. On July 2, 2004, Plaintiffs Mozelle and Kebreau properly tendered to the office of the Prince George's County Circuit Court Clerk all of the paperwork and fees necessary to obtain a marriage license. The office of the Prince George's County Circuit Court Clerk refused to issue a marriage license to Plaintiffs Mozelle and Kebreau for the sole reason that they are a same-sex couple.

135. The office of the Washington County Circuit Court Clerk will not issue marriage licenses to same-sex couples.

136. The fact that the Maryland statutory code does not permit same-sex couples to marry has the practical effect of directly and substantially harming Plaintiffs in that it excludes them from marriage, the social status that marriage confers on married couples and their children, and the hundreds of rights, responsibilities, benefits, and obligations that marriage affords to married couples and their children.

**Count I**  
**(Unjustified Discrimination Based on Sex;**  
**Md. Declaration of Rights, Art. 46)**

137. Plaintiffs incorporate herein the allegations set forth in paragraphs 1 through 136 as if repeated entirely herein.

138. Defendants will not issue marriage licenses to Plaintiff couples or other same-sex couples solely because they are same-sex couples.

139. The Maryland statutory code does not permit same-sex couples to marry, but permits similarly situated opposite-sex couples to marry.

140. Because the Maryland statutory code does not permit same-sex couples to marry, same-sex couples and their children are excluded from marriage, the social status that marriage confers to married couples and their children, and the hundreds of protections, rights, responsibilities, benefits, and obligations that marriage affords to married couples and their children.

141. Article 46 of the Maryland Declaration of Rights prohibits unjustified discrimination based on sex.

142. Prohibiting same-sex couples from marrying but permitting similarly situated opposite-sex couples to marry constitutes unjustified discrimination based on sex and therefore constitutes a violation of Article 46 of the Maryland Declaration of Rights.

143. The exclusion of same-sex couples from marriage does not further a compelling governmental interest in the least restrictive manner, nor does it even rationally further a legitimate governmental interest.

144. WHEREFORE, Plaintiffs respectfully request that the Court grant a judgment or decree in favor of Plaintiffs and against Defendants as follows:

- (a) Declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes unjustified discrimination based on sex and therefore constitutes a violation of Article 46 of the Maryland Declaration of Rights;
- (b) Enjoining Defendants from refusing to issue marriage licenses to Plaintiff couples or other same-sex couples because they are same-sex couples;
- (c) Awarding Plaintiffs their reasonable costs; and
- (d) Awarding further relief as the Court deems necessary or proper.

**Count II**  
**(Unjustified Discrimination Based on Sexual Orientation;**  
**Md. Declaration of Rights, Art. 24 (Equal Protection of the Laws))**

145. Plaintiffs incorporate herein the allegations set forth in paragraphs 1 through 144 as if repeated entirely herein.

146. Defendants will not issue marriage licenses to Plaintiff couples or other same-sex couples solely because they are same-sex couples.

147. The Maryland statutory code does not permit same-sex couples to marry, but permits similarly situated opposite-sex couples to marry.

148. Because the Maryland statutory code does not permit same-sex couples to marry, same-sex couples and their children are excluded from marriage, the social status that marriage confers to married couples and their children, and the hundreds of protections, rights, responsibilities, benefits, and obligations that marriage affords to married couples and their children.

149. Article 24 of the Maryland Declaration of Rights prohibits unjustified discrimination based on sexual orientation.

150. Prohibiting same-sex couples from marrying but permitting similarly situated opposite-sex couples to marry constitutes unjustified discrimination based on sexual orientation and therefore constitutes a violation of Article 24 of the Maryland Declaration of Rights.

151. The exclusion of same-sex couples from marriage does not further a compelling governmental interest in the least restrictive manner, nor does it even rationally further a legitimate governmental interest.

152. WHEREFORE, Plaintiffs respectfully request that the Court grant a judgment or decree in favor of Plaintiffs and against Defendants as follows:

- (a) Declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes unjustified discrimination based on sexual orientation and therefore constitutes a violation of Article 24 of the Maryland Declaration of Rights;
- (b) Enjoining Defendants from refusing to issue marriage licenses to Plaintiff couples or other same-sex couples because they are same-sex couples;
- (c) Awarding Plaintiffs their reasonable costs; and
- (d) Awarding further relief as the Court deems necessary or proper.

**Count III**  
**Unjustified Discrimination in the Exercise of Fundamental Rights;**  
**Md. Declaration of Rights, Art. 24 (Equal Protection of the Laws))**

153. Plaintiffs incorporate herein the allegations set forth in paragraphs 1 through 152 as if repeated entirely herein.

154. Defendants will not issue marriage licenses to Plaintiff couples or other same-sex couples solely because they are same-sex couples.

155. The Maryland statutory code does not permit same-sex couples to marry, but permits similarly situated opposite-sex couples to marry.

156. Because the Maryland statutory code does not permit same-sex couples to marry, same-sex couples and their children are excluded from marriage, the social status that marriage confers on married couples and their children, and the hundreds of rights,

responsibilities, benefits, and obligations that marriage affords to married couples and their children.

157. Article 24 of the Maryland Declaration of Rights prohibits an unjustified, disparate deprivation of fundamental rights, including the fundamental right to marry. It also prohibits an unjustified, disparate burden on the exercise of fundamental rights, including the fundamental right to enter into an intimate relationship, a component of the fundamental rights to privacy, autonomy, and intimate association.

158. Prohibiting same-sex couples from marrying but permitting similarly situated opposite-sex couples to marry constitutes an unjustified, disparate deprivation of fundamental rights, including the fundamental right to marry. It also constitutes an unjustified, disparate burden on the exercise of fundamental rights, including the fundamental right to enter into an intimate relationship, a component of the fundamental rights to privacy, autonomy, and intimate association. It therefore constitutes a violation of Article 24 of the Maryland Declaration of Rights.

159. The exclusion of same-sex couples from marriage does not further a compelling governmental interest in the least restrictive manner, nor does it even rationally further a legitimate governmental interest.

160. WHEREFORE, Plaintiffs respectfully request that the Court grant a judgment or decree in favor of Plaintiffs and against Defendants as follows:

- (a) Declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes an unjustified, disparate deprivation of fundamental rights – including the fundamental right to marry – as well

- as an unjustified, disparate burden on the exercise of fundamental rights – including the fundamental right to enter into an intimate relationship, a component of the fundamental rights to privacy, autonomy, and intimate association – and therefore constitutes a violation of Article 24 of the Maryland Declaration of Rights;
- (b) Enjoining Defendants from refusing to issue marriage licenses to Plaintiff couples or other same-sex couples because they are same-sex couples;
  - (c) Awarding Plaintiffs their reasonable costs; and
  - (d) Awarding further relief as the Court deems necessary or proper.

**Count IV**  
**Unjustified Burden on the Exercise of Fundamental Rights;**  
**Md. Declaration of Rights, Art. 24 (Due Process of Law)**

- 161. Plaintiffs incorporate herein the allegations set forth in paragraphs 1 through 160 as if repeated entirely herein.
- 162. Defendants will not issue marriage licenses to Plaintiff couples or other same-sex couples solely because they are same-sex couples.
- 163. The Maryland statutory code does not permit same-sex couples to marry.
- 164. Because the Maryland statutory code does not permit same-sex couples to marry, same-sex couples and their children are excluded from marriage, the social status that marriage confers on married couples and their children, and the hundreds of rights, responsibilities, benefits, and obligations that marriage affords to married couples and their children.

165. Article 24 of the Maryland Declaration of Rights prohibits an unjustified deprivation of fundamental rights, including the fundamental right to marry. It also prohibits an unjustified burden on the exercise of fundamental rights, including the fundamental right to enter into an intimate relationship, a component of the fundamental rights to privacy, autonomy, and intimate association.

166. Prohibiting same-sex couples from marrying constitutes an unjustified deprivation of fundamental rights, including the fundamental right to marry. It also constitutes an unjustified burden on the exercise of fundamental rights, including the fundamental right to enter into an intimate relationship, a component of the fundamental rights to privacy, autonomy, and intimate association. It therefore constitutes a violation of Article 24 of the Maryland Declaration of Rights.

167. The exclusion of same-sex couples from marriage does not further a compelling governmental interest in the least restrictive manner, nor does it even rationally further a legitimate governmental interest.

168. WHEREFORE, Plaintiffs respectfully request that the Court grant a judgment or decree in favor of Plaintiffs and against Defendants as follows:

- (a) Declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes an unjustified deprivation of fundamental rights – including the fundamental right to marry – as well as an unjustified burden on the exercise of fundamental rights – including the fundamental right to enter into an intimate relationship, a component of the fundamental rights to privacy, autonomy, and intimate

- association – and therefore constitutes a violation of Article 24 of the Maryland Declaration of Rights;
- (b) Enjoining Defendants from refusing to issue marriage licenses to Plaintiff couples or other same-sex couples because they are same-sex couples;
- (c) Awarding Plaintiffs their reasonable costs; and
- (d) Awarding further relief as the Court deems necessary or proper.

Respectfully submitted,

---

Andrew H. Baida  
Caroline D. Ciraolo  
Cooperating Attorneys for the ACLU Foundation  
and the ACLU Foundation of Maryland  
Rosenberg Martin Funk Greenberg, LLP  
25 South Charles Street, Suite 2115  
Baltimore, MD 21201  
(410) 727-6600

Kenneth Y. Choe  
James D. Esseks  
American Civil Liberties Union Foundation  
Lesbian and Gay Rights Project  
125 Broad Street  
New York, NY 10004  
(212) 549-2627

David R. Rocah  
American Civil Liberties Union Foundation  
of Maryland  
3600 Clipper Mill Road, Suite 350  
Baltimore, MD 21211  
(410) 889-8555

Arthur B. Spitzer  
American Civil Liberties Union Foundation  
of the National Capital Area  
1400 20<sup>th</sup> Street, NW, #119  
Washington, DC 20036  
(202) 457-0800

Attorneys for Plaintiffs