

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

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

Plaintiffs, \*

v. \*

Case No. 24-C-04-005390

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. \*

\* \* \* \* \*

PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 2-501, Plaintiffs respectfully move the Court for entry of summary judgment in their favor and against Defendants on all counts. The grounds for this motion are set forth in the memorandum and exhibits that accompany and are filed in support of this motion. For the reasons stated in the memorandum, Plaintiffs’ motion for summary judgment should be granted. A proposed order is attached.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order granting their motion for summary of judgment.

Respectfully submitted,



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Andrew H. Baida  
Caroline D. Ciralo  
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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 14<sup>th</sup> day of June, 2005, copies of the foregoing motion and accompanying memorandum, exhibits, and proposed order were mailed via first class mail, postage prepaid, to:

J. Joseph Curran, Jr., Attorney General  
Margaret Ann Nolan, Assistant Attorney General  
Steven M. Sullivan, Assistant Attorney General  
Office of the Attorney General  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, MD 21202

Attorneys for Defendants

  
\_\_\_\_\_  
Andrew H. Baida

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Dorchester County Circuit Court Clerk, \*

Defendants. \*

\* \* \* \* \*

ORDER

Upon consideration of Plaintiffs' Motion for Summary Judgment, Defendants' response thereto, and the entire record in this matter, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2005, ORDERED that

1. Plaintiffs' Motion for Summary Judgment is GRANTED; and

2. Judgment is entered in favor of Plaintiffs and against Defendants on all counts, with costs to be paid by Defendants.

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The Honorable M. Brooke Murdock  
Judge, Circuit Court for Baltimore City, Maryland

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**Defendants.**

\* \* \* \* \*

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Plaintiffs include nine same-sex couples who have formed committed relationships and loving households. They seek for themselves and their children the protections unique to marriage that would protect and strengthen their families. Such protections are not only tangible but also intangible:

Marriage . . . bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. “It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.” Because it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life’s momentous acts of self-definition.

Goodridge v. Department of Public Health, 798 N.E.2d 941, 954-55 (Mass. 2003)

(quoting Griswold v. Connecticut, 381 U.S. 479, 486 (1965)). Md. Code Ann., Fam. Law § 2-201, which provides that “[o]nly a marriage between a man and a woman is valid in this State,” excludes them from marriage simply because they are same-sex couples. The Maryland Constitution does not tolerate such discrimination. The exclusion of same-sex couples from marriage violates the most basic constitutional guarantees of equality and liberty for all Marylanders.<sup>1</sup>

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<sup>1</sup> Plaintiffs seek a ruling solely on independent state grounds; they cite federal constitutional case law only as persuasive authority. In addition, Plaintiffs complain only of their exclusion from civil marriage, which is distinct from religious marriage; they do not – and indeed may not – complain of any exclusion from religious marriage. See Md. Const. Decl. Rts. Art. 36 (guaranteeing freedom of religion).

## STATEMENT OF FACTS

### **I. Plaintiffs are lesbian and gay individuals who have formed loving and committed relationships with same-sex partners**

Plaintiffs, each of whom identifies as lesbian or gay, include nine same-sex couples and one surviving same-sex partner who has begun to date another person of the same sex. Blackburn Decl. ¶ 3 (Ex. 7); Deane Decl. ¶ 3 (Ex. 1); Kelber-Kaye Decl. ¶ 3 (Ex. 4); Williams Decl. ¶ 3 (Ex. 2); Palmer Decl. ¶ 3 (Ex. 8); Wojahn Decl. ¶ 3 (Ex. 9); Mozelle Decl. ¶ 3 (Ex. 10); Myers Decl. ¶ 3 (Ex. 5); Foskey Decl. ¶ 3 (Ex. 3); Lestitian Decl. ¶¶ 3, 7, 9, 19 (Ex. 6).

Each partner loves the other, and wishes to be married to the other. Blackburn Decl. ¶ 4; Deane Decl. ¶ 4; Kelber-Kaye Decl. ¶ 4; Williams Decl. ¶ 4; Palmer Decl. ¶ 4; Wojahn Decl. ¶ 4; Mozelle Decl. ¶ 4; Myers Decl. ¶ 4; Foskey Decl. ¶ 4. And each couple has formed a relationship of significant duration that is otherwise suffused with indicia of commitment, as illustrated below.

Charles Blackburn and Glen Dehn 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. Blackburn Decl. ¶ 11. Soon thereafter, Charles moved in with Glen, and they created a home together. Id. Their love for each other has only deepened after almost 27 years of companionship and shared experiences. Id. They intend to spend the rest of their lives together. Id.

Gita Deane and Lisa Polyak met as college classmates in 1979 and committed to a lifelong relationship in 1981. Deane Decl. ¶ 7.

Jodi Kelber-Kaye and Stacey Kargman-Kaye met in an airport in 1993. Kelber-Kaye Decl. ¶ 7. They discovered many common bonds and, soon thereafter, committed to a lifelong relationship. Id.

Alvin Williams and Nigel Simon met in a discussion group for African-American gay men in 1997. Williams Decl. ¶ 8. They discovered many common bonds and, soon thereafter, Nigel moved in with Alvin. Id. They have explored their shared religious faith together, and that faith is a vital part of their family life. Id. ¶ 9. In 2000, they celebrated their love for each other with a holy union ceremony in the presence of 300 family members and friends. Id. They have long felt as married as anyone who shares with his or her spouse in the joys and responsibilities of raising a child and creating a home. Id. ¶ 12.

Steve Palmer and Ryan Killough met in the workplace in 1995. Palmer Decl. ¶ 7. At that time, Steve was the manager of an ambulance company, and Ryan was a part-time paramedic at one of its bases. Id. Each did not know that the other was gay. Id. Living in small Eastern Shore communities and working with volunteer fire departments, each safeguarded his sexual orientation from public disclosure. Id. In 1998, they spotted each other at a gay nightclub and began dating that very evening. Id. Soon thereafter, they fell in love and moved in together. Id. They intend to spend the rest of their lives together. Id. Together, they designed and constructed their house. Id. ¶ 9. And, together, they purchased their trucks and their boat, on which they enjoy the Chesapeake Bay. Id. Their lives, financial and otherwise, are completely entwined. Id.

Patrick Wojahn and Dave Kolesar met in a coffee shop in January of 2001 and, soon thereafter, began dating. Wojahn Decl. ¶ 7. On the second anniversary of their

meeting, Patrick proposed a lifelong commitment to Dave, which Dave accepted. Id. They agreed to declare their love for and devotion to each other before their families, friends, community, and God. Id. On June 25, 2005, they will celebrate their love for each other with a religious ceremony. Id. ¶ 8.

Mikki Mozelle and Lisa Kebreau met through a mutual friend in 1999 and struck up a close friendship. Mozelle Decl. ¶ 7. 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. Id. Soon thereafter, Mikki moved in with them. Id. In August of 2003, Mikki and Lisa celebrated their love for each other with a commitment ceremony. Id.

Donna Myers and Maria Barquero met playing roller hockey in 1999 and struck up a close friendship. Myers Decl. ¶ 9. In June of 2002, they began dating and, soon thereafter, moved in together. Id. They intend to spend the rest of their lives together. Id.

Takia Foskey and Jo Rabb met in March of 2003 while Takia and her children were boarding the bus that Jo was driving. Foskey Decl. ¶ 7. Takia was immediately taken with the kindness that Jo demonstrated toward her children. Id. Takia and Jo began dating and, soon thereafter, moved in together. Id. On June 26, 2004, they celebrated their love for each other with a commitment ceremony. Id.

John Lestitian is the surviving same-sex partner of a loving and committed thirteen-year relationship. Lestitian Decl. ¶¶ 7, 9. He has begun to date another person of the same sex. Id. ¶ 19.

## **II. Plaintiffs include same-sex couples who are raising children**

Plaintiffs include five same-sex couples who are raising children, some of whom intend to raise additional children, and a sixth same-sex couple who intends to raise children. Deane Decl. ¶¶ 12-13; Kelber-Kaye Decl. ¶¶ 8-9, 12, 15; Mozelle Decl. ¶¶ 6, 8-9, 11-12; Williams Decl. ¶ 10; Foskey Decl. ¶¶ 6, 15; Myers Decl. ¶ 10.

Three couples are raising children who were brought into their families through donor insemination. Lisa Polyak and Gita Deane are raising two daughters, both of whom were brought into their family through donor insemination. Lisa gave birth to their older daughter in 1996, and Gita gave birth to their younger daughter in 1999. Deane Decl. ¶ 12. Jodi Kelber-Kaye and Stacey Kargman-Kaye are raising two sons, both of whom were brought into their family through donor insemination. Jodi gave birth to their older son in 1998 and their younger son in May of 2003. Kelber-Kaye Decl. ¶¶ 8, 12. Mikki Mozelle and Lisa Kebreau are raising two sons, one of whom was brought into their family through donor insemination. Lisa gave birth to their younger son in September of 2004. Mozelle Decl. ¶ 8. Mikki and Lisa are expecting to bring an additional child into their family through donor insemination. Lisa is expecting to give birth to another child in December of 2005. Mozelle Decl. ¶ 11. A fourth couple, Takia Foskey and Jo Rabb, would like to bring a child into their family through donor insemination. Foskey Decl. ¶ 15.

A fifth couple is raising a child who was brought into their family through adoption. Alvin Williams and Nigel Simon are raising a son who was brought into their family through adoption. Nigel adopted their son, age 7, in September of 2002. Williams Decl. ¶ 10. Alvin and Nigel are expecting to bring additional children into their

family through adoption. Nigel is expecting to adopt a daughter, age 9, and another son, age 7, a sibling pair. Id.

Two of these five couples are raising children from previous relationships. Mikki Mozelle and Lisa Kebreau are raising Lisa's son from a previous relationship, age 15, who considers both Lisa and Mikki to be his parents. Mozelle Decl. ¶ 6. Takia Foskey and Jo Rabb are raising Takia's daughter and son from previous relationships, ages 12 and 7, respectively, both of whom consider both Takia and Jo to be their parents. Foskey Decl. ¶ 6.

A sixth couple, Donna Myers and Maria Barquero, would like to bring a child into their family. Myers Decl. ¶ 10.

### **III. Plaintiffs may not marry solely because they seek to marry same-sex partners**

Plaintiffs may not marry solely because they seek to marry same-sex partners. Each partner is unrelated to the other by blood or marriage. Deane Decl. ¶ 4; Williams Decl. ¶ 4; Foskey Decl. ¶ 4; Kelber-Kaye Decl. ¶ 4; Myers Decl. ¶ 4; Blackburn Decl. ¶ 4; Palmer Decl. ¶ 4; Wojahn Decl. ¶ 4; Mozelle Decl. ¶ 4. Neither partner is married to another person. Id.; see also Lestitian Decl. ¶ 4. Each partner is over the age of 17. Id.; see also Lestitian Decl. ¶ 4. Each partner has the capacity to consent to marry. Id.; see also Lestitian Decl. ¶ 4. Each partner consents to marry the other. Id.

Each couple properly tendered to the proper circuit court clerk's office all of the paperwork and fees necessary to obtain a marriage license. Deane Decl. ¶¶ 2, 5; Williams Decl. ¶¶ 2, 5; Foskey Decl. ¶¶ 2, 5; Kelber-Kaye Decl. ¶¶ 2, 5; Myers Decl. ¶¶ 2, 5; Blackburn Decl. ¶¶ 2, 5; Palmer Decl. ¶¶ 2, 5; Wojahn Decl. ¶¶ 2, 5; Mozelle Decl.

¶¶ 2, 5. In each instance, the circuit court clerk's office refused to issue a marriage license solely because the couple is a same-sex couple. Id.

**IV. Because Plaintiffs may not marry, they and their children suffer significant injury**

**A. Plaintiffs and their children are denied important protections that are afforded to married couples and their children by state law**

Because Plaintiffs may not marry, they and their children are denied hundreds of important protections that are afforded to married couples and their children by state law, whether statutory, regulatory, common law, or otherwise.<sup>2</sup> The following subsections are merely illustrative of such harm.

**1. Plaintiffs and their children are denied important protections associated with times of death**

The safeguards and protections available to surviving spouses in times of death are not available to Plaintiffs. For example, Plaintiffs may not avail themselves of the spousal priority in intestate succession, Md. Code Ann., Est. & Trusts § 3-102, the spousal priority in authority to dispose of a body, Md. Code Ann., Health Occ. § 7-410(c)(1), and the spousal exemption from inheritance tax, Md. Code Ann., Tax-Gen. § 7-203(b)(2)(iii), as illustrated below.

Before his death in July of 2003, John Lestitian's deceased partner sought to leave John his estate and to authorize John to dispose of his body. Lestitian Decl. ¶¶ 9-11. After his death, however, his will was deemed invalid on account of a technical deficiency. Id. ¶ 10. As a result, John had to give up his own house. Id. ¶ 13. Moreover, he had to negotiate with his deceased partner's surviving family over the

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<sup>2</sup> A partial list of such protections is set forth in the Appendix, infra.

