

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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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 14th 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:

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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.

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

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**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.¹

¹ 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.² 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

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

disposition of the body. Id. ¶ 11. In addition, he had to pay state taxes on half of the balances of the joint bank accounts that he had shared with his deceased partner. Id. ¶ 15.

Such disparities – whether those involving the authority to dispose of a body or those involving the payment of state taxes on an inheritance – are of particular and increasing concern to Charles Blackburn, age 72, and Glen Dehn, age 67. Blackburn Decl. ¶¶ 6-7, 12.

Because Plaintiffs do not enjoy the safeguards and protections that married couples enjoy, they have had to incur the expense of attempting to protect their rights through wills and other legal instruments. Wojahn Decl. ¶ 11; Williams Decl. ¶ 11; Blackburn Decl. ¶ 12.

2. Plaintiffs and their children are denied important protections associated with times of illness

The safeguards and protections available to spouses in times of illness are also not available to Plaintiffs. For example, Plaintiffs may not avail themselves of the spousal priority in authority to make health care decisions, Md. Code Ann., Health-Gen. § 5-605(a)(2)(ii), and the spousal entitlement to share a room in a health care facility, Md. Code Ann. Health-Gen. § 19-344(h), as illustrated below.

In September of 2003, Jo Rabb was rushed to a local hospital for emergency gallbladder surgery. Foskey Decl. ¶ 14. Takia Foskey sought to participate in discussions with hospital staff about Jo’s medical care, and simply to be by Jo’s side. Id. Hospital staff, however, instructed Takia to sit in the waiting room because, according to hospital staff, she is not a member of Jo’s family. Id. 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. Id. This caused great anxiety for Takia, especially because

she knew that Jo was heavily medicated and therefore unable to make informed decisions for herself. Id.

In January of 2001, Stacey Kargman-Kaye was unexpectedly admitted to a local hospital for ten days. Kelber-Kaye Decl. ¶ 10. As Stacey was returning from surgery, a nurse pushed Jodi Kelber-Kaye out of the room despite her repeated protests that Stacey is her partner and that Stacey would want her to be there to comfort Stacey in her time of need. Id.

In May of 2003, Jodi gave birth prematurely at a state hospital. Id. ¶ 12. While Jodi was in post-delivery recovery, the child was whisked away to a special nursery for premature infants. Id. ¶ 13. Stacey, a naturopathic doctor, followed to advocate on his behalf. Id. A nurse attempted to exclude her from discussions about his care, repeatedly and hostilely asking, “Just who are you?” and failing to understand that she is his parent. Id. The nurse stood down only when Jodi was compelled to join them in order to confirm what Stacey had said. Id.

In May of 2003, Ryan Killough was admitted to the emergency room of a local hospital where an electrocardiogram revealed an abnormality. Palmer Decl. ¶ 11. Steve Palmer sought to see Ryan so that he could comfort Ryan in his time of need. Id. The emergency room physician, however, told Steve that he could not see Ryan because Steve is not “family.” Id. This caused great anxiety for Steve. Id. Ultimately, a nurse whom he happened to know interceded on his behalf. Id.

Such disparities – whether those involving the entitlement to share a room with a partner in a nursing home or those involving the authority to make health care decisions

on behalf of a partner – are of particular and increasing concern to Charles Blackburn and Glen Dehn. Blackburn Decl. ¶ 12.

Because Plaintiffs do not enjoy the safeguards and protections that married couples enjoy, they have had to incur the expense of attempting to protect their rights through health care proxies and other legal instruments. Kelber-Kaye Decl. ¶ 11; Williams Decl. ¶ 11; Blackburn Decl. ¶ 12.

3. Plaintiffs and their children are denied important protections associated with public employment

The protections and benefits available to spouses through public employment are also not available to Plaintiffs. For example, Plaintiffs may not avail themselves of spousal eligibility for death benefits, Md. Code Ann., State Pers. & Pens. § 10-404(d)(2), spousal eligibility for health benefits, Md. Regs. Code tit. 17, § 04.13.03(11)(a), and spousal eligibility for donor insemination benefits, 2005-2006 Maryland State Employees/Retirees Health Benefits, at 18 (www.dbm.maryland.gov/dbm_publishing/public_content/dbm_search/employee_services/health_benefits/2006_health_active_retiree_wrkbnk_2006.pdf), as illustrated below.

Jo Rabb is a Maryland Transit Administration bus driver. Foskey Decl. ¶ 6. For a period of ten months, Takia Foskey and her children did not have health insurance, which caused great anxiety for Takia and Jo. Id. ¶ 8. As a same-sex partner, Takia is ineligible to enroll in Jo's state employer-sponsored health plan. Id. ¶ 10. Because Takia and Jo are not married, Takia's children are also ineligible to enroll in Jo's state employer-sponsored health plan. Id. Until July of 2004, Takia and her children were ineligible to enroll in Takia's employer-sponsored health plan because, until then, Takia worked only part-time. Id. ¶ 11. Until September of 2003, Takia and her children qualified for

Medicaid coverage. Id. ¶ 9. Thereafter, however, they no longer qualified for Medicaid coverage because, thereafter, Takia earned too much. Id. At the same time, Takia and Jo earned too little to afford private health insurance for Takia and her children. Id. Takia suffers from adenomyosis, a medical condition involving the reproductive system and, in August of 2003, underwent surgery related to that condition. Id. ¶ 12. Medicaid covered the cost of the surgery itself, but, soon after the surgery, she lost her Medicaid coverage. Id. While Takia was uninsured, Takia and Jo incurred out-of-pocket post-surgical medical expenses, and Takia had to forego follow-up medical care. Id. Takia's son suffers from asthma. Id. ¶ 13. While he was uninsured, Takia and Jo incurred out-of-pocket medical expenses related to his medical condition. Id. Although Takia and her children are now enrolled in Takia's employer-sponsored health plan, their health benefits are costlier than and inferior to the health benefits that they would enjoy if they were enrolled in Jo's state employer-sponsored health plan. Id. ¶ 11.

Ryan Killough is the public relations coordinator and a paramedic for the City of Cambridge's Emergency Medical Services. Palmer Decl. ¶ 6. In the summer of 2000, Steve Palmer enrolled in nursing school. Id. ¶ 10. In doing so, he left full-time employment and, as a result, lost his health benefits. Id. As a same-sex partner, Steve is ineligible to enroll in Ryan's public employer-sponsored health plan. Id. Throughout the course of Steve's studies, Steve and Ryan had to pay for expensive private health insurance to ensure that Steve's health needs were covered. Id.

Jodi Kelber-Kaye is a professor at the University of Maryland at Baltimore County. Kelber-Kaye Decl. ¶ 6. Stacey Kargman-Kaye is self-employed. Id. ¶ 16. As a same-sex partner, Stacey is ineligible to enroll in Jodi's state employer-sponsored health

plan. Id. Thus, Jodi's state employer-sponsored health plan is not an option for Jodi and Stacey in ensuring that Stacey's health needs are covered. Id.

Takia Foskey and Jo Rabb would like to bring a child into their family through donor insemination but cannot afford to do so on their own. Foskey Decl. ¶ 15. If they were married, Jo's state employer-sponsored health plan would help cover such expenses. Id.

Takia and Jo and their children live with the possibility of a vehicular accident while Jo is performing her duties as a bus driver. Id. ¶ 16. 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 married. Id.

As a same-sex partner, Mikki Mozelle does not enjoy automatic recognition by Lisa Kebreau's public employer-sponsored pension plan. Mozelle Decl. ¶ 14.

4. Plaintiffs and their children are denied important protections associated with the parent-child relationship

Maryland courts routinely grant second-parent adoptions to same-sex partners. Ayers Decl. ¶ 9 (Ex. 11); Deane Decl. ¶ 13; Williams Decl. ¶ 10; Kelber-Kaye Decl. ¶¶ 9, 15; Mozelle Decl. ¶ 9. However, where one partner gives birth to a child, the other partner may not secure a second-parent adoption until after a period of delay. Ayers Decl. ¶ 12; Mozelle Decl. ¶¶ 10, 12. Similarly, where one partner adopts a child, the other partner may not secure a second-parent adoption until after a period of delay. Ayers Decl. ¶ 12; Williams Decl. ¶ 10. Either way, the delay in the establishment of legal relationships between the child and both of his or her parents is a source of concern for same-sex couples, given that the second parent would have no authority to act on

behalf of the child if the first parent were to become incapacitated during the period of delay. Ayers Decl. ¶ 11; Mozelle Decl. ¶¶ 10, 12; Williams Decl. ¶ 10.

In contrast, where a child is born into a marriage, there is no delay in the establishment of legal relationships between the child and both of his or her parents. Ayers Decl. ¶ 13; see also Md. Code Ann., Fam. Law. § 5-1027(c)(1) (spousal presumption of parenthood). Similarly, where a child is adopted into a marriage, there is no delay in the establishment of legal relationships between the child and both of his or her parents. See Md. Code Ann., Fam. Law. § 5-315(a) (spousal entitlement to joint adoption).

5. Plaintiffs and their children are denied important protections associated with economic security

Other protections and benefits available to spouses are not available to Plaintiffs, as illustrated below. See Badgett Decl. ¶¶ 18-52 (Ex. 14).

Plaintiffs do not enjoy the greater security that comes with joint ownership through a tenancy by the entirety. Kelber-Kaye Decl. ¶ 17; Wojahn Decl. ¶ 11; see also, e.g., *McManus v. Summers*, 290 Md. 408, 412, 430 A.2d 80 (1981) (tenancy by the entirety is reserved for spouses).

In addition, because they are not married, Plaintiffs do not enjoy state tax equity. Blackburn Decl. ¶ 12; see also, e.g., Md. Code Ann., Tax-Gen. § 10-807(a) (spousal entitlement to joint return).

B. Plaintiffs and their children are more likely to be denied other important protections that are afforded to married couples and their children

1. Plaintiffs and their children are more likely to be denied social recognition as family units and otherwise suffer discrimination

Plaintiffs seek the intangible protections of marriage for themselves and especially for their children. As Mikki Mozelle states:

With our elder son starting high school, our younger son starting life, and another child on the way, Lisa and I seek to protect our children from harm and to ensure their happiness. We want our children to know a stable family and home. Marriage would contribute significantly to such stability. We want our children to feel proud of who they are and where they come from. Marriage would contribute significantly to such a sense of dignity. We are fearful that our exclusion from marriage serves to stigmatize our children.

Mozelle Decl. ¶ 13. All Plaintiffs share this general concern. See, e.g., Deane Decl. ¶ 16 (“The legal sanction of our relationship through the institution of civil marriage would greatly diminish the stigma that our daughters will otherwise bear, simply because their parents are a same-sex couple.”); Williams Decl. ¶ 12 (“We want our family to have the sense of security that comes with the knowledge that our relationship is recognized by our community and by the laws of our state.”); Foskey Decl. ¶ 17 (“[We] seek for ourselves and our children the same sense of security that married couples and their children enjoy.”); Kelber-Kaye Decl. ¶ 18 (“[We] are concerned that, because we cannot marry, we and our sons are at constant risk that we will not be recognized as a family unit.”); Myers Decl. ¶ 14 (“I suffer dignitary harm on account of the fact that the law effectively requires me to choose between my life in Maryland and my relationship with Maria, simply because we are not recognized as spouses.”); Lestitian Decl. ¶ 20 (“I also seek the right to marry because I risk discrimination fostered by the stigmatizing message about the worth of lesbian and gay people that my government sends to my community

by excluding them from the right to marry.”); Blackburn Decl. ¶ 13 (“[We] believe that anything short of civil marriage for same-sex couples would perpetuate second-class citizenship for lesbian and gay families We believe that we, too, are entitled to the dignity and respect that marriage bestows.”); Palmer Decl. ¶ 8 (“[W]e still risk discrimination fostered by the stigmatizing message about the worth of our relationship that our government sends to our community by excluding us from marriage.”); Wojahn Decl. ¶ 12 (“Most of all, [we] wish for our relationship to enjoy the same social recognition as well as legal recognition as the relationships of our heterosexual peers. Our relationship can attain this level of respect only through the institution of marriage.”).

Because Gita Deane and Lisa Polyak are not married, they and their daughters have been denied social recognition as a family unit. Deane Decl. ¶ 15. In April of 2004, when Gita and Lisa and their daughters were returning to the country after an overseas family reunion, Gita and Lisa were not permitted to complete a single customs forms for their entire family because they are not married. Id. Lisa completed one customs form listing herself and their daughters, while Gita completed another customs form listing only herself. Id. Lisa and their older daughter proceeded through the checkpoint without incident. Id. Gita and their younger daughter, however, were stopped and questioned, and Gita was forbidden from proceeding through the checkpoint with her own daughter. Id. Only after some time, during which Gita and Lisa and their daughters suffered humiliation and inconvenience, did a customs official recognize their family relationship. Id.

Similarly, when Jo Rabb, Stacey Kargman-Kaye, and Ryan Killough were hospitalized, Takia Foskey, Jodi Kelber-Kaye, and Steve Palmer, respectively, were denied visitation and decisionmaking privileges by hospital officials who, because the couples were not married, failed to recognize their family relationships. Foskey Decl. ¶ 14; Kelber-Kaye Decl. ¶¶ 10, 13; Palmer Decl. ¶ 11.

2. Plaintiffs and their children are more likely to be denied important protections afforded to married couples and their children by private actors

Because Plaintiffs may not marry, they and their children are more likely to be denied protections and benefits that are afforded to married couples and their children by private actors, as illustrated below.

When Jo Rabb, Stacey Kargman-Kaye, and Ryan Killough were hospitalized, Takia Foskey, Jodi Kelber-Kaye, and Steve Palmer, respectively, were denied visitation and decisionmaking privileges by private hospitals because they were not married. Foskey Decl. ¶ 14; Kelber-Kaye Decl. ¶ 10; Palmer Decl. ¶ 11. Steve, a nurse in the intensive care unit of a private hospital, notes that, “today, if, in a medical emergency, Ryan or I were rushed to the very hospital for which I now work, neither of us would be assured the right to visit the other or to make medical decisions on behalf of the other because we are not married.” Palmer Decl. ¶¶ 6, 12.

Charles Blackburn and Glen Dehn are fearful that, despite their commitment to remain together until the end, they will be separated in a private retirement community or a private nursing home because they are not married. Blackburn Decl. ¶ 12.

3. Plaintiffs and their children are more likely to be denied important protections afforded to married couples and their children by other governmental actors³

a. Plaintiffs and their children are more likely to be denied important protections by other state governments

Now that they are retired, Charles Blackburn and Glen Dehn spend a significant amount of time traveling out of state. Blackburn Decl. ¶ 8. They risk a medical emergency that will land one in an out-of-state hospital that will deny the other decisionmaking and visitation rights. Id. ¶ 10.

Because Patrick Wojahn, Dave Kolesar, Nigel Simon, and Mikki Mozelle work across the state line, they and their partners risk the same on a daily basis. Wojahn Decl. ¶ 6; Williams Decl. ¶ 6; Mozelle Decl. ¶ 6. This is of particular concern 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. Wojahn Decl. ¶ 10. Doctors at The Johns Hopkins Hospital gave him a five percent chance of survival, but he miraculously survived experimental medical procedures without any long-term impairment. Id. 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. Id. 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. Id. Compounding their anxiety, they are fearful that Patrick's relationship to Dave will

³ Same-sex couples who marry in Maryland would not enjoy recognition by some other state governments and the federal government on account of laws precluding such recognition, but they would be positioned to enjoy recognition by such governments if such laws were repealed or invalidated. See, e.g., In re Coordination Proceeding, No. 4365, 2005 WL 583129 (Cal. Super. Ct. Mar. 14, 2005) (appeal pending) (challenging California law precluding recognition); Castle v. Washington, No. 04-2-00614-4, 2004 WL 1985215 (Wash. Super. Ct. Sept. 7, 2004) (appeal pending) (challenging Washington law precluding recognition); Andersen v. King County, No. 04-2-04964-4-SEA, 2004 WL 1738447 (Wash. Super. Ct. Aug. 4, 2004) (appeal pending) (same).

not be recognized in this time of need, depriving Patrick of the ability to care for and visit with Dave. Id.

b. Plaintiffs and their children are more likely to be denied important protections by the federal government

By its own count, the federal government affords 1,138 protections and benefits to married couples and their children. United States General Accounting Office, Letter to Majority Leader Bill Frist (Jan. 23, 2004) (www.gao.gov/new.items/d04353r.pdf). Because they may not marry, Plaintiffs and their children are more likely to be denied such protections and benefits, as illustrated below.⁴

Because Donna Myers is unable to marry Maria Barquero and sponsor her for permanent residency in the United States, Maria had to return to Costa Rica upon expiration of her work visa in February of 2003. Myers Decl. ¶ 10. Thereafter, to be together with her life partner, Donna spent much of her time with Maria in Costa Rica on a series of tourist visas. Id. In doing so, Donna gave up a steady income, employer-sponsored health benefits, and an opportunity to pursue a master's degree in public health. Id. ¶ 12. The fact that she was uninsured was of particular concern to her as a survivor of both a spinal tumor and a broken neck. Id. 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. Id. In doing so, she gave up an opportunity to ensure that, in the future, her own family will

⁴ Defendants assert as their "Second Affirmative Defense" that "[t]he federal Defense of Marriage Act, 28 U.S.C. § 1738C bars and preempts the extension of marital rights to same sex couples as to federal benefits and programs including, but not limited to immigration status and [the federal portion of] Medicaid." Answer at 6-7. Plaintiffs do not seek the protections and benefits afforded to married couples by the federal government in this action. See Compl. ¶¶ 137-68. If they were married, however, they would be positioned to enjoy such protections and benefits if the so-called Defense of Marriage Act were repealed or invalidated.

