



Baltimore, MD 21202;  
**ROSALYN PUGH, IN HER OFFICIAL CAPACITY AS** \*  
**PRINCE GEORGE’S COUNTY CIRCUIT COURT CLERK,**  
 14735 Main Street, \*

Upper Marlboro, MD 20772;  
**EVELYN ARNOLD, IN HER OFFICIAL CAPACITY AS** \*  
**ST. MARY’S COUNTY CIRCUIT COURT CLERK,**  
 41605 Courthouse Drive, \*

Leonardtown, MD 20650;  
**DENNIS WEAVER, IN HIS OFFICIAL CAPACITY AS** \*  
**WASHINGTON COUNTY CIRCUIT COURT CLERK,**  
 95 West Washington Street, \*

Hagerstown, MD 21740; and  
**MICHAEL BAKER, IN HIS OFFICIAL CAPACITY AS** \*  
**DORCHESTER COUNTY CIRCUIT COURT CLERK,**  
 206 High Street, \*

Cambridge, MD 21613, \*

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.

