STATE OF MARYLAND	*	Case No: 21-K-11-45589
v.	*	IN THE CIRCUIT COURT FOR
DEBORAH A. SNOWDEN	*	WASHINGTON COUNTY, MARYLAND

* * * * * * * * * * * *

BRIEF OF SHA'RRON AMEEDAH SALEEM IN OPPOSITION TO THE MARYLAND STATE'S ATTORNEY'S MOTION TO COMPEL TESTIMONY

Sha'rron Ameedah Saleem (a.k.a. Sha'rron Ameedah Snowden, hereinafter "Ms. Saleem Snowden"), by and through her undersigned counsel, respectfully submits this brief and supporting exhibits in opposition to the Maryland State's Attorney's motion to compel her testimony.

Preliminary Statement

Ms. Saleem Snowden asserts her spousal privilege pursuant to Md. Code Ann., Cts. & Jud. Proc. § 9-106 not to testify against her spouse, Deborah Antionette Snowden ("Ms. Snowden"), defendant in this criminal proceeding. Ms. Saleem Snowden and Ms. Snowden, a committed same-sex couple, legally wed in the District of Columbia on August 11, 2010, and are still married. A copy of their marriage certificate is attached as Exhibit A.

The issue posed by the State's Attorney's motion to compel is whether Ms. Saleem Snowden may be considered a "spouse" and hence eligible to invoke the spousal privilege under § 9-106. This question is resolved under longstanding Maryland common law comity principles, which require legal recognition of the Snowdens' validly entered out-of-state marriage, and hence of Ms. Saleem Snowden's status as a spouse.

Under Maryland's common law marriage recognition rule, an out-of-state marriage is entitled to legal respect in Maryland even if it could not be entered within the State, unless either of two narrowly construed exceptions applies. The first exception is if the common law rule of marriage recognition has been expressly abrogated by the Legislature's enactment of a statute specifically prohibiting recognition of the out-of-state

marriage. If the Legislature has only prohibited the marriage from being entered into within the State, the rule of recognition still applies. The second is if recognition of the marriage would be repugnant to Maryland public policy, a standard so stringent that even an incestuous marriage between uncle and niece carrying criminal sanction within Maryland has been held entitled to recognition. Neither of those exceptions even remotely applies to out-of-state marriages of same-sex couples, which therefore are subject to recognition in Maryland — as Maryland's Attorney General has concluded and its Governor has confirmed. While Maryland appellate courts have yet to address the issue, many New York appellate and lower courts have applied the virtually identical marriage recognition rule in that state's very similar marriage and public policy landscape to recognize out-of-state marriages of same-sex couples. These cases offer instructive guidance on this question.

Ms. Saleem Snowden qualifies as Ms. Snowden's spouse, and therefore is entitled to assert her right pursuant to Md. Code Ann., Cts. & Jud. Proc. § 9-106 not to testify in this proceeding against Ms. Snowden, just as spouses in different-sex marriages are entitled to assert this privilege. The State's motion to compel therefore should be denied as contrary to the testimonial privilege conferred under § 9-106.

Background

The Snowdens reside together in Washington County, Maryland. It is undisputed that they validly married in the District of Columbia, where same-sex couples have been able legally to wed since March 3, 2010. D.C. Code § 46-401 (effective March 3, 2010). The District of Columbia imposes no residency requirement to marry there.

Prior to the time the Snowdens married, Maryland's Attorney General and Governor had announced that marriages of same-sex couples validly entered in other jurisdictions are entitled to respect by the State. On February 23, 2010, Maryland Attorney General Douglas Gansler issued a comprehensive opinion (the "Opinion") thoroughly analyzing why out-of-state marriages of same-sex couples are subject to legal recognition in Maryland under longstanding comity principles. A copy of the Opinion is

attached as Exhibit B.[1] The Attorney General specifically responded in the Opinion to the question: "Whether [an] Out-of-State Same-Sex Marriage That Is Valid in the State of Celebration May Be Recognized in Maryland." Ex. B at 3. The Attorney General concluded that "[t]he answer to that question is clearly 'yes.'" *Id.* at 4. The Attorney General further opined that, "While the matter is not free from all doubt, in our view, the Court [of Appeals] is likely to respect the law of other states and recognize a same-sex marriage contracted validly in another jurisdiction." *Id.* at 6.[2]

On February 24, 2010, Governor O'Malley issued a press release following issuance of the Opinion, stating that, "[h]aving reviewed the 45-page opinion, we will be guided by the Attorney General's thorough analysis and legal advice on this matter," and that he "expect[s] all State agencies to work with the Attorney General's office to ensure compliance with the law." *See* Press Release, Office of Governor Martin O'Malley, Statement from Governor Martin O'Malley on Attorney General's Same Sex Marriage Recognition Opinion (Feb. 24, 2010) (attached as Exhibit C).[3] Governor O'Malley thus confirmed that the State will comply with Maryland comity law, as summarized in the Attorney General's Opinion, and recognize out-of-state marriages of same-sex couples. As discussed below, the State's recognition of such marriages is evidenced in an array of contexts.

On January 5, 2011, Ms. Snowden was charged with assault in the second degree and reckless endangerment with respect to an alleged incident between Ms. Snowden and Ms. Saleem Snowden on or about December 10, 2010. Ms. Saleem Snowden was issued a subpoena by the State's Attorney, dated March 2, 2011, to testify in the case against Ms. Snowden. A copy of the subpoena is attached as Exhibit D. Ms. Saleem Snowden appeared *pro se* before this Court on April 25, 2011, pursuant to the subpoena. A copy of

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[1] Available at http://www.oag.state.md.us/Opinions/2010/95oag3.pdf.

[2] The Attorney General's Opinion is "entitled to careful consideration and serve[s] as [an] important guide[] to those charged with the administration of the law." *Mitchell v. Register of Wills*, 227 Md. 305, 310 (1962). Maryland courts have repeatedly held that opinions of the Attorney General are entitled to great weight and respectful consideration. *See, e.g., Read Drug & Chemical Co. v. Claypoole*, 165 Md. 250, 257 (1933); *Popham v. Conservation Comm'n*, 186 Md. 62, 71 (1946).

[3] Available at http://www.governor.maryland.gov/pressreleases/100224.asp.

the certified transcript of the April 25, 2011 proceedings in this matter is attached as Exhibit E.

When called to testify by the State's Attorney, Ms. Saleem Snowden asserted the spousal privilege granted in Md. Code Ann., Cts. & Jud. Proc. § 9-106 (Ex. E at 7), which, with an exception inapplicable here, prohibits the State from compelling an individual to testify as an adverse witness against his or her spouse in a criminal proceeding.

Ms. Saleem Snowden testified that she and Ms. Snowden married in Washington, D.C., on August 11, 2010 (Ex. E at 6). Counsel for Ms. Snowden agreed that Ms. Saleem Snowden is entitled to invoke the spousal privilege (*see, e.g.*, Ex. E at 15), and submitted a brief in support of Ms. Saleem Snowden's assertion of the privilege. The State's Attorney argued that the Snowdens' marriage is not recognized in Maryland and therefore Ms. Saleem Snowden is not a "spouse" entitled to assert the privilege (Ex. E at 7). The State's Attorney also submitted a brief in response to Ms. Snowden's brief ("State's Attorney's Br.").

The State moved the Court to compel Ms. Saleem Snowden to testify, notwithstanding her assertion of the spousal privilege (Ex. E at 7). The State conceded its belief that without Ms. Saleem Snowden's testimony, the State cannot establish its burden of proof for a conviction of Ms. Snowden (Ex. E at 13).

The Court continued the case to allow for submission of additional briefing and for oral argument on this issue (Ex. E at 20-21). The proceeding has been set to resume on June 23, 2011 at 1:30 p.m. Ms. Saleem Snowden, by her undersigned counsel, submits this brief in opposition to the State's Attorney's motion to compel her testimony in this case.

Argument

Ms. Saleem Snowden may not be compelled to testify against her spouse by virtue of the spousal privilege granted in Md. Code Ann., Cts. & Jud. Proc. § 9-106. Validly married in the District of Columbia, she qualifies as a "spouse" under Maryland comity

principles and meets all requirements of § 9-106. She therefore has the right to exercise the spousal privilege conferred under § 9-106.

I. Ms. Saleem Snowden Is Entitled to Invoke the Spousal Privilege Conferred Under Md. Code Ann., Cts. & Jud. Proc. § 9-106.

Md. Code Ann., Cts. & Jud. Proc. § 9-106, entitled "Testimony by spouses – Spouse of person charged with a crime," provides in relevant part:

> (a) In general. – The spouse of a person on trial for a crime may not be compelled to testify as an adverse witness unless the charge involves:
> . . . (2) Assault in any degree in which the spouse is a victim if:
> (i) The person on trial was previously charged with assault in any degree or assault and battery of the spouse;
> (ii) The spouse was sworn to testify at the previous trial; and
> (iii) The spouse refused to testify at the previous trial on the basis of the provisions of this section.

As the spouse of Ms. Snowden, Ms. Saleem Snowden falls within the ambit of the statute, and the exception provided in subsection (a)(2) for when the privilege already has been invoked does not apply in this case. Ms. Snowden has not previously been charged with assault in which her spouse was the alleged victim, and Ms. Saleem Snowden has not previously invoked the spousal privilege as a basis for refusing to testify against Ms. Snowden. Ms. Saleem Snowden therefore has the right to exercise the privilege and may not be compelled to testify against Ms. Snowden.

The spousal privilege codified in § 9-106 is based on important social policy concerns and "'remains vital in modern jurisprudence.'" *Hagez v. State*, 110 Md. App. 194, 211 (1996), quoting *United States v. Morris*, 988 F.2d 1335, 1339 (4th Cir. 1993). The purpose of the privilege is to "protect[] the sanctity of a marital relationship by giving the criminal defendant's spouse a right to refuse to testify as a State's witness." *Wong-Wing v. State*, 156 Md. App. 597, 607 n.3 (2004) (citations omitted); *see also State v. Walker*, 345 Md. 293, 328 (1997) (discussing historical recognition that "permitting a person to testify against his or her spouse would be destructive of the marriage"); *Johnson v. State*, 156 Md. App. 694, 706 (2004) ("The purpose of the privilege is to maintain and foster the marital relationship.") (citations omitted). The privilege resides

with the witness-spouse, because "if the spouse exercises the privilege and refuses to testify, it is because he or she regards the marriage as important and enduring and does not wish to jeopardize it." *Walker*, 345 Md. at 329.

Courts honor the privilege conferred by § 9-106 even if there was "an improper motive or purpose in marrying." *Hagez*, 110 Md. at 211 n.7. "Thus, one who marries for money, or to enhance one's career, or for estate purposes, seemingly would be entitled to invoke the privilege . . . ." *Id.* The privilege thus is intended to be construed liberally; "the statute does not specifically authorize a trial court to go behind the marriage to discern its validity or to pass judgment on the reasons for the marriage." *Id.*

The important public policy concerns furthered by the spousal privilege are equally applicable to marriages of same-sex and different-sex couples, and, indeed, to any couple whose marriage is recognized under State law. The State is correct that the Legislature chose not to grant the privilege to unmarried couples who simply live together, or to parents and children, or to brothers and sisters. *See* State's Attorney's Br. at 2. But the Snowdens are not simply cohabiting. They are married, having validly wed in the District of Columbia after Governor O'Malley and Attorney General Gansler confirmed that Maryland recognizes marriages of same-sex couples. And, as discussed more fully below, Maryland law recognizes their married status, despite the fact that they could not and did not establish their marital relationship in Maryland, just as State law recognizes the marital status of other couples who could not wed here but who nonetheless have valid marriages created in other jurisdictions.

Already the spousal privilege has been asserted in two related cases in another Maryland court, the District Court of Maryland for St. Mary's County, by spouses married to same-sex partners. *See State v. Tippett*, No. 6Q00048411 (Dist. Ct. Md. for St. Mary's County, Mar. 9, 2011); *State v. Ford*, No. 4Q00048409 (Dist. Ct. Md. for St. Mary's County, Mar. 9, 2011).[4] Ms. Saleem Snowden respectfully requests that she be permitted to invoke her privilege not to testify against her spouse as well.

[4] Copies of filings in these cases were submitted to the Court by counsel to Ms. Snowden by letter dated May 23, 2011, and are attached hereto as Exhibit F.

II. Maryland's Common Law Marriage Recognition Rule Requires Recognition of the Snowdens' Out-of-State Marriage and Ms. Saleem Snowden's Status as a Spouse.

Md. Code Ann., Fam. Law § 2-201 provides in full: "Only a marriage between a man and a woman is valid in this State." Md. Code Ann., Fam. Law § 2-201. This statute makes civil marriage unavailable within Maryland to same-sex couples, an exclusion which the Court of Appeals held in *Deane v. Conaway*, 401 Md. 219 (2007), does not violate the State Constitution. Unquestionably, the Snowdens presently could not marry within Maryland, and resolution of this motion to compel does not call upon the Court to revisit that issue.

But the fact that Family Law § 2-201 bars marriage within the State to same-sex couples does not answer how Maryland regards marriages of same-sex couples validly entered elsewhere. Rather, that question, not at all addressed in *Deane,* is answered by well-established comity principles according respect to out-of-state marriages even if they could not be entered into within Maryland.

A. Maryland Applies Longstanding Comity Principles to Respect Marriages Valid Where Entered, Even if the Marriages Could Not Be Entered Here.

As the Attorney General's Opinion sets forth in great detail, for well over a century, Maryland has followed "the general rule that a marriage valid where contracted or solemnized is valid everywhere . . . ." *Henderson v. Henderson*, 199 Md. 449, 458 (1952); *accord Bannister v. Bannister*, 181 Md. 177, 180 (1942); *Jackson v. Jackson*, 82 Md. 17, 28 (1895). The marriage recognition rule stems from the need for uniformity and certainty with respect to a couple's marital status, *see Henderson*, 199 Md. at 458, so that one's spousal status and the legal consequences flowing from it do not depend on whether one has crossed a state line. "Because marriage is a continuing relationship, there is . . . a need that its existence be subject to regulation by one law without occasion for repeated redetermination of the validity." Eugene F. Scoles et al., *Conflict of laws* § 13.2 (4th ed. 2004). Under Maryland's rule, a marriage is recognized as valid if it was validly entered in the jurisdiction where it was obtained, even though the marriage would have been invalid if it had been entered into within the State.

Thus public and private parties in Maryland have recognized under State comity principles the validity of an array of out-of-state marriages that could not have been entered into under Maryland's own laws. These have included common law marriages entered into in other jurisdictions, even though Maryland does not recognize common law marriages entered into within the State, allowing under State law only formally licensed marriages performed in a ceremony.[5] Maryland likewise has accorded respect to a marriage entered into in Rhode Island between a Maryland couple who were uncle and niece. *See Fensterwald v. Burk*, 129 Md. 131, 139 (1916). By statute, Maryland not only explicitly prohibits consanguineous marriages this close in degree to be solemnized within the State, but also criminalizes such marriages and sexual relations between uncle and niece. *See id.* at 138; *see also* Md. Code Ann., Fam. Law § 2-202(c) (prohibiting and criminalizing uncle-niece marriages); Md. Code Ann., Crim. Law § 3-323 (making it a felony to engage in sexual relations with a person one is prohibited from marrying under § 2-202). Yet the Court of Appeals has nonetheless upheld an uncle-niece marriage under the Maryland rule of recognition, despite evidence that the couple married in Rhode Island for the express purpose of avoiding Maryland's marriage prohibition. *Fensterwald*, 129 Md. at 138-39; *see also* Ex. B at 11-12, 29-32.

The Court of Appeals long has held that only two narrow exceptions lie to the broad rule of recognition, for categories of out-of-state marriages so repugnant to the State's public policy as to be denied respect in Maryland. Over a century ago the Court described the exceptions as consisting of: "[f]irst, marriages which are deemed contrary to the law of nature as generally recognized in Christian countries," and, "second, marriages which the local lawmaking power has declared shall not be allowed any validity." *Jackson*, 82 Md. at 29. The Court explained that "[t]o the first class belong

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[5] *See, e.g.*, *Laccetti v. Laccetti*, 245 Md. 97 (1967) (according respect to common law marriage entered in District of Columbia); *Henderson*, 199 Md. 449 (same); *Whitehurst v. Whitehurst*, 156 Md. 610 (1929) (recognizing New York common law marriage); *Blaw-Knox Constr. Equip. Co. v. Morris*, 88 Md. App. 655, 669-70 (1991) (recognizing common law marriage entered into by virtue of two-night sojourn in Pennsylvania, even though "Maryland courts do not recognize common law marriages contracted within this state's geographic boundaries"); *Jennings v. Jennings*, 20 Md. App. 369 (1974) (recognizing common law marriage entered in District of Columbia). *Compare Mendelson v. Mendelson*, 75 Md. App. 486, 502 (1988) ("[I]t is firmly settled that Maryland does not permit common law marriages to be formed within its borders.").

those which involve polygamy and incest." *Id.* This exception has been held to apply only to those out-of-state marriages that are "condemned" in Maryland as "repugnant" to its public policy. *Henderson*, 199 Md. at 459. With respect to the second category, the Court similarly clarified that many marriages that would be invalid if performed in Maryland would not be subject to the exception; only such marriages that are "denounced by our own positive State policy as affecting the morals or good order of society" would be exceptions to the rule of recognition. *Jackson*, 82 Md. at 30.

Accordingly, Maryland will recognize a marriage validly entered in another jurisdiction unless (1) the marriage is positively condemned as repugnant to Maryland public policy, or (2) the legislature by statute expressly has prohibited recognition of the out-of-state marriage. Marriages of same-sex couples do not fall within either of these two exceptions (discussed in inverse order below) and therefore are entitled to recognition in Maryland.

Although Maryland appellate courts have yet to apply the longstanding common law recognition rule to unions of same-sex couples, a number of recent New York cases confirming that the rule applies to same-sex couples offer instructive precedent.[6] Decisions of sister jurisdictions, "[w]hile not binding, . . . may be persuasive authority." *Bozman v. Bozman*, 376 Md. 461, 490 (2003). Indeed, New York's law and public policy

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[6] *See, e.g.*, *In re Estate of Ranftle*, 81 A.D.3d 566 (N.Y. App. Div. 2011) (recognizing out-of-state marriage of same-sex couple in probate proceeding); *Lewis v. New York State Dep't of Civil Serv.*, 60 A.D.3d 216 (N.Y. App. Div.)(confirming as consistent with marriage recognition rule state agency's extension of spousal coverage to same-sex spouses of government employees), *aff'd sub nom. Godfrey v. Spano*, 13 N.Y.3d 358 (2009); *Martinez v. County of Monroe*, 50 A.D.3d 189 (N.Y. App. Div. 2008) (recognizing marriage and requiring County to afford spousal benefits to employee's same-sex spouse); *S.M. v. C.R.*, Index No. Redacted, NYLJ 1202494607706, at *1 (N.Y. Sup. Ct., May 18, 2011) (recognizing marriage for divorce purposes); *Golden v. Paterson*, 23 Misc. 3d 641 (N.Y. Sup. Ct. 2008) (upholding Governor's directive that out-of-state marriages of same-sex couples are entitled to government respect); *In re Adoption of Sebastian*, 25 Misc. 3d 567 (N.Y. Sur. Ct. 2009) (recognizing marriage for parentage purposes); *In re Donna S.*, 23 Misc. 3d 338 (N.Y. Fam. Ct. 2009) (same); *C.M. v. C.C.*, 21 Misc. 3d 926 (N.Y. Sup. Ct. 2008) (recognizing marriage for divorce purposes); *Godfrey v. DiNapoli*, 22 Misc. 3d 249, 251-52 (N.Y. Sup. Ct. 2008) (confirming as consistent with marriage recognition rule state comptroller's extension of spousal benefits to same-sex spouses of government employees); *Beth R. v. Donna M.*, 19 Misc. 3d 724, 728-30 (N.Y. Sup. Ct. 2008) (recognizing marriage for divorce purposes); *see also Godfrey v. Spano*, 13 N.Y.3d 358 (Ct. App. 2009) (upholding recognition of out-of-state marriages of same-sex couples as within government's discretion).

on the subject are strikingly similar to Maryland's, making New York precedent on this question particularly useful guidance for Maryland courts.[7] *See also* Ex. B at 16, 24-28.

B. The Maryland Legislature Has Declined to Enact an Express Prohibition on Recognition of Out-of-State Marriages of Same-Sex Couples, Leaving the Default Common Law Rule Intact.

Significantly, Family Law § 2-201 does not contain any terms explicitly providing that marriages between same-sex couples validly entered in other jurisdictions are void and not recognized within Maryland — which would be required to overcome the State's common law rule of recognition. If the General Assembly had wished to deny recognition to such out-of-state marriages, it could have enacted an express non-recognition provision, as many other states have. That it did not is decisive here.

1. The Common Law Rule of Recognition Is Abrogated Only by an Express Legislative Prohibition on Recognition.

Maryland's marriage recognition rule is a specific application of the principle of comity, *Henderson*, 199 Md. at 458-59; *John Crane, Inc. v. Puller*, 169 Md. App. 1, 59 (2006), "part of the common law" of Maryland, *Holloway v. Safe Deposit & Trust Co.*, 151 Md. 321, 334 (1926); *accord Washington Suburban Sanitary Comm'n v. CAE-Link Corp.*, 330 Md. 115, 140 (1993). It long has been established that "statutes are to be construed in reference to the principles of the common law. For it is not to be presumed that the legislature intended to make any innovation upon the common law, further than the case absolutely required." *Hooper v. Mayor & City Council of Baltimore*, 12 Md. 464, 475 (1859) (emphasis and quotations omitted); *accord State v. North*, 356 Md. 308,

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[7] New York follows the same common law marriage recognition rule as Maryland. *See In re Estate of May*, 305 N.Y. 486 (1953) (recognizing uncle-niece marriage that would be criminal if entered into in New York under common law rule giving respect to out-of-state marriages valid where entered unless recognition is expressly precluded by legislature or abhorrent to public policy). And, like Maryland, New York does not confer civil marriage rights on same-sex couples, an exclusion upheld as constitutional by New York's highest court, *Hernandez v. Robles*, 7 N.Y.3d 338 (2006), but New York also has no express statutory barrier to recognition of out-of-state marriages of same-sex couples. *See Godfrey v. Spano*, 13 N.Y.3d 358, 378-79 (2009) (Ciparick, J., concurring). Following a New York Attorney General opinion concluding that marriages of same-sex couples are appropriately accorded respect, 2004 N.Y. Op. (Inf.) Att'y Gen. 1, 34-37 (Mar. 3, 2004); available at http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/2004/informal/2004_1.pdf, New York's Governor confirmed that the state government extends respect to the marriages, *see Golden*, 23 Misc. 3d 641.

311-12 (1999). Consequently, "unless the legislature makes it expressly clear that its purpose is to change the common law, it is presumed that no such change was intended." *Azarian v. Witte*, 140 Md. App. 70, 95 (2001). The Maryland legislature has *not* made it expressly clear that it intended to deny recognition to out-of-state marriages validly entered into by same-sex couples, and it would be contrary to Maryland law to infer such a non-recognition provision where none was explicitly enacted by statute. *See Lutz v State*, 167 Md. 12, 13 (1934) ("The rules of the common law are not to be changed by doubtful implication, nor overturned except by clear and unambiguous language.") (citation omitted).

The marriage recognition rule, like the common law generally, is designed to respond to evolving social and legal developments not necessarily contemplated at an earlier time. In applying the common law, a court's "decision should be made on the basis of present day knowledge," even if the question would have been "decided differently" if "raised at the end of the 18th Century." *Damasiewicz v. Gorsuch*, 197 Md. 417, 440 (1951). As the Court of Appeals has explained, "Just because this is the first time for 175 years that the question has arisen in this court, does not make our conclusion judicial legislation." *Id.* at 441.

The State's Attorney here asserts a contrary argument, claiming that the Court would interfere with the Legislature's prerogative to determine marital status in Maryland by recognizing the Snowdens' out-of-state marriage under the common law. *See* State's Attorney's Br. at 4-5; Ex. E at 18. But this argument turns the marriage recognition rule on its head. The rule was developed to address precisely the situation in which Maryland's statutes do not permit a marriage that nonetheless was validly entered in another jurisdiction and is in need of recognition here. If courts were required to recognize only those foreign marriages which the parties could have entered into under Maryland statute, there would be no need for a comity rule of recognition. Instead, the common law rule calls for courts and others to recognize those out-of-state marriages the Legislature has chosen not to prohibit from recognition within Maryland. The Legislature retains ultimate control (within constitutional bounds) to determine which

types of out-of-state marriages are so contrary to Maryland public policy as to be denied recognition. Unless and until the Legislature expressly abrogates the default common law rule requiring recognition of marriages, that rule governs. *See, e.g.*, *Lewis*, 60 A.D.3d 216, 222 ("[W]here the [marriage law] does not expressly declare void a certain type of marriage validly solemnized outside of New York, the statute should not be extended by judicial construction.").

The State's Attorney's reliance on *Washington v. Glucksberg*, 521 U.S. 702 (1997), is likewise entirely misplaced. *See* State's Attorney's Br. at 2-3; Ex. E at 18-19. That case cautioned the courts against unnecessarily ruling that a particular privacy interest deserves designation as a constitutionally-protected fundamental substantive due process right, a determination that would tie the hands of legislative bodies from regulating and infringing on the protected constitutional right. *See Washington*, 521 U.S. at 720. But this case does not call on the Court to make a constitutional ruling about the scope of constitutional protections for marriage rights, and so does not run the risk of foreclosing legislative regulation in this arena. The *Glucksberg constitutional* principles invoked by the State's Attorney simply have no bearing at all on the *common law* question before the Court. Recognition of the Snowden's marriage in this case leaves the General Assembly free to abrogate the comity rule of recognition should it so choose, and, moreover, recognition of the out-of-state marriage is precisely the course most consistent with legislative policy on the subject.

2. The General Assembly Has Declined to Abrogate the Marriage Recognition Rule for Out-of-State Marriages of Same-Sex Couples.

That § 2-201 cannot be read to prohibit recognition of validly-entered out-of-state marriages of same-sex couples is evidenced by the fact that multiple bills have been introduced in the General Assembly in the past decade and a half — both before and after the Attorney General issued his Opinion in February 2010 — in order to add just such a prohibition, and all have failed to pass. These unsuccessful efforts to enact non-recognition language demonstrate that the marriages should be respected as valid under

existing law and that § 2-201 would have to be expressly amended to abrogate the common law recognition requirement.

Specifically, prior to the Attorney General's February 2010 Opinion, in multiple bills the following addition to § 2-201 was proposed but never enacted:

> A marriage between two individuals of the same sex that is validly entered into in another state or in a foreign country is not valid in this state.[8]

Several of these bills also proposed this additional language, to express a different public policy from that prevailing in Maryland:

> Marriages between individuals of the same sex are against the public policy of this state.[9]

Subsequent to the Attorney General's Opinion, bills to abrogate the common law marriage recognition rule were introduced as well, without success or even reaching a floor vote. Those bills proposed constitutional amendments expressly to withdraw recognition to out-of-state marriages, with such provisions as: "Marriage between one man and one woman shall be the only domestic legal union valid or recognized in this State."[10]

These unsuccessful proposals to change Maryland law demonstrate that § 2-201 as written does not prevent marriage recognition and that the General Assembly has not taken the affirmative legislative steps that would be required to prohibit recognition of validly-entered out-of-state marriages of same-sex couples. "The Legislature may decide to prohibit the recognition of same-sex marriages solemnized abroad. Until it does so, however, such marriages are entitled to recognition . . . ." *Martinez v. County of Monroe*, 50 A.D.3d 189, 193 (N.Y. App. Div. 2008).

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[8] H.D. 1268, 1996 Leg., 410th Sess. (Md. 1996); H.D. 398, 1997 Leg., 411th Sess. (Md. 1997); S. 565, 1998 Leg., 412th Sess. (Md. 1998); H.D. 1128, 1999 Leg., 413th Sess. (Md. 1999); H.D. 531, 2001 Leg., 415th Sess. (Md. 2001); H.D. 728, 2004 Leg., 418th Sess. (Md. 2004); H.D. 693, 2005 Leg., 419th Sess. (Md. 2005); H.D. 90, 2010 Leg., 427th Sess. (Md. 2010).

[9] H.D. 1268, 1996 Leg., 410th Sess. (Md. 1996); H.D. 398, 1997 Leg., 411th Sess. (Md. 1997); H.D. 728, 2004 Leg., 418th Sess. (Md. 2004); H.D. 693, 2005 Leg., 419th Sess. (Md. 2005); H.D. 90, 2010 Leg., 427th Sess. (Md. 2010).

[10] H.D. 963, 2011 Leg., 428th Sess. (Md. 2011); S. 1097, 2010 Leg., 427th Sess. (Md. 2010).

3. In Contrast to § 2-201, Provisions Enacted in Other States Prohibiting Recognition of Marriages of Same-Sex Couples Include Specific Non-Recognition Language Expressly Directed to Out-of-State Marriages.

In contrast to Maryland, approximately 40 other states have chosen to deny recognition of marriages between same-sex couples validly entered into in other jurisdictions by enacting explicit non-recognition language in their statutes or constitutions.[11] For example, Delaware Code. Ann. tit. 13, § 101 provides:

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[11] These include: Alabama (Ala. Const. art. I, § 36.03 (effective June 28, 2006); Ala. Code § 30-1-19 (1975) (effective May 1, 1998)), Alaska (Alaska Const. Art. I, § 25 (effective Jan. 3, 1999); Alaska Stat. § 25.05.013 (2009) (effective May 7, 1996)), Arizona (Ariz. Const. art. XXX, § 1 (effective Dec. 16, 2008); Ariz. Rev. Stat. Ann. §§ 25-101, -112, -125 (2009) (effective 1996)), Arkansas (Ark. Const. amend. 83 § 2 (effective Nov. 2, 2004); Ark. Code Ann. §§ 9-11-107, 9-11-109, 9-11-208 (2008) (effective 1997)), California (Cal. Const. art. I, § 7.5 (effective Nov. 5, 2008)), Colorado (Colo. Const. art. II, § 31 (effective Dec. 31, 2006); Colo. Rev. Stat. Ann. § 14-2-104 (2008) (effective 2000)), Delaware (Del. Code Ann. tit. 13, § 101 (2009)), Florida (Fla. Const. art. I, § 27 (effective Nov. 4, 2008); Fla. Stat. § 741.212 (2009) (effective June 1, 1997)), Georgia (Ga. Const. art. 1, § IV, ¶ 1 (effective Nov. 2, 2004); Ga. Code Ann. § 19-3-3.1 (2008) (effective 1996)), Hawaii (Haw. Const. art. I, § 23 (effective June 3, 1998); Haw. Rev. Stat. §§ 572-1, 572-3 (2008)), Idaho (Idaho Const. art. III, § 28 (effective Nov. 7, 2006); Idaho Code §§ 32-201 to 209 (2009) (effective 2005)), Illinois (750 Ill. Comp. Stat. Ann. 5/201, /212 to 213.1 (2009) (effective May 25, 1996)), Indiana (Ind. Code § 31-11-1-1 (2008) (effective May 13, 1997)), Kansas (Kan. Const. art. 15, § 16 (effective 2005); Kan. Stat. Ann. §§ 23-101, 23-115 (2008) (effective 1996)), Kentucky (Ky. Const. § 233A (effective Nov. 2, 2004); Ky. Rev. Stat. Ann. §§ 402.005, 402.020, 402.040, 402.045 (West 2008) (effective July 15, 1998)), Louisiana (La. Const. art. 12, § 15 (effective Oct. 19, 2004); La. Civ. Code Ann. art. 86 (effective Jan. 1, 1988), art. 3520 (2008) (effective 1999)), Maine (19-A Me. Rev. Stat. §701 (2011) (effective Oct. 1, 1997)) , Michigan (Mich. Const. art. 1, § 25 (effective Dec. 18, 2004); Mich. Comp. Laws §§ 551.1 to .4, 551.271 to 551.272 (2005) (effective June 26, 1996)), Minnesota (Minn. Stat. §§ 517.01, 517.03 (2006) (effective 1997)), Mississippi (Miss. Const. art. 14, § 263A (effective Dec. 11, 2004); Miss. Code Ann. § 93-1-1 (2008) (effective Feb. 12, 1997)), Missouri (Mo. Const. art. I, § 33 (effective Aug. 3, 2004); Mo. Rev. Stat. § 451.022 (2003) (effective 2001)), Montana (Mont. Code Ann. §§ 40-1-103, 40-1-401 (2007)), Nebraska (Neb. Const. art. I, § 29 (effective 2000)), Nevada (Nev. Const. art. 1 § 21 (effective 2002)), North Carolina (N.C. Gen. Stat. § 51-1.2 (2003) (effective June 20, 1996)), North Dakota (N.D. Cent. Code §§ 14-03-01, 14-03-08 (2008) (effective 1997)), Ohio (Ohio Const. art. XV, § 11 (effective Dec. 2, 2004); Ohio Rev. Code Ann. § 3101.01, 3105.12 (LexisNexis 2009) (effective 2004)), Oklahoma (Okla. Const. art. II § 35 (effective Nov. 2, 2004); Okla. Stat. tit. 43, § 3 (2008)), Oregon (Or. Const. art. XV, § 5a (effective Nov. 2, 2004)), Pennsylvania (23 Pa. Cons. Stat. Ann. § 1704 (2008) (effective Dec. 16, 1996)), South Carolina (S.C. Const. art. XVII, § 15 (effective 2007); S.C. Code Ann. §§ 20-1-10, 20-1-15 (2008) (effective May 20, 1996)), South Dakota (S.D. Const. art. 21, § 9 (effective Nov. 7, 2006); S.D. Codified Laws §§ 25-1-1 (effective 1996), 25-1-38 (2008) (effective 2000)), Tennessee (Tenn. Const. art. XI, § 18 (effective Nov. 7, 2006); Tenn. Code Ann. § 36-3-113 (2001) (effective 1996)), Texas (Tex. Const. art. I, § 32 (effective Nov. 8, 2005); Tex. Fam. Code Ann. § 6.204 (Vernon 2006) (effective Sept. 1, 2003)), Utah (Utah Const. art. 1, § 29 (effective Jan. 1, 2005); Utah Code Ann. § 30-1-2, 30-1-4 (2008) (effective 1995)), Virginia (Va. Const. art. I, § 15-A (effective Jan. 1, 2007); Va. Code Ann. § 20-45.2 to -.3 (2008) (effective 1997)), Washington (Wash. Rev. Code §§ 26.04.010, 26.04.020 (2009) (effective 1999)), West Virginia (W. Va. Code Ann. § 48-2-603 (2008) (effective Sept. 1, 2001)), and Wisconsin (Wis. Const. art. XIII § 13 (effective Nov. 7, 2006)).

> (a) A marriage is prohibited and void . . . between persons of the same gender. . . .
>
> (d) A marriage obtained or recognized outside the State between persons prohibited by subsection (a) of this section shall not constitute a legal or valid marriage within the State.

Notably, unlike the great majority of other states, Maryland has not enacted a statute or constitutional provision that specifically purports to forbid recognition of marriages of same-sex couples entered in other jurisdictions. These types of state provisions expressly reference out-of-state marriages and declare them to be void within the state[12] and/or declare that marriages between individuals of the same sex expressly violate public policy[13] or explicitly will not be "recognized" within the state.[14] The absence of similar specific language regarding out-of-state marriages in the Maryland statute further shows that § 2-201 was not intended to address, much less prohibit, recognition of such marriages. *See Martinez*, 50 A.D.3d at 192-93 (holding that recognition of out-of-state marriages of same-sex couples is not contrary to New York legislative policy, and noting that "unlike the overwhelming majority of states, New York has not chosen . . . to enact legislation denying [recognition] to same-sex marriages validly solemnized in another state").

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[12] *See, e.g.*, Ala. Code § 30-1-19(e) ("The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued."); Va. Code Ann. § 20-45.2 ("A marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia . . . ."); W.Va. Code Ann. § 48-2-603 ("A public act, record or judicial proceeding of any other state, territory, possession or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the other state, territory, possession, or tribe . . . shall not be given effect by this state.").

[13] *See, e.g.*, 23 Pa. Stat. Ann. § 1704 ("It is hereby declared to be the strong and longstanding public policy of this Commonwealth that marriage shall be between one man and one woman. A marriage between persons of the same sex which was entered into in another state or foreign jurisdiction, even if valid where entered into, shall be void in this Commonwealth.").

[14] *See, e.g.*, Oregon Const. art. XV, § 5a ("It is the public policy of Oregon . . . that only a marriage between one man and one woman shall be valid or legally recognized as a marriage.").

4. Maryland's Now Discredited Prohibition Against Recognition of Interracial Marriages Employed Far Stronger Terms Than § 2-201, Further Demonstrating That, In Contrast, Maryland Has No Statutory Prohibition Against Recognition of Validly-Entered Out-of-State Marriages of Same-Sex Couples.

Prior to the U.S. Supreme Court's declaration in 1967 that anti-miscegenation laws violate the federal Constitution, *see Loving v. Virginia*, 388 U.S. 1 (1967), Maryland courts declared, in dicta, that interracial marriages validly entered in other states would be "absolutely void in Maryland as long as the statutory prohibition remains unchanged." *Henderson*, 199 Md. at 459; *accord Jackson*, 82 Md. at 30. In *Jackson*, the Court based its conclusion on the ground that "the statutes of Maryland peremptorily forbid the marriage of a white person and a negro, *and* declare all such marriages forever void." *Id.* (emphasis added). Specifically, the Maryland statute provided:

> All marriages between a white person and a negro . . . are forever prohibited; and shall be void; and any person violating the provisions of this Section shall be deemed guilty of an infamous crime, and punished by imprisonment in the penitentiary not less than eighteen months nor more than ten years . . . .

Md. Ann. Code art. 27 § 365 (1935).

This condemning language and the stringent criminal penalty (since recognized to be discriminatory and unconstitutional) for those who entered into such unions stands in stark contrast to the far narrower terms of § 2-201, which does not criminalize marriages of same-sex couples nor declare them "void" or "forever prohibited." Section 2-201 cannot be held to address or prohibit recognition of validly-entered out-of-state marriages of same-sex couples.

C. Recognition of Marriages of Same-Sex Couples, Far From Being Repugnant to Maryland Public Policy, *Is* Maryland Public Policy.

The other exception to the rule of recognition — where recognition of the out-of-state marriage would be so contrary to Maryland's public policy as to be "condemned" as "repugnant" — also does not apply to marriages of same-sex couples. Indeed,

recognition of marriages of same-sex couples, far from being condemned as repugnant under Maryland public policy, in fact now *is* the public policy of the State.

The public policy exception historically has been applied only to unions so abhorrent to Maryland standards as to carry criminal sanction, including polygamous and incestuous marriages.[15] *See Jackson*, 82 Md. at 29; *Fensterwald*, 129 Md. at 137. Other than the now discredited dicta on interracial marriages, no other categories of marriages have been adjudicated to fall within an exception to the marriage recognition rule.

In *Fensterwald*, confirming recognition of an uncle-niece marriage criminal if entered within Maryland, the Court of Appeals explained that the public policy exception barring recognition of incestuous marriages "embraced only such marriages as are incestuous according to the generally accepted opinion of Christendom, which relates only to persons in direct line of consanguinity, and brothers and sisters." *Fensterwald*, 129 Md. at 137. The Court concluded that marriages between uncles and nieces, afforded in the sister state of Rhode Island but invalid if entered into in Maryland, are "not incestuous according to the generally accepted opinion of Christendom" and so are entitled to recognition in Maryland. *Id.* at 138 (citation omitted). Maryland courts likewise accord liberal recognition to common law marriages, for example holding that a Maryland couple's two night sojourn in Pennsylvania was sufficient to establish a common law marriage under Pennsylvania law, in turn entitled to respect in Maryland. *Blaw-Knox Constr. Equip. Co. v. Morris*, 88 Md. App. 655, 671 (1991).

Same-sex couples can wed in many jurisdictions both within the United States and abroad, including directly across Maryland's border in our nation's capitol, as well as in Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, and such foreign nations as Canada, Spain, Portugal, the Netherlands, Belgium, Norway, Sweden, Argentina and South Africa. Marriages of same-sex couples entered in these respected sister jurisdictions are not "repugnant" to Maryland public policy and thus should be accorded recognition here.

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[15] Unlike the categories of marriages deemed repugnant under Maryland's marriage recognition jurisprudence, same-sex relationships are not (and not could be) criminalized in Maryland. *See Lawrence v. Texas*, 539 U.S. 558 (2003), declaring Texas's same-sex sodomy criminal prohibition unconstitutional and overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Indeed, these marriages already are given legal respect by the government of Maryland, as Governor O'Malley confirmed following release of the Attorney General's Opinion. *See* Ex. C. In an array of contexts, State agencies have publicly confirmed that partners in such unions are entitled to legal recognition as spouses. Thus, for example, the Maryland State Department of Budget and Management ("DBM") issued a memorandum to State Personnel Management System ("SPMS") Agency Personnel Directors on May 21, 2010 (attached as Exhibit G), directing recognition of out-of-state marriages of same-sex couples for purposes of granting spousal leave for State employees in the SPMS. The DBM memorandum directs that "a same-sex spouse should be considered a spouse" for purposes of paid sick leave, paid bereavement leave and Employee-to-Employee Leave Donation.

The DBM likewise published responses to "Frequently Asked Questions" ("DBM FAQs") (attached as Exhibit H),[16] confirming that same-sex spouses are treated as the eligible dependents of State employees for purposes of participation in the Maryland Employee and Retiree Health and Welfare Benefit Program. According to the DBM FAQs, "spouse" is defined as "[a]ny individual who is lawfully joined in marriage to an employee or retired employee as recognized by the laws of the State of Maryland. Based on advice from the Attorney General, same sex marriages will be recognized so long as the marriage was created in a jurisdiction where such marriages are legal." Ex. H at 1.

On September 17, 2010, the Board of Regents ("BOR") of the Maryland University System issued a "Clarification of the Definition of 'Spouse' in BOR Policies" (attached as Exhibit I),[17] confirming that the term "spouse" as used in BOR tuition remission and other policies "include[s] spouses in valid marriages contracted in Maryland and other jurisdictions." The BOR stated that this "is consistent with advice given by the Office of the Attorney General and is in alignment with the definition of spouses used by other state agencies."

On February 10, 2011, the State Department of Health and Mental Hygiene issued a letter to birth registrars advising that, in light of the Attorney General's Opinion, the

[16] Available at http://dbm.maryland.gov/benefits/documents/samesexdpspousefaqs.pdf.
[17] Available at http://www.usmd.edu/BORPortal/Materials/2010/FB/20100917/6f.pdf.

Division of Vital Records was "changing the procedure for naming a same-sex female spouse as a parent on a child's Maryland birth certificate" (attached as Exhibit J). Maryland thus recognizes marriages of same-sex couples for birth certificate purposes to establish the female same-sex spouse as a parent on the birth certificate of the child born to a woman in Maryland.

In fact, a ruling denying recognition to the Snowdens' marriage would be at odds with Maryland's current public policy, as expressed by the State Governor and not abrogated by the Legislature, according respect to the out-of-state marriages of same-sex couples. "A policy change would be the failure to recognize same-sex marriages legally solemnized outside [the state]. Only the . . . Legislature may legislate such a change." *Golden*, 23 Misc. 3d at 654.

The State's Attorney mistakenly suggests that the Court of Appeals in *Deane* "implied" "a strong public policy" against recognition of out-of-state marriages. *See* State's Attorney's Br. at 5. In fact, if anything, the decision reinforces the conclusion that recognition of such out-of-state marriages does not violate Maryland public policy. The majority asserted "there is no doubt that the legal landscape surrounding the rights of homosexual persons is evolving," with increased recognition of their rights and protections. *Deane*, 401 Md. at 308. The majority further emphasized that, although the Maryland Constitution may not require permitting same-sex couples to marry, "our opinion should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons . . . the right to marry a person of the same sex." *Id.* at 325.

Indeed, recent legislation to permit same-sex couples to marry, while not receiving a vote in the House, passed in the State Senate.[18] It would be incongruous to suggest that the Senate was voting in favor of recognizing a marital union so "repugnant" to State policy as to be denied comity if entered into in a sister jurisdiction. Thus, far from being repugnant to public policy, marriages of same-sex couples already have such

[18] S. 116, 2011 Leg., 428th Sess. (Md. 2011), available at http://mlis.state.md.us/2011rs/bills/sb/sb0116t.pdf.

affirmative support in Maryland as to have garnered a Senate majority to authorize their solemnization within Maryland itself.

In many other ways, Maryland public policy, as demonstrated through its laws, judicial pronouncements and practices, is tolerant and supportive of relationships of same-sex couples, negating any claim that it would be contrary to public policy to recognize the spousal status of a married same-sex couple.

For example, the General Assembly has enacted legislation recognizing domestic partnerships and protecting the relationships of same-sex domestic partners in an array of ways, including, for example, through spousal health care coverage for domestic partners of State employees, medical decision-making and hospital visitation rights, tax exemptions and reciprocal property rights. *See, e.g.*, Md. Code Ann., Health-Gen. §§ 6-201-203 (medical decision-making and hospital visitation rights); Md. Code Ann., Tax-Prop. §§ 12-101(e-2), 12-108 (recordation tax exemption), 13-207 (transfer tax exemption); Md. Code Ann., Tax-Gen. § 7-203 (inheritance tax exemption); *see also* Ex. B at 41-42. Many public and private employers throughout the State extend health and other benefits to the same-sex domestic partners of their employees. *See* Equality Maryland, *Domestic Partnerships*, http://www.equalitymaryland.org/issues/dp.

Same-sex couples may adopt children together in Maryland, and many rear children in the State. *See Deane*, 401 Md. at 332-36 (analyzing parental rights of same-sex partners under Maryland law) (Raker, J., concurring and dissenting).

The General Assembly also has enacted legislation prohibiting discrimination based on sexual orientation. *See, e.g.*, Md. Code Ann., State Gov't §§ 20-606 (employment); 20-304 (public accommodations); 20-705 (housing); 20-901 (discrimination by governmental units, officers and employees). It has designated as "hate crimes," carrying enhanced penalties, crimes motivated by animus towards a person's sexual orientation. *See* Md. Code Ann., Crim. Law. § 10-301.

In sum, given the public acceptance of and protections for same-sex couples in Maryland, and the recognition their out-of-state marriages already are accorded by the

State government, it certainly could not be said that their out-of-state marriages are "condemned" or "repugnant" as a matter of State policy.

As the Attorney General concluded, out-of-state marriages of same-sex couples squarely fall within the marriage recognition rule and are not subject to either of the two exceptions to the common law doctrine. Ms. Saleem Snowden is the spouse of Ms. Snowden and fully entitled to invoke the privilege guaranteed her under § 9-106 not to testify in this criminal

D. Recognition of Ms. Snowden's Marriage Avoids Constitutional Doubts.

The central question before the Court can and should be resolved in Ms. Saleem Snowden's favor on the basis of Maryland's longstanding common law rule of recognition and faithful interpretations of the statutes at issue. The Court thus need not reach any constitutional implications of this proceeding. *See, e.g., Doe v. Montgomery County Bd. of Elections*, 406 Md. 697, 714 n.16 (2008) ("[t]his Court has regularly adhered to the principle that we will not reach a constitutional issue when a case can properly be disposed of on a non-constitutional ground") (quotation and citation omitted). But denial of the State's Attorney's motion to compel and recognition of Ms. Snowden's marriage for purposes of affording her the refuge of the testimonial privilege to protect her family also avoids a potentially unjust and unconstitutional result. *See, e.g., Schochet v. State*, 320 Md. 714, 725 (1990) (courts should prefer interpretations of the law which avoid doubts as to the law's constitutionality).

Any different interpretation of the relevant statutory and common law would give rise to a potentially unconstitutional result, since there is not even a legitimate and rational reason, when it comes to affording the spousal privilege, to discriminate between same-sex and different-sex couples who may not marry in Maryland but have been validly married elsewhere. *See, e.g., Romer v. Evans*, 517 U.S. 620, 632-35 (1996) (desire to impose legal disadvantage on gay and lesbian people is not even legitimate or rational basis for government action). There is no sufficient reason to deny Ms. Saleem Snowden the spousal privilege and the privacy and autonomy to choose to invoke it as she pursues family life. Under the governing marriage recognition rule and § 9-106, a

partner in an out-of-state uncle-niece marriage, prohibited and criminalized within Maryland, would be recognized as a spouse and the privilege would be granted. To single out for unfavorable treatment the out-of-state marriages of lesbian and gay spouses, while simultaneously respecting other out-of-state marriages that not only could not be obtained in Maryland but are criminalized within the State, would run afoul of due process and equal protection principles protected under Md. Declaration of Rights Articles 24 and 46 and the Fourteenth Amendment of the U.S. Constitution, a result which can be avoided by application of the common law rule of recognition to this marriage.

Conclusion

Wherefore, Ms. Saleem Snowden respectfully requests that the Court uphold her right to invoke the spousal privilege and deny the State's Attorney's motion to compel her testimony.

Ms. Saleem Snowden further requests that, should the Court determine to grant the State's Attorney's motion to compel, the Court stay the proceeding and any requirement that she testify in order to allow Ms. Saleem Snowden to appeal the Court's ruling on the motion to compel.

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Respectfully submitted,

David Rocah /SLS

David R. Rocah
AMERICAN CIVIL LIBERTIES UNION OF MARYLAND
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
(410) 889-8555

Susan L. Sommer*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, Suite 1500
New York, NY 10005
(212) 809-8585

*Motion for Special Admission Pending

Attorneys for Witness Sha'rron Ameedah Saleem, a.k.a. Sha'rron Ameedah Snowden