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# Comments: Something Old, Something New, Something Borrowed, Something Long Overdue: The Evolution of A "Sexual Orientation-Blind" Legal System in Maryland and the Recognition of Same-Sex Marriage

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# SOMETHING OLD, SOMETHING NEW, SOMETHING BORROWED, SOMETHING LONG OVERDUE: THE EVOLUTION OF A “SEXUAL ORIENTATION-BLIND” LEGAL SYSTEM IN MARYLAND AND THE RECOGNITION OF SAME-SEX MARRIAGE

## I. INTRODUCTION

Thomas Jefferson once opined that the United States Constitution should be revised by each “new majority” and “handed on, with periodic repairs, from generation to generation to the end of time.”<sup>1</sup> Our constitutional jurisprudence embraces an altogether different approach to revolution than that advocated by Jefferson. The bedrock principle of a flexible, broadly-read Constitution which adapts to changing circumstances allows revolution to occur at the judge’s bench rather than at the ballot box.<sup>2</sup> Historically, this revolutionary impulse has resonated in generational expansions of substantive due process and equal protection rights under our “living” Constitution.<sup>3</sup>

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1. JEAN M. YARBROUGH, *AMERICAN VIRTUES: THOMAS JEFFERSON ON THE CHARACTER OF A FREE PEOPLE* 118 (Univ. Press of Kan. 1998) (quoting Letter from Thomas Jefferson to Thomas Earle (Sept. 24, 1823), in 15 *THE WRITINGS OF THOMAS JEFFERSON* 470-71 (Albert Ellery Bergh ed. 1907)). Jefferson advocated for frequent constitutional change because of his belief that “one generation is to another as one independent nation is to another” and that “the earth belongs to the living” and not bygone figures of past generations. DAVID N. MAYER, *THE CONSTITUTIONAL THOUGHT OF THOMAS JEFFERSON* 302-03 (Univ. Press of Va. 1994) (quoting Letter from Thomas Jefferson to James Madison (Sept. 6, 1789), in ADRIENNE KOCH, *JEFFERSON AND MADISON: THE GREAT COLLABORATION* 392-95 (Oxford Univ. Press 1950)).
  2. See *McCulloch v. Maryland*, 17 U.S. 316, 407, 415 (1819) (“[W]e must never forget, it is a *constitution* we are expounding. . . . intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.”). The Supreme Court has rejected Jefferson’s notion that a majority of citizens may determine the individual rights of all citizens under the Constitution. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (“One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.”). Rather, it is the judiciary that interprets the Constitution and the rights it bestows. See *infra* note 206 and accompanying text.
  3. See, e.g., *Lawrence v. Texas*, 539 U.S. 558, 564, 577-78 (2003) (striking down a Texas sodomy statute as violative of privacy rights protected by due process and overturning *Bowers v. Hardwick*’s contrary ruling twenty years prior); *Roe v. Wade*, 410 U.S. 113, 116, 163-65 (1973) (invalidating a century-old Texas law criminalizing pre-viability abortions as violative of the Due Process Clause); *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (finding that segregation in public schools violated equal protection and discarding the nearly sixty year-old ‘separate but equal’ doctrine). See *infra* text accompanying notes 165-68 for a discussion and explanation of *Bowers*.

In fact, the United States Supreme Court recently reaffirmed this principle in *Lawrence v. Texas*,<sup>4</sup> declaring that “[a]s the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”<sup>5</sup>

The next generational revolution, and perhaps the final frontier, of civil rights jurisprudence is that of the protection and equality of homosexuals. Already, this generation has seen great strides forward in the legal rights of gays and lesbians, particularly with respect to marriage-like rights.<sup>6</sup> Maryland, however, still denies same-sex couples the fundamental right to marry enjoyed by opposite-sex couples,<sup>7</sup> and the number of couples affected by this is profound. The 2000 Census indicated that 12,632 same-sex couples resided in Maryland, accounting for twelve percent of unmarried partner households in the state.<sup>8</sup> The lack of equality in marriage rights for homosexuals is especially problematic for a state that ranks sixteenth among all states in the number of same-sex couple residents.<sup>9</sup> For the more than 25,000 Maryland gays and lesbians in same-sex relationships, the recognition of same-sex marriage is the one remaining, and most im-

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4. 539 U.S. 558 (2003).

5. *Id.* at 579.

6. *Compare* Goodridge v. Dep’t of Pub. Health, 798 N.E.2d 941, 961 (Mass. 2003) (determining that the exclusion of same-sex couples from entering into marriage violates state equal protection and due process guarantees), *and* Baker v. State, 744 A.2d 864, 867, 886 (Vt. 1999) (holding that the Common Benefits Clause of the Vermont Constitution requires that same-sex couples be granted the same benefits and protections of marriage granted to opposite-sex couples), *with* Singer v. Hara, 522 P.2d 1187, 1189-91 (Wash. Ct. App. 1974) (finding that the ban on same-sex marriage does not violate the state equal rights amendment), *and* Baker v. Nelson, 191 N.W.2d 185, 187 (Minn. 1971) (declaring that neither the federal equal protection nor the due process clause is offended by the state’s prohibition on same-sex marriage).

7. MD. CODE ANN., FAM. LAW § 2-201 (LexisNexis 2004) (“Only a marriage between a man and a woman is valid in this State.”).

8. U.S. CENSUS BUREAU, 2000 U.S. CENSUS SUMMARY FILE 3 (2000), <http://www.census.gov/Press-Release/www/2002/sumfile3.html> (select “Data” hyperlink; select “Detailed Tables” hyperlink; select “State” from dropdown menu; add “Maryland” to Geography Selection; and follow to table “PCT1”). Although the Census does not specifically track same-sex couples, the U.S. Census Bureau has acknowledged that it diverts same-sex spouse and like responses to the unmarried partner category. *See* U.S. CENSUS BUREAU, POPULATION DIVISION, *Fertility & Family Statistics Branch*, TECHNICAL NOTE ON SAME-SEX UNMARRIED PARTNER DATA FROM THE 1990 AND 2000 CENSUSES (2001), <http://www.census.gov/population/www/cen2000/samesex.html>.

9. *See* U.S. CENSUS BUREAU, 2000 U.S. CENSUS SUMMARY FILE 3 (2000), <http://www.census.gov/Press-Release/www/2002/sumfile3.html> (select “Data” hyperlink; select “Detailed Tables” hyperlink; select “All States” from dropdown menu; and follow to table “PCT1”). Moreover, the 4,977 black same-sex couples in the Baltimore-Washington metropolitan area is the second largest of such a demographic nationwide. Kelly Brewington, *Caught Between Gay, Black Worlds*, BALT. SUN, Oct. 7, 2004, at 1A.

portant, unrealized aspect of Maryland's "revolution" in sexual orientation equality.

Over the past decade, crucial facets of Maryland law have evolved, equalizing the legal protections of homosexuals and heterosexuals.<sup>10</sup> The resultant "orientation-blind" legal system, which has systematically abolished the disparate treatment of people based on their sexual orientation, cannot countenance the differentiation between the rights of homosexuals and heterosexuals. Accordingly, under substantive due process analysis, the fundamental right to marry in Maryland exercised by an opposite-sex couple is identical to the right of a same-sex couple to marry. Maryland's marriage statute,<sup>11</sup> then, should be declared unconstitutional to the extent that it limits valid marriages only to opposite-sex couples.

This Comment will first discuss, in Part II, the development of sexual orientation equality in Maryland law with particular emphasis on several critical family law decisions, changes to the criminal law, the passage of landmark anti-discrimination measures, and the implications of a local ordinance that extended same-sex partnership benefits to county employees. Finally, in light of Maryland's sexual orientation-blind legal system, Part III will analyze and vindicate the right to same-sex marriage under the substantive due process standard applied to putative fundamental rights.

## II. THE DEVELOPMENT OF MARYLAND'S "ORIENTATION-BLIND" LEGAL SYSTEM

Over the past decade, Maryland statutory, regulatory, and case law have developed a trend of eliminating discrimination against homosexuals and equalizing the legal footing on which both homosexuals and heterosexuals stand.<sup>12</sup> This movement towards increased equality of sexual orientations spans the gamut of legal contexts and has accelerated in both its scope and effect in the past four years.<sup>13</sup> Some of the most important developments have occurred in the jurisprudence of family law, criminal law, anti-discrimination legislation, as well as the extension of county same-sex partnership benefits.

### A. *The Equalization of Homosexuals' Parental Rights in Maryland Family Law*

The equality of sexual orientations that has developed in the family law context is one of the most compelling examples of this emerging principle of equality in Maryland law and bears heavily on the argument for marriage equality. Over ten years ago, Maryland courts be-

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10. See *infra* Part II.

11. FAM. LAW § 2-201.

12. See *infra* Part II.A-D.

13. See *infra* Part II.A.2-3, B, C.1.

gan to specifically protect the parental rights of homosexuals by eliminating the distinction between sexual orientations in determining those rights.<sup>14</sup> The courts firmly rejected the notion that homosexuals were unfit for the visitation, custody, and adoption of children because of their sexual orientation.<sup>15</sup> These developments are particularly compelling for the recognition of same-sex marriage given the deeply intimate and familial nature that is shared by parenthood and marriage.

### 1. The Visitation Rights of Homosexuals

In 1994, the full panel of the Maryland Court of Special Appeals grappled with the issue of homosexual parents' visitation rights in *North v. North*,<sup>16</sup> the first reported case of its kind in Maryland.<sup>17</sup> The *North* court held that a lower trial court abused its discretion in denying a homosexual man overnight visitation of his children due to the "perceived harms" resulting from his sexual orientation.<sup>18</sup> Notably, all but one of the *dissenting* members of the court in *North* acknowledged that any special weight given to Mr. North's homosexuality by the trial court was improper.<sup>19</sup> The largest bloc of dissenters even agreed that homosexuality, by itself, could not be used as a factor in denying visitation, nor could exposing children to such a sexual orientation be deemed inherently harmful.<sup>20</sup> Judge Cathell's dissent espoused an approach indicative of the sexual orientation equality principle argued in this Comment, stating, "I do not believe the issue should be treated differently because of the appellant's homosexuality . . . ."<sup>21</sup>

Four years later, the Maryland Court of Appeals conclusively settled the issue of visitation rights of homosexual parents in *Boswell v. Boswell*.<sup>22</sup> The case involved a couple who separated after the husband revealed to his wife that he was a homosexual.<sup>23</sup> Invalidating a restric-

14. See *North v. North*, 102 Md. App. 1, 648 A.2d 1025 (1994) (en banc). See also *infra* Part II.A.1 for a discussion of this case.

15. See *infra* Part II.A.1-4.

16. 102 Md. App. 1, 648 A.2d 1025.

17. Hope D. Miller, *The Maryland Survey: 1998-1999: Recent Decisions: The Court of Appeals of Maryland: Family Law*, 59 MD. L. REV. 1132, 1143 (2000).

18. *North*, 102 Md. App. at 16, 648 A.2d at 1033 (holding the trial court's prohibition on Mr. North's overnight visitation to be inconsistent with his unsupervised day-time visitation).

19. *Id.* at 29-30, 648 A.2d at 1039 (Murphy, J., dissenting) (failing to comment on the relation between the visitation restriction and Mr. North's homosexuality).

20. *Id.* at 22, 648 A.2d at 1035 (Bishop, J., dissenting in which Fischer, J., concurs) ("We agree that there is no evidence in the record that Mr. North's homosexuality would likely cause harm to his children or that Mr. North's homosexuality, considered alone, should preclude overnight visitation . . . .").

21. *Id.* at 25, 648 A.2d at 1037 (Cathell, J., dissenting).

22. 352 Md. 204, 721 A.2d 662 (1998).

23. *Id.* at 210, 721 A.2d at 664.

tion placed on the father's visitation, the Court of Appeals rejected the lower court's rationale that the children's exposure to their father's homosexual relationship was a dispositive factor.<sup>24</sup> Instead, the court favored a rule for evaluating the propriety of visitation orders that "applies to both heterosexual and homosexual relationships" equally.<sup>25</sup> That rule requires that in *all* visitation cases, including ones involving non-marital partners, restrictions on visitation should be reviewed under the best interests of the child standard.<sup>26</sup> The *Boswell* court declared that, in such cases, the best interests are achieved by inquiring whether an adverse impact is being made on the child, and if so, whether that harm can be attributed to the child's contact with the non-marital partner.<sup>27</sup> If no such connection can be found there can be no restrictions placed on the non-custodial parent's visitation rights.<sup>28</sup>

In *Boswell*, the court also built on the holding of *North* and forbade the denial or limitation of a parent's visitation of his or her child based solely upon "one factor, such as a parent's . . . homosexuality, to the exclusion of all others."<sup>29</sup> In fact, the court stressed the inherent equality of the process by stating that "[w]e make no distinctions as to the sexual preference of the non-custodial parent whose visitation is being challenged."<sup>30</sup> Thus, the *Boswell* court not only declined the invitation to follow the trial court's declaration that non-marital homosexual relationships are *per se* deleterious to children in visitation disputes,<sup>31</sup> but also placed the non-marital relationships of homosexuals on the same plane as those of heterosexuals.

The court's insistence that determinations of child visitation be made without respect to the non-custodial parent's homosexuality or involvement in a same-sex relationship<sup>32</sup> created the foundation for the sexual orientation-blind legal system in Maryland. In these early cases, the court's equal treatment of homosexuals in the exercise of their visitation rights was rooted in the basic comparability between homosexual and heterosexual relationships.<sup>33</sup> Equality for homosex-

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24. *Id.* at 239-40, 721 A.2d at 679.

25. *Id.* at 237, 721 A.2d at 678.

26. *Id.* at 236-37, 721 A.2d at 678.

27. *Id.* at 237, 721 A.2d at 678.

28. *Id.*

29. *Id.* at 224, 721 A.2d at 671.

30. *Id.* at 237, 721 A.2d at 678.

31. *Id.* at 211, 213-14, 721 A.2d at 665-67 (quoting the trial court visitation order that "prohibited any overnight visitation and visitation with the children in the presence of [the father's gay partner] or 'anyone having homosexual tendencies or such persuasions, male or female, or with anyone that the father may be living with in a non-marital relationship'").

32. *See id.* at 237, 721 A.2d at 678.

33. Indeed, psychologists have found that there is little difference between the two types of relationships. *See generally* LETITIA ANNE PEPLAU & SUSAN D. COCHRAN, *A Relational Perspective on Homosexuality*, in *HOMOSEXUALITY/ HET-*

ual parents in *North* and *Boswell* though, was still based upon a comparison to a precedent or concurrent heterosexual relationship on the part of the gay parent.<sup>34</sup> That paradigm changed in 2000 when the Court of Special Appeals examined the viability of same-sex parenting and the visitation rights of homosexual partners solely within the context of a same-sex relationship alone.

## 2. Homosexual "De Facto" Parenthood and Visitation

In the groundbreaking case of *S.F. v. M.D.*,<sup>35</sup> decided two years after *Boswell*, the Court of Special Appeals encountered the issue of "de facto parent" visitation after the dissolution of a "committed domestic relationship" between two women.<sup>36</sup> As an initial step, the court recognized the existence of "de facto parents" within same-sex relationships in Maryland.<sup>37</sup> The court then held that such parents not only have standing to seek visitation, but also that the parent requesting visitation would not have to demonstrate unfitness of the biological parent or "exceptional circumstances" to be awarded visitation.<sup>38</sup>

Importantly, in its visitation analysis, the court in *S.F.* equated the same-sex relationship of the two women with that of a married couple.<sup>39</sup> This comparison is more than a convenient analogy for the court. Rather, it is one of several indicative examples of the growing consensus among courts in Maryland that families of same-sex partners function in much the same way as do families of opposite-sex partners.<sup>40</sup> Thus, homosexual couples raising families deserve the le-

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EROSEXUALITY: CONCEPTS OF SEXUAL ORIENTATION 321, 333-34 (David P. McWhirter, et al., eds., Oxford Univ. Press 1990).

34. See *Boswell*, 352 Md. at 210, 721 A.2d at 664 (relating the facts of Mr. and Mrs. Boswell's eight-year marriage); *North v. North*, 102 Md. App. 1, 3-4, 648 A.2d 1025, 1027 (1994) (en banc) (recounting Mr. North's problematic ten-year marriage to his wife).
35. 132 Md. App. 99, 751 A.2d 9 (2000).
36. *Id.* at 102, 751 A.2d at 10-11. The phrase "committed domestic relationship," is the court's own term for describing the seven-year relationship between two women who cooperatively raised a child born as a result of artificial insemination of one of the women. *Id.* at 102-03, 751 A.2d at 10-11.
37. *Id.* at 111, 751 A.2d at 15. The court defined "de facto parent" vis-à-vis its recital of the elements a third party must satisfy to be considered such a parent: "the legal parent must consent to and foster the relationship between the third party and the child; the third party must have lived with the child; the third party must perform parental functions for the child to a significant degree; and most important, a parent-child bond must be forged." *Id.* (quoting *V.C. v. M.J.B.*, 748 A.2d 539, 551 (N.J. 2000)); see also *In re Custody of H.S.H.-K.*, 533 N.W.2d 419, 421 (Wis. 1995) (listing the four elements of de facto parenthood).
38. *S.F.*, 132 Md. App. at 110-12, 751 A.2d at 15.
39. *Id.* at 112, 751 A.2d at 15 ("The case before us is most akin to a stepparent seeking visitation.").
40. See *supra* and *infra* Part II.A.1-4.

gal equality granted to heterosexuals commensurate with their functional and conceptual equivalency.

### 3. Custody Rights of Homosexuals

Child custody is another important family law issue for homosexual couples as part of this trend of sexual orientation equality. In 2000, the Court of Special Appeals of Maryland weighed in on the issue of granting child custody to homosexuals in *Gestl v. Frederick*.<sup>41</sup> The case involved a custody dispute filed under the Uniform Child Custody Jurisdiction Act (UCCJA) by Gestl, a Maryland woman, against her same-sex partner, Frederick.<sup>42</sup> The UCCJA was invoked when Frederick moved back to Tennessee five years after giving birth to the child the couple was raising together in Maryland.<sup>43</sup> After the court determined that Maryland courts possessed jurisdiction under the UCCJA,<sup>44</sup> and that Tennessee did not present an available alternative forum for the dispute to be heard,<sup>45</sup> the court held that Gestl had standing to claim custody of Frederick's biological child.<sup>46</sup>

The *Gestl* court observed that Maryland law "recognizes a third party's right to custody over a natural parent if exceptional circumstances exist which make it in the best interests of the child to award custody to the third party."<sup>47</sup> Further, the court stated that its reading of the already seminal biological parent rights case of *Troxel v. Granville*<sup>48</sup> was not inconsistent with this permissive formulation of custody rights for non-biological parents.<sup>49</sup> In fact, due to *Troxel's* strong pre-

41. 133 Md. App. 216, 754 A.2d 1087 (2000).

42. *Id.* at 221-22, 754 A.2d at 1090.

43. *Id.*

44. *Id.* at 225-26, 754 A.2d at 1092-93.

45. *Id.* at 243, 754 A.2d at 1101. The court determined that Tennessee was not an available alternative forum in this case specifically because its substantive law would deny "a non-biological parent claiming to be a de facto parent" the standing extended to such parents in Maryland. *Id.*

46. *Id.* at 244, 754 A.2d at 1102.

47. *Id.* at 241, 754 A.2d at 1100.

48. 530 U.S. 57 (2000). In *Troxel*, the Supreme Court invalidated a Washington non-parental visitation statute on substantive due process grounds because the statute "impermissibly interfere[d] with the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Gestl*, 133 Md. App. at 242, 754 A.2d at 1101 (quoting *Troxel*, 530 U.S. at 60, 66). The Court of Special Appeals in *Gestl* found it dispositive that

[t]he Court expressly declined . . . to reach the question of whether parental unfitness was always a prerequisite in order to justify intervention in decisions concerning custody and visitation. It also suggested that intervention in custody and visitation decisions might be justified, when the intervention was 'founded . . . on special factors,' rather than merely a generalized best interest analysis.

*Id.* at 242-43, 754 A.2d at 1001 (quoting *Troxel*, 530 U.S. at 68).

49. *Gestl*, 133 Md. App. at 243, 754 A.2d at 1101.

sumption in favor of biological parents,<sup>50</sup> which is echoed in Maryland law,<sup>51</sup> and the inherent reality of same-sex relationships that only one partner will be a biological parent, the custody rights of non-biological same-sex parents announced in *Gestl* is likely the most permissive of all the constitutionally-viable constructions possible.

The *Gestl* court ultimately found that Donna Gestl was a “person acting as parent”<sup>52</sup> and specifically allowed the opportunity for something that, at best, *Boswell* only implied<sup>53</sup> - that with the proper allegations, homosexuals could now be granted child custody without their sexual orientation being used against them.<sup>54</sup> Importantly, this case established custody rights for the partners of same-sex relationships that mirror those exercised by opposite-sex couples as closely as the circumstances would allow.<sup>55</sup> As a result, Maryland courts made available yet another institution of family law for homosexual relationships that had previously only been available for heterosexuals. The *Gestl* decision is yet another crucial step in the process of equalizing the rights and protections bestowed upon same-sex and opposite-sex relationships in Maryland.

#### 4. Adoption by Homosexuals and Same-Sex Couples

At the outset, it should be noted that Maryland law does not expressly permit or deny the adoption of children by same-sex couples.<sup>56</sup>

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50. *Troxel*, 530 U.S. at 66, 68 (“[T]here is a presumption that fit parents act in the best interests of their children.”).
  51. *Ross v. Hoffman*, 280 Md. 172, 178, 372 A.2d 582, 587 (1977) (“When the dispute is between a *biological parent* and a third party, it is presumed that the child’s best interest is subserved by custody in the parent.”) (emphasis added).
  52. *Gestl*, 133 Md. App. at 244, 754 A.2d at 1102.
  53. *Boswell v. Boswell*, 352 Md. 204, 222, 721 A.2d 662, 670-71 (1998) (“These best interest factors also apply to visitation, as well as *any other proceeding where the best interest of the child is at issue.*”) (emphasis added). Earlier, the court stated that a child’s best interests are implicated in “visitation, custody, and adoption” proceedings. *Id.* at 219, 721 A.2d at 669. The lack of an announcement of a different test for custody or adoption by homosexuals implies that those actions would not be denied because of their sexual orientation.
  54. *Gestl*, 133 Md. App. at 243-44, 754 A.2d at 1101.
  55. Since biological reality prevents a same-sex couple from producing mutually genetic children, the custody regime for gay couples established in *Gestl* by extending a cause of action to a “non-biological parent who has had joint custody of a child with the biological parent” is the closest equivalent to the regime utilized by opposite-sex couples, who are capable of being mutually biological parents. *Id.*
  56. MD. CODE ANN., FAM. LAW § 5-309(a) (LexisNexis 2004) (“Any adult may petition a court to decree an adoption.”) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581 (to be reenacted as FAM. LAW §§ 5-331(b)(1) (adoption without prior termination of parental rights), 5-345(b)(1) (adoption after termination of parental rights), 5-3A-29(a) (private adoption), 5-3B-13(b)(1) (independent adoption))).

Rather, the statute uses broad and inclusive language,<sup>57</sup> in contrast to Florida's statute completely prohibiting such adoptions.<sup>58</sup> Though reported cases of same-sex couple adoptions are rare,<sup>59</sup> evidence suggests that adoptions by same-sex couples are quite commonplace in Maryland courts.<sup>60</sup> The most common form of adoption under this broad, permissive scheme is the "second parent" adoption, which involves the adoption of one partner's natural child by the natural parent's same-sex partner without sacrificing the natural parent's parental rights.<sup>61</sup> This form of adoption may occur as a result of a number of varying circumstances, including the non-adoptive natural parent's willful termination of their parental rights,<sup>62</sup> or an imposed termination of rights due to abuse, failing to maintain meaningful contact with the child, or some other harm imposed on the child by that parent.<sup>63</sup> While other adoptions result in the automatic termina-

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57. See *supra* note 56 and accompanying text. Moreover, the statute further provides that a court may not deny a petition for adoption because the petitioner is single or does not have a spouse, thus pre-empting courts from denying same-sex couples, who cannot currently marry under Maryland law, the ability to adopt. FAM. LAW § 5-309(b) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581 (to be reenacted as FAM. LAW § 5-349(b) ("In ruling on a petition for adoption . . . a juvenile court may not deny a petition for adoption solely because the petitioner is single or unmarried."))).
  58. FLA. STAT. ANN. § 63.042(3) (West 2005) ("No person eligible to adopt under this statute may adopt if that person is a homosexual."); see also *Lof-ton v. Sec'y of the Dep't of Children & Fam. Servs.*, 358 F.3d 804 (11th Cir. 2004) (affirming the constitutionality of the Florida statute), *cert. denied*, 125 S. Ct. 869 (2005). Until an amendment passed in 1999, New Hampshire also forbade same-sex adoptions. See N.H. REV. STAT. ANN. § 170-B:4 (Supp. 1989) ("[A]ny individual not a minor and not a homosexual may adopt.").
  59. See, e.g., *In re* Petition of D.L.G. & M.A.H., No. 95-179001/CAD, 2 MFLM Supp. 21 (Cir. Ct. Balt. City June 27, 1996). The D.L.G. decision was the first reported case of a same-sex second parent adoption in Maryland. *Judge Approves Same-Sex Adoption Petition; Second Ever in Maryland*, MD. FAM. L. MONTHLY (The Daily Record, Baltimore, Md.), February 1997, at 16.
  60. See Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 32, *Deane v. Conaway* (Civ. No. 24-C-04-005390) (Cir. Ct. Balt. City June 14, 2005) (on file with author); see also Ryiah Lilith, *The G.I.F.T. of Two Biological and Legal Mothers*, 9 AM. U.J. GENDER SOC. POL'Y & L. 207, 214 n.49 (2001); 25 CAUSES OF ACTION 2D 1, 14 (Thomson West ed., 2004).
  61. See Lilith, *supra* note 60, at 214 nn.47-48; see also 25 CAUSES OF ACTION 2D 1, *supra* note 60, at 9.
  62. MD. CODE ANN., FAM. LAW § 5-311(b) (LexisNexis 2004) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581) (to be reenacted as FAM. LAW § 5-350(a) (when the non-adoptive parent's rights have been terminated, adoption is allowed when the individual's guardian only consents)).
  63. FAM. LAW § 5-313 (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581 Ch 464) (to be reenacted as FAM. LAW § 5-3B-21 ("In ruling under this subsection, a court shall give primary consider-

tion of a natural parent's parental rights,<sup>64</sup> a statutory exception for second parent adoptions preserves the adoptive natural parent's rights.<sup>65</sup>

Maryland's first reported case of a same-sex second parent adoption, *In re Petition of D.L.G. & M.A.H.*,<sup>66</sup> made two crucial findings with respect to same-sex parent adoptions. First, Judge Friedman of the Circuit Court for Baltimore City found that Maryland's adoption statute "does not prohibit adoption by same-sex partners,"<sup>67</sup> a finding supported in large measure by the analysis in *North v. North*.<sup>68</sup> Second, the court extended the second parent adoption exception to the lesbian partners in *D.L.G.* in reliance upon similar extensions in other states.<sup>69</sup> Ultimately, the court granted the adoption based on its finding that doing so was unquestionably in the best interests of the couples' children.<sup>70</sup>

Interestingly, Maryland law provides that once adopted, children in same-sex partnership families are "entitled to all the rights and privileges of and [are] subject to all the obligations of children born to the adoptive parents."<sup>71</sup> Not only does this provision ensure the equal rights and protection of adoptive children, but its language also signals something important about the expansiveness of the concept of

ation to the health and safety of the prospective adoptee in determining the prospective adoptee's best interests.")).

64. FAM. LAW § 5-308(b)(2) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581) (to be reenacted as FAM. LAW §§ 5-341(a)(2)(ii) (adoption without prior termination of parental rights), 5-352(a)(2)(ii) (adoption with prior termination of parental rights), 5-3A-35(a)(2)(ii) (private adoption), 5-3B-24(a)(2)(ii) (independent adoption)).
65. FAM. LAW § 5-315 (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581) (to be reenacted as FAM. LAW §§ 5-331(b)(2) (adoption without prior termination of parental rights), 5-345(b)(2) (adoption with prior termination of parental rights), 5-3A-29(c)(1) (private adoption), 5-3B-13(b)(2) (independent adoption)).
66. No. 95-179001/CAD, 2 MFLM Supp. 21 (Cir. Ct. Balt. City June 27, 1996).
67. *Id.* at 22. The court also noted several studies supporting its finding that "[t]here appears to be no substantiation for the view that homosexuals cannot properly raise children . . ." *Id.* at 24.
68. *Id.* at 22. See *supra* Part II.A.1 for a discussion of *North*.
69. *Id.* at 23-24 (recognizing that New Jersey, New York, and Colorado have extended the second parent adoption exception to same-sex couples).
70. *Id.* at 24 ("The children are both happy and healthy; each consented without reservation to these adoptions . . . there have been no discernable ill effects brought upon these children by the de facto family the petitioners have created. The benefits of granting this adoption, on the other hand, are overwhelming.").
71. MD. CODE ANN., FAM. LAW § 5-308(b)(1)(ii) (LexisNexis 2004) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581) (to be reenacted as FAM. LAW §§ 5-341(a)(2)(i) (adoption without prior termination of parental rights), 5-352(a)(2)(i) (adoption with prior termination of parental rights), 5-3A-35(a)(2)(i) (private adoption), 5-3B-24(b)(1) (independent adoption)).

family in Maryland law. By operation of this statute and the “wedlock” language therein, the adoptive children of same-sex couples are viewed in the same way as those of opposite-sex couples in the marital sense.

Furthermore, the simple fact that same-sex couples are permitted to adopt is another foundational aspect of the principle of sexual orientation equality that has developed in Maryland law. In courts around the state, judges have decided time and again that two loving, caring, and responsible same-sex partners are well-suited to raise a child.<sup>72</sup> The gravity and importance of granting an adoption petition submitted by a homosexual couple differs very little from the issuance of a marriage license. Both actions cut to the heart of intimate familial relations and serve as the foundations of our society as social human beings: parenting and marriage. Quite often, in the view of Maryland and federal courts, these concepts are inextricably intertwined.<sup>73</sup> How these fundamental rights could be divorced from each other when they are sought to be exercised by homosexuals defies both logic and fundamental fairness.<sup>74</sup>

#### B. *The Incorporation of Sexual Orientation Equality into Maryland Criminal Law*

Much like the advancements in the family law context that provide the foundation for the orientation-blind principle, the criminal laws of Maryland have also evolved in a manner consonant with sexual orientation equality. Two developments in particular have reshaped Maryland criminal law: one, essentially de-criminalizing homosexual sodomy and, the other, implying that the “battered spouse” defense is available to an abused member of a same-sex relationship.

#### 1. The Decriminalization of Homosexual Sodomy

The sweeping language in the landmark Supreme Court case of *Lawrence v. Texas*,<sup>75</sup> which invalidated a sodomy statute that targeted

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72. See *supra* notes 59-60.

73. See, e.g., *In re Yve S.*, 373 Md. 551, 565-66, 819 A.2d 1030, 1038-39 (2003) (quoting *Wolinski v. Browneller*, 115 Md. App. 285, 297-98, 693 A.2d 30, 35-36 (1997) (“Beginning with *Meyer v. Nebraska* . . . and *Pierce v. Society of Sisters* . . . , the Supreme Court, in a variety of contexts, has recognized that freedom of personal choice in matters of marriage, family life, and the upbringing of children is a liberty interest protected by the Fourteenth Amendment.”) (citations omitted)). The *Wolinski* opinion quoted by *Yve S.* also noted that the Maryland Declaration of Rights contemplates those same rights conceived under the Fourteenth Amendment. *Wolinski*, 115 Md. App. at 298 n.6, 693 A.2d at 35.

74. See *infra* notes 144-50 and accompanying text.

75. 539 U.S. 558 (2003). \

consensual homosexual activity and overturned *Bowers v. Hardwick*,<sup>76</sup> has only solidified that which had already been achieved in Maryland four years earlier. In January 1999, a consent decree signed by the Maryland Attorney General's Office<sup>77</sup> rendered the state's sodomy statute<sup>78</sup> dead letter law just one year after the law's constitutionality had been challenged.<sup>79</sup> In that challenge, a Maryland circuit court extended the ruling in the case of *Schochet v. State*,<sup>80</sup> which excluded private heterosexual activity from the scope of the sodomy statute, to also exclude private homosexual activity.<sup>81</sup> This extended ruling thus avoided the equal protection violation created by *Schochet's* unequal application of the law.<sup>82</sup>

The advent of *Lawrence* and its implied overturning of *Schochet*,<sup>83</sup> Maryland's closest analog to *Bowers v. Hardwick*,<sup>84</sup> simply punctuates Maryland's policy of abolishing discriminatory laws affecting homosexuals. In that regard, the fact that Maryland's consent decree eliminating its sodomy law predates *Lawrence* by four years is a measure of the state's dedication to sexual orientation equality. To be sure, the decriminalization of the uniquely private and consensual sexual activity of same-sex relationships is a cornerstone in the argument of equality between the different sexual orientations. Once again, Maryland law embodies the principle of equality by placing same-sex and opposite-sex relationships on the same legal footing.

## 2. The "Battered Spouse Syndrome" Defense in Same-Sex Relationships

An intriguing case decided by the Court of Appeals of Maryland in March, 2004 that considered the scope of the "Battered Spouse Syndrome" offers yet more evidence that same-sex relationships are regarded as equally worthy of the protections of the law. In *State v.*

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76. 478 U.S. 186, 191, 196 (1986) (holding that there is no fundamental right to engage in homosexual sodomy and affirming the constitutionality of state laws making such conduct illegal).

77. See Scott Calvert, *Ruling on Gays Stirs Up Emotions*, BALT. SUN, June 28, 2003, at 1A.

78. MD. CODE ANN., CRIM. LAW § 3-321 (LexisNexis 2002).

79. See *Williams v. Glendening*, No. 98036031/CL-1059, 1998 WL 965992 (Md. Cir. Ct. Oct. 15, 1998).

80. 320 Md. 714, 717, 580 A.2d 176, 177 (1990).

81. *Williams*, 1998 WL 965992, at \*7.

82. *Id.* ("It cannot be doubted . . . that there would be an equal protection violation if acts, considered not criminal when committed by a heterosexual couple, could be prosecuted when practiced by a homosexual couple. There is simply no basis for the distinction.")

83. 320 Md. at 717, 580 A.2d at 177 (holding that the statute forbidding "unnatural or perverted sexual practices" does not encompass "consensual, noncommercial, heterosexual activity between adults in the privacy of the home," while leaving homosexual acts open to criminal prosecution).

84. See *supra* note 76.

*Smullen*,<sup>85</sup> the court, in bringing the assertions of battered children within the ambit of the statutory Battered Spouse Syndrome<sup>86</sup> self-defense theory,<sup>87</sup> pondered the scope of the defense with respect to same-sex relationships.<sup>88</sup> Recognizing that defense theories like these are subject to expansion<sup>89</sup> the *Smullen* court's dicta implied that the defense would be extended to same-sex relationships as an eligible type of "adult domestic relationship."<sup>90</sup> The court emphasized that "[a]lthough the bill [codifying the defense] used the terminology 'battered spouse syndrome,' it made clear that it was applicable as well to former spouses, cohabitants, and former cohabitants . . . ."<sup>91</sup>

The dicta of *Smullen*, then, implies that the defense is applicable to homosexuals for the same reasons that it applies to their heterosexual counterparts. First, such broad and sweeping terminology contemplates the inclusion of same-sex couples just as surely as it does other cohabitating couples of other sexual orientations. Moreover, homosexuals are abused by their same-sex partners and with the same frequency as members of opposite-sex relationships.<sup>92</sup> Thus, the battered spouse syndrome is equally applicable to same-sex couples in the same way that the *Smullen* Court found that it applies to battered children: "[t]he underpinnings of that application, we believe, have been generally accepted in the psychological and legal communities and are therefore reliable."<sup>93</sup> Those underpinnings are satisfied being that the incidence of abuse in relationships of both orientations and the underlying causes of that abuse are, sadly, universally true.<sup>94</sup>

### C. *The Proliferation of Anti-Discrimination Measures Targeting Sexual Orientation-Based Prejudice*

Another context in which homosexuals have achieved an important measure of equality with heterosexuals in Maryland is in the context of protection from discrimination. Positive developments in this

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85. 380 Md. 233, 844 A.2d 429 (2004).

86. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (LexisNexis 2002).

87. 380 Md. at 268, 844 A.2d at 449 ("[W]e do hold that the battered spouse syndrome, as recognized in § 10-916, applies as well to battered children.").

88. *Id.* at 258, 844 A.2d at 443 ("[Q]uestions arose whether the [battered spouse] syndrome was limited to wives trapped in a marital relationship with their abuser or included . . . same-sex persons involved in a homosexual communal relationship. . . .").

89. *Id.*

90. *Id.* at 260, 844 A.2d at 444.

91. *Id.* at 259, 844 A.2d at 444 (emphasis in original).

92. Nancy E. Murphy, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 VAL. U. L. REV. 335, 340 & n.34 (1995) (citing CLAIRE M. RENZETTI, VIOLENT BETRAYAL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS 18 (Sage Publications 1992) (reporting that abuse occurs in about 25 to 30 percent of both same-sex and opposite-sex relationships)).

93. *Smullen*, 380 Md. at 268, 844 A.2d at 449-50.

94. Murphy, *supra* note 92, at 340 & n.36.

realm of the law are indicative of a design to equalize the once-unprotected group with the rest of society in the eyes of the law. Indeed, the fundamental purpose of any anti-discrimination measure is to eliminate disparate treatment between distinct segments of the population and the prejudices animating such treatment, thereby creating equality amongst all members of society.<sup>95</sup> The magnitude of the measures currently in force in Maryland is, indeed, astounding. Certainly, the proceeding anti-discrimination laws and regulations buttress the legal equality of homosexuals in Maryland.

### 1. The Antidiscrimination Act of 2001

One ground-breaking law passed just four years ago, the Antidiscrimination Act of 2001,<sup>96</sup> added Maryland to the list of just eleven states and the District of Columbia that have placed a statewide ban on discrimination based on sexual orientation.<sup>97</sup> The law prohibits discrimination in employment,<sup>98</sup> housing,<sup>99</sup> and public accommodations<sup>100</sup> based on one's particular real or perceived sexual orientation, whatever it may be.<sup>101</sup>

Although the Act contains a proviso that disclaims any interpretation of the law as "authoriz[ing] or validat[ing]" same-sex marriage,<sup>102</sup> it is still a critical step forward in the evolution of orientation-blind law in Maryland. Indeed, the Act's stated purpose and effect is to repudiate disparate treatment based on sexual orientation.<sup>103</sup> Interestingly, the Act makes no distinction as to homosexuality or heterosexuality in its effect, providing equal protection to all sexual orientations,<sup>104</sup> thus providing protection on an orientation-blind basis. As a result, Maryland law once again embodies the principle of orientation equality by cloaking both orientations with the same rights and protections against discrimination.

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95. See 15 AM. JUR. 2D *Civil Rights* § 13 (2000).

96. 2001 Md. Laws 2112.

97. Catherine M. Brennan, *Banning Discrimination Based on Sexual Orientation*, 35 MD. B. J., May-June 2002 at 50, 51 (2002).

98. MD. ANN. CODE art. 49B, § 16(a)(1) (2003).

99. *Id.* § 22(a)(1).

100. MD. ANN. CODE art. 49B, § 5(b) (Supp. 2004).

101. MD. ANN. CODE art. 49B, § 5(a) (Supp. 2004); *id.* §§ 15(j), 20(u) (2003) ("[S]exual orientation' means the identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.").

102. 2001 Md. Laws 2122.

103. *Id.* at 2112 ("F[or] the purpose of prohibiting discrimination based on sexual orientation. . . .").

104. See *supra* notes 98-101.

## 2. Other Statutory and Regulatory Measures Prohibiting Sexual Orientation Discrimination

Maryland law also prohibits sexual orientation discrimination by those employed in various professional vocations, including that of social workers<sup>105</sup> and judges.<sup>106</sup> What is more, as early as 1973, it was held that the mere homosexuality of an educational professional was not sufficient to either fail to hire,<sup>107</sup> transfer or terminate<sup>108</sup> that person. There is also a statute tailored to outlaw discrimination in collective bargaining labor relations for the Maryland-National Capital Park and Planning Commission,<sup>109</sup> as well as two statutes prohibiting discrimination in the operations of the Washington Suburban Sanitary Commission.<sup>110</sup>

There are also a great deal of regulations in force in Maryland that further the goal of equality between the sexual orientations in the state. The majority of these regulations propagate the state's anti-discrimination policies in employment and other matters under state control.<sup>111</sup>

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105. MD. CODE ANN., HEALTH OCC. § 19-311 (LexisNexis Supp. 2004).

106. MD. R. 16-813 Canon 3 (LexisNexis Supp. 2005) ("A judge shall perform the duties of judicial office . . . impartially, and without having or manifesting bias or prejudice, including bias or prejudice based on . . . sexual orientation. . . .").

107. *Acanfora v. Bd. of Educ.*, 359 F. Supp. 843, 853 (D. Md. 1973) ("[T]he Board of Education's policy of not knowingly employing any homosexuals is objectionable."), *aff'd on other grounds*, 491 F.2d 498 (4th Cir. 1974).

108. *Id.* at 856 ("[M]ere knowledge that a teacher is homosexual is not sufficient to justify transfer or dismissal.").

109. MD. ANN. CODE art. 28, § 2-112.1(f)(1)-(2) (2003).

110. MD. ANN. CODE art. 29, § 1-107 (2003) (prohibiting discrimination by the Washington Suburban Sanitary Commission (WSSC)); *id.* § 3-102(h) (requiring that contracts awarded by the WSSC must include terms requiring the contractor "[n]ot to discriminate in any manner against an employee or applicant for employment on the basis of . . . sexual orientation").

111. MD. CODE REGS. 01.01.1995.19(I)(A)(11) (2004) (executive order to establish an equal employment opportunity program for state government to ensure personnel actions taken "without regard to . . . [s]exual orientation"); *id.* 01.04.04.04(B)(7) (2004) (requiring the board of directors of Residential Child Care Programs to ensure that such programs do not discriminate on the basis of sexual orientation); *id.* 05.04.11.18(A) (2005) (prohibiting sexual orientation discrimination by sponsors or contractors in the Special Housing Opportunities Program); *id.* 05.05.02.14(A) (2005) (prohibiting sexual orientation discrimination in the Multi-Family Housing Revenue Bond Financing Program); *id.* 05.17.01.10(A) (2005) (prohibiting sexual orientation discrimination by sponsors in the Community Legacy Program); *id.* 07.03.03.07(I)(9)(b) (2004) (deeming quitting a job because of sexual orientation discrimination as good cause for purposes of the Family Investment Program); *id.* 07.03.08.02(B)(1)(h) (2004) (same in Emergency Assistance to Families with Children program); *id.* 07.03.16.08(D)(2) (2004) (same in Refugee Cash Assistance program); *id.* 07.05.03.09(A)(2) (2004) (prohibiting private child placement agencies from denying an application because of the applicant's or the adoptive child's sexual orientation); *id.* 07.05.03.15(C)(2) (2004) (prohibiting the delay or denial of the

#### 4. Anti-Discrimination Measures in Individual Maryland Counties

In addition to the state-wide protections created by the Antidiscrimination Act and other measures, some individual Maryland counties have passed ordinances prohibiting sexual orientation discrimination in a plentitude of its other manifestations. At present, five of Maryland's twenty-three counties and Baltimore City have their

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placement of an adoptive child because of the adoptive parent or child's sexual orientation); *id.* 10.18.06.03(A)(6) (2004) (requiring Maryland AIDS Drug Assistance Program providers to provide services without regard to sexual orientation); *id.* 10.26.03.03(D)(5) (2004) (prohibiting licensees of the Board of Acupuncture from discriminating on the basis of sexual orientation); *id.* 10.34.10.06(A)(1) (2004) (prohibiting pharmacists from discriminating on the basis of sexual orientation); *id.* 10.41.02.04(E) (2005) (prohibiting licensees of the Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists from discriminating on the basis of sexual orientation); *id.* 10.42.03.03(B)(5) (2005) (prohibiting licensed social workers from discriminating on the basis of sexual orientation); *id.* 10.43.14.03(D)(5) (2005) (prohibiting licensed chiropractors and registered chiropractic assistants of the Board of Chiropractic Examiners from discriminating on the basis of sexual orientation); *id.* 10.43.18.03(D)(5) (2005) (prohibiting licensed massage therapists of the Board of Chiropractic Examiners from discriminating on the basis of sexual orientation); *id.* 10.46.02.01(A)(1) (2005) (prohibiting licensees of the Board of Occupational Therapy Practice from discriminating on the basis of sexual orientation); *id.* 10.47.01.07(C) (2005) (prohibiting a program administered under the Alcohol and Drug Abuse Administration from discriminating on the basis of sexual orientation); *id.* 10.51.04.01(C)(2)(x) (2005) (prohibiting providers of Maryland PrimaryCare from discriminating on the basis of sexual orientation); *id.* 10.53.01.01(D)(5) (2005) (prohibiting an electrologist from discriminating on the basis of sexual orientation); *id.* 10.58.03.05(A)(2)(b) (2005) (prohibiting a counselor or therapist certified or licensed by the Board of Professional Counselors and Therapists from discriminating on the basis of sexual orientation); *id.* 11.02.04.02(A) (2005) (mandating that departmental actions of the Department of Transportation not discriminate on the basis of sexual orientation); *id.* 11.07.06.13 (2005) (mandating that proposals submitted to the Transportation Public-Private Partnership Program may not be subjected to discrimination on the basis of sexual orientation); *id.* 11.15.29.02(E)(6) (2005) (permitting the rejection of motor vehicle registration plates which "[c]ommunicates a message of any kind about" sexual orientation); *id.* 13A.01.04.03 (2005) (guaranteeing a safe, adequate, and harassment-free educational environment for students without regard to sexual orientation in Maryland's public schools); *id.* 14.27.02.03(B) (2004) (calling for the implementation of an equal employment opportunity program in the Maryland Environmental Service to administer the human resources policies and provisions without discriminating on the basis of sexual orientation); *id.* 14.29.04.09(C)(1) (2004) (prohibiting borrowers from the Maryland Heritage Areas Loan Program from discriminating on the basis of sexual orientation); *id.* 14.30.04.04(B)(3)(e)(i) (2004) (requiring election petitions of employee organizations for the State Higher Education Labor Relations Board to certify that they accept members without regard to sexual orientation); 27:23 Md. Reg. 2130 (Nov. 17, 2000) (executive order for commission to study sexual orientation discrimination in Maryland).

own local ordinances banning discrimination based on sexual orientation.<sup>112</sup>

Like the Antidiscrimination Act, these ordinances apply equally to both homosexuals and heterosexuals. Given the basic level of protection afforded by the Antidiscrimination Act, these county ordinances provide an additional barrier to sexual orientation prejudice that is both practical and symbolic in effect. Furthermore, they illustrate the pervasiveness of the orientation-blind principle in Maryland state and local law.

For example, Howard County has enacted a panoply of anti-discrimination measures focusing on sexual orientation both generally<sup>113</sup> and in specific contexts including housing, employment, service by law enforcement, public accommodations, finance, and use of "open spaces".<sup>114</sup> Prince George's County has similarly extended protections against discrimination based on sexual orientation in a variety of similar contexts as well as real estate and contracting.<sup>115</sup> Baltimore City has also made efforts to ensure the equality of homosexuals with various anti-discrimination measures concerning sexual orientation including medical services and a program that tracks sexual orientation-motivated hate crimes.<sup>116</sup> Caroline County has passed an equal opportunity employment resolution that bans any discrimination against potential employees on the basis of sexual orientation.<sup>117</sup> Lastly, Anne Arundel County has mandated that no sexual orientation discrimination is to be permitted by cable franchisees.<sup>118</sup>

Perhaps some of the most far-reaching and innovative of these local ordinances can be found in Montgomery County, which has enacted measures banning sexual orientation discrimination generally,<sup>119</sup>

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112. See *infra* notes 113-21.

113. HOWARD COUNTY, MD., CODE § 12.200 (1998) (prohibiting discrimination based on sexual orientation generally).

114. *Id.* § 12.207 (housing discrimination); *id.* § 12.208 (employment discrimination); *id.* § 12.209 (discrimination by law enforcement personnel); *id.* § 12.210 (public accommodation discrimination); *id.* § 12.211 (financing discrimination); *id.* § 19.513 (discrimination in use of "open space areas").

115. PRINCE GEORGE'S COUNTY, MD., CODE § 2-210 (2002) (housing discrimination); *id.* § 2-231.01 (commercial real estate discrimination); *id.* § 5A-117 (cable franchise discrimination); *id.* § 10A-122 (contracting discrimination); *id.* § 16-101 (prohibiting discrimination based on sexual orientation generally).

116. BALTIMORE CITY, MD., CODE art. 4 § 3-1 (2004) (prohibiting employment discrimination); *id.* § 3-2 (prohibiting public accommodations discrimination); *id.* § 3-3 (prohibiting education discrimination); *id.* § 3-4 (prohibiting health and welfare agency discrimination); *id.* § 3-5 (prohibiting housing discrimination); *id.* art. 5, § 31-3 (providing for an annual review of licensed medical service providers to certify that they do not deny service on the basis of sexual orientation); *id.* art. 19, § 23-2 (providing for the tracking of hate crimes motivated by the victim's sexual orientation).

117. CAROLINE COUNTY, MD., CODE app. II, Res. No. 93-008, § 1(A) (2003).

118. ANNE ARUNDEL COUNTY, MD., CODE art. 13, § 2-811 (2004).

119. MONTGOMERY COUNTY, MD., CODE § 27-1 (2004).

along with many specific prohibitions similar to those established in other counties.<sup>120</sup> The County's most pioneering provision, however, is its extension of various rights and privileges to homosexual couples which were previously only enjoyed by heterosexual couples through the civil contract of marriage.<sup>121</sup> The ordinances affecting this change, therefore, have considerable bearing on the argument for the equal enjoyment of the rights appurtenant to marriage by same-sex couples to be explored in the proceeding section.

*D. Montgomery County's Extension of Marriage-Like Benefits to Same-Sex Domestic Partnerships*

Perhaps the most profound development in the evolution of Maryland's sexual orientation-blind legal system that buttresses the argument for same-sex marriage rights is Montgomery County's extension of employment benefits to the same-sex domestic partners of County employees.<sup>122</sup> The Maryland Court of Appeals' unanimous vindication of the ordinance in litigation challenging its constitutionality<sup>123</sup> not only affirmed the emerging principle of orientation equality, but also signaled its stance on some important issues that may come to bear in Maryland's pending same-sex marriage lawsuit.<sup>124</sup>

In *Tyma v. Montgomery County*, the court upheld the local ordinance granting domestic partnership benefits as a proper exercise of the powers delegated to the counties by the "Home Rule Amendment" to the Maryland Constitution.<sup>125</sup> In order to reach this decision, the court had to closely analyze the ordinance's purpose and effect to ensure that the county had not enacted a local law having an unduly

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120. *Id.* § 8A-15 (prohibiting cable franchise discrimination); *id.* § 27-11 (prohibiting public accommodations discrimination); *id.* § 27-12 (prohibiting housing discrimination); *id.* § 27-16 (prohibiting commercial real estate discrimination); *id.* § 27-19 (prohibiting employment discrimination); *id.* § 27-22 (prohibiting discrimination through intimidation); *id.* app. D, § 6.19 (prohibiting sexual orientation discrimination by licensees granted licenses by Board of Licensing Commission); *see also* Montgomery County Code of Regulations § 21.02.18.04 (2004) (prohibiting discrimination by fire rescue personnel); *id.* § 27.26.01.01 (including crimes committed against a person because of their sexual orientation as "hate crimes"); *id.* § 33.07.01.05 (prohibiting employment discrimination in county operations).
121. MONTGOMERY COUNTY, MD., CODE § 33-22 (2004) (providing certain insurance and financial benefits to same-sex domestic partnerships); *id.* § 52-24 (extending tax exemption for property transfers to same-sex couples).
122. *See supra* note 121 and accompanying text.
123. *Tyma v. Montgomery County*, 369 Md. 497, 801 A.2d 148 (2002).
124. *Deane v. Conaway*, No. 24-C-04-005390 (Cir. Ct. Balt. City filed July 7, 2004); *see also* text accompanying notes 136-37.
125. *Tyma*, 369 Md. at 518, 801 A.2d at 160 ("[W]e hold that a home rule county that provides benefits to the domestic partners of its employees does not exceed its local lawmaking authority or otherwise undermine State and federal law.").

general effect throughout the state.<sup>126</sup> The court's inquiry indicated that the ordinance was, in fact, a local law and that the county had not exceeded its home rule power.<sup>127</sup> The court's analysis also focused on the ordinance's controversial effect in extending marriage-like benefits to same-sex couples.<sup>128</sup>

In fact, the petitioners bringing the challenge in *Tyma* argued that the county ordinance was "an attempt to legitimize illegitimate relationships under Maryland law by attempting to create, in the guise of a benefits ordinance, a legal equivalency between lawful spouses and same-sex domestic partners."<sup>129</sup> This characterization of the law was explicitly rejected by the court, which found that the law functioned only to extend similar benefits to domestic partners.<sup>130</sup>

The ordinance, titled the Employee Benefits Equity Act of 1999, was enacted pursuant to the county's "long-standing policy, in law and practice, against employment discrimination based on sexual orientation."<sup>131</sup> In addition, the passage of the ordinance was motivated by the sense that "it is unfair to treat employees differently based solely on whether the employee's partner is legally recognized as a spouse."<sup>132</sup> This rationale is essentially a recapitulation of the foundational principles of the orientation-blind legal system.<sup>133</sup> The county recognized that it had developed a well-founded policy of preventing sexual orientation discrimination and created an affirmative benefit for same-sex partners to equalize them with their opposite-sex counterparts.<sup>134</sup> This same extension of benefits should extend to same-sex couples throughout the state based on the concept of fundamental fairness implicit in the sexual orientation-blind principle.

Although the court's decision that the ordinance did not implicate the state's marriage laws<sup>135</sup> did not give it the occasion to pass upon the constitutionality of Maryland's limitation of marriage to opposite-

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126. *Id.* at 507-08, 801 A.2d at 153-54.

127. *Id.* at 511, 801 A.2d at 156.

128. *Id.* at 512, 514, 801 A.2d at 157-58.

129. *Id.* at 509, 801 A.2d at 155.

130. *Id.* at 514, 801 A.2d at 158.

131. *Id.* at 501, 801 A.2d at 150.

132. *Id.*

133. See *supra* text accompanying note 12 for a discussion of the principles of the orientation-blind system.

134. See *supra* text accompanying notes 129-32; see also MONTGOMERY COUNTY, MD., CODE § 33-22(a) (2004).

135. *Tyma*, 369 Md. at 514, 801 A.2d at 158 ("Nothing in the Act purports to, or can be construed to, create an alternate form of marriage, authorize common law marriage or create any legal relationship. Nor does the Act, by its terms or implication, restrict, modify or alter any rights incident to a marriage recognized in this State. . . ."). The court, in neutral terms, noted earlier in the opinion that the county ordinance "does not infringe upon the Legislature's ability to regulate marriage on a statewide basis," without articulating whether the current regulation of marriage is constitutionally valid. *Id.* at 511, 801 A.2d at 156.

sex couples, *Tyma* was an important step forward. The decision upheld a county-level scheme that created a legal institution for same-sex relationships much closer to marriage than anything currently available under Maryland law. In that regard, the ordinance limits eligibility for domestic partnership to same-sex couples who, *inter alia*, “share a close personal relationship and [are] responsible for each other’s welfare” and have shared the same legal residence for at least one year.<sup>136</sup> Indeed, the court recognized that “[t]o be sure, in the Act, the requirements for domestic partnership generally parallel those for marriage.”<sup>137</sup>

And so, ultimately, the court recognized that the extension of benefits to same-sex domestic partnerships was a valid exercise of the county’s authority to provide for the general welfare of its citizens.<sup>138</sup> This rationale would be particularly useful in application to the same-sex marriage lawsuit currently being litigated in Maryland. Far from protecting the general welfare of the state, denying same-sex couples critical legal benefits<sup>139</sup> continues to significantly hinder their

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136. *Id.* at 502 n.4, 801 A.2d at 151 n.4 (citing MONTGOMERY COUNTY, MD., CODE § 32-22(c)(1)(A)-(C) (2004)).

137. *Id.* at 514, 801 A.2d at 158. In fact, the qualifications for a domestic partnership under the ordinance appear to be even more stringent than those for marriage in the state. Compare MONTGOMERY COUNTY, MD., CODE § 32-22(c) (2004) (requiring, *inter alia*, partners to have shared a residence for one year and to “share sufficient financial and legal obligations”), with Md. CODE ANN., FAM. LAW §§ 2-201, 2-202, 2-301 (LexisNexis 2004) (requiring only that spouses be of the opposite sex, not be related by certain degrees of affinity or consanguinity, and be a certain age).

138. *Tyma*, 369 Md. at 511, 801 A.2d at 156 (“Article 25A, § 5(S) of the Maryland Code, which implements [the Home Rule Amendment], authorizes counties . . . to enact ‘such ordinances as may be expedient in maintaining the peace, good government, health and welfare of the county’ that ‘are not provided for by the public general law.’”).

139. In 1997, the Government Accounting Office (GAO) reported that federal law provided at least 1,049 benefits appurtenant to marriage. U.S. GEN. ACCOUNTING OFFICE, DEFENSE OF MARRIAGE ACT, GAO/OGC-97-16 at 1-2 (1997), available at <http://www.gao.gov/archive/1997/og97016.pdf>. The GAO upgraded that figure to 1,138 with the release of a new study in 2004. U.S. GEN. ACCOUNTING OFFICE, DEFENSE OF MARRIAGE ACT, GAO/OGC-04-353R at 1 (2004), available at <http://www.gao.gov/new.items/d04353r.pdf>. In Maryland, there are at least 339 benefits and obligations associated with marriage as codified in the Maryland Code according to the ACLU’s pleadings in the *Deane* marriage equality case. Appendix to Plaintiffs’ Memorandum of Law in Support of Plaintiffs’ Motion For Summary Judgment, *Deane v. Conaway* (Civ. No. 24-C-04-005390) (Cir. Ct. Balt. City June 14, 2005) (on file with author); see *infra* Appendix. The more than 300 provisions run the gamut of important financial, medical, familial, and personal matters. See, e.g., MD. CODE ANN., CTS. & JUD. PROC. §§ 9-105, 9-106 (LexisNexis 2002) (establishes the marital communication and testimonial privileges); EST. & TRUSTS § 3-102 (LexisNexis 2001) (assigns the spouse of a decedent first priority in intestate succession); FAM. LAW §§ 7-102, 7-103 (LexisNexis 2004) (creates a cause of action for both limited and absolute divorce); *id.* §§ 8-203, 8-204, 8-205 (allows a court to determine the existence and value of marital property and grant a monetary award); *id.* §§ 11-

welfare.<sup>140</sup>

### III. THE MARRIAGE OF SUBSTANTIVE DUE PROCESS AND THE “ORIENTATION-BLIND” PRINCIPLE

The preceding Part has discussed, at some length, the gradual and expansive evolution of sexual orientation blindness as a principle of Maryland law. This principle establishes that many crucial rights and privileges that were, at one time, only understood to protect or apply to heterosexuals or opposite-sex relationships are now extended equally to homosexuals and same-sex relationships.<sup>141</sup> It is in the realm of substantive due process analysis, however, that the orientation-blind principle becomes legally actionable. In that analysis, the principle guides the court’s descriptive and historical inquiries into fundamental rights,<sup>142</sup> instructing that such rights should be conceived without regard to sexual orientation. Of course, the fundamental substantive due process right at issue here is that of marriage,<sup>143</sup> particularly marriage between same-sex partners.

#### A. *Maryland Substantive Due Process*

In Maryland, substantive due process is enshrined in Article 24 of the Maryland Declaration of Rights,<sup>144</sup> which is read in the same man-

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101, 11-106 (provides a cause of action for both definite and indefinite alimony); HEALTH-GEN. § 5-605(a)(2)(ii) (LexisNexis 2005) (allows a patient’s spouse to make decisions about health care for an incapacitated spouse who has not elected a health care agent); INS. § 15-201(c)(2)(ii) (LexisNexis 2002) (permits a spouse to add another spouse to an insurance policy on the application of either spouse); REAL PROP. § 4-108 (LexisNexis 2003) (allows husband and wife to hold property as tenants by the entireties and avoid straw deeds when transferring such property to another type of estate); TAX-GEN. § 7-203(b)(2)(iii) (LexisNexis 2004) (creates the spousal exemption from the inheritance tax); *id.* § 10-807 (requires a married couple who filed a joint federal income tax return to also file a joint Maryland income tax return). The full list of benefits and obligations is appended to this Comment.

140. The detrimental effects of these myriad withheld benefits on same-sex couple families in Maryland are as diverse as the couples themselves. *See, e.g.*, Stephanie Shapiro, *Making a Case for Marriage*, BALT. SUN, Jan. 23, 2005, at 6E; Susan Kinzie, *Fighting for a Married Life Together in Md.*, WASH. POST, July 18, 2004, at T03.

141. *See supra* Part II.

142. *See infra* Part III.A.1.

143. *Dep’t of Human Res. v. Thompson*, 103 Md. App. 175, 197, 652 A.2d 1183, 1193 (1995) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 572 (1972)) (“Fundamental liberty interests protected by the due process clause of the constitution include ‘not merely freedom from bodily restraint but also the right . . . to marry. . . .’”).

144. MD. DECL. OF RIGHTS, art. 24 (2002) (“That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.”).

ner as the United States Constitution's Fourteenth Amendment's Due Process Clause.<sup>145</sup> Maryland's Due Process Clause, though, is still capable of producing,<sup>146</sup> and should produce, results different than those possible under the federal Constitution.<sup>147</sup> It has been recognized in Maryland that these different results may be more expansive in their bestowal of rights in cases where fundamental fairness dictates such a result.<sup>148</sup> On several occasions, the Court of Appeals has given an expanded reading of Article 24 compared to the federal Constitution.<sup>149</sup> The broader result suggested here is that Maryland substantive due process should be guided by the sexual orientation equality principle explored above, thus requiring the recognition of same-sex marriage under the state constitution even though such recognition has not yet been achieved under the federal Constitution.<sup>150</sup>

### 1. Tailoring Substantive Due Process Analysis to Maryland Law

The seminal case of *Washington v. Glucksberg*,<sup>151</sup> provides that assertions of substantive due process rights are subjected to a two-pronged analysis that first requires a "careful description" of the asserted fun-

145. *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77, 775 A.2d 1218, 1224 (2001).

146. *Aero Motors, Inc. v. Motor Vehicle Admin.*, 274 Md. 567, 587, 337 A.2d 685, 699 (1975) ("Although Art. [24] of the Maryland Declaration of Rights has long 'been equated' with the 'due process' clause of the Fourteenth Amendment by judicial construction and application, the two provisions are not synonymous.").

147. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977):

[S]tate courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.

*See also* Att'y Gen. v. Waldron, 289 Md. 683, 705 n.9, 426 A.2d 929, 941 n.9 (1981).

148. *Borchardt v. State*, 367 Md. 91, 175, 786 A.2d 631, 681 (2001) (Raker, J., dissenting) ("Although this Court has generally interpreted Article 24 in *pari materia* with the Due Process Clause of the Fourteenth Amendment, we have interpreted it more broadly in instances where fundamental fairness demanded that we do so.").

149. *See id.* (citing examples in the criminal context such as placing stricter limits on prosecutorial discretion to enter *nolle prosequi* and the optional merger of criminal offenses). Maryland's due process clause has also been read more broadly than the federal constitution in granting the right to counsel. *See* *Das v. Das*, 133 Md. App. 1, 28, 754 A.2d 441, 456 (2000) (citing *Rutherford v. Rutherford*, 296 Md. 347, 358, 363, 464 A.2d 228, 234, 237 (1983)).

150. *See, e.g.,* *Dean v. District of Columbia*, 653 A.2d 307 (D.C. 1995); *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971).

151. 521 U.S. 702 (1997).

damental liberty interest.”<sup>152</sup> The second prong of the *Glucksberg* analysis prescribes a demonstration that the carefully described asserted right is “objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’”<sup>153</sup> While federal jurisprudence supplies the prevailing test for the examination of asserted substantive due process rights,<sup>154</sup> the history, laws, and social climate of a particular state should color the application of *Glucksberg* in matters of state substantive due process rights.<sup>155</sup>

The analytical framework announced in *Glucksberg* has been adopted in Maryland<sup>156</sup> and is, therefore, appropriate to apply for the assertion of same-sex marriage rights under Maryland law. As discussed above, though, the *Glucksberg* analysis should be tailored precisely to the history and law of the jurisdiction where it is being applied to ensure that the result is true to that jurisdiction’s particular circumstances.<sup>157</sup> This tailoring should be done here and is only logical since Maryland constitutional law should be governed by Maryland’s specific history and jurisprudence just as federal constitutional law is governed by national history and jurisprudence.<sup>158</sup>

## 2. Maryland’s Orientation-Blind System and the Careful Description of Same-Sex Marriage Rights

The extensive development of sexual orientation equality in Maryland’s decisional, statutory, and regulatory law greatly informs the “careful description” prong of the *Glucksberg* analysis. The litany of privileges and protections now equally available to homosexuals and heterosexuals in Maryland<sup>159</sup> suggests that the conception of *any* legal right in the state should be described without regard to sexual orientation. This is also the case with the careful description of the marriage rights invoked by individuals that are part of a same-sex relationship. Just as one’s protection from employment discrimina-

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152. *Id.* at 720-21 (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

153. *Id.* (citations omitted).

154. See *supra* notes 151-53 and accompanying text.

155. See *Deems v. W. Md. Ry. Co.*, 247 Md. 95, 101, 231 A.2d 514, 517 (1967); see generally Robert F. Williams, *Old Constitutions and New Issues: National Lessons From Vermont’s State Constitutional Case on Marriage of Same-Sex Couples*, 43 B.C. L. REV. 73 (2001).

156. *Samuels v. Tschechtelin*, 135 Md. App. 483, 537, 763 A.2d 209, 238 (2000).

157. See, e.g., *Standhardt v. Super. Ct. ex rel. County of Maricopa*, 77 P.3d 451, 459 (Ariz. Ct. App. 2003) (holding that “same-sex marriages are neither deeply rooted in the legal and social history of our Nation or state”) (emphasis added); *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 977 (Mass. 2003) (Spina, J., dissenting) (“In this *Commonwealth* and in this country, the roots of the institution of marriage are deeply set in history as a civil union between a single man and a single woman.”) (emphasis added).

158. *Glucksberg*, 521 U.S. at 720-21.

159. See *supra* Part II.

tion,<sup>160</sup> enjoyment of child visitation rights,<sup>161</sup> or invocation of the “battered spouse syndrome” defense<sup>162</sup> is no longer dependent on one’s orientation, one’s enjoyment of the benefits and protections of civil marriage should no longer be predicated on one’s orientation. In fact, the orientation-blind principle would suggest a description of same-sex marriage that is precisely the same as the description of opposite-sex marriage: the right to marry the person of your choice.<sup>163</sup>

Logically, this conception reflects common sense as well as legal reasoning and is universally applicable to other fundamental rights. One would not carefully describe a gay man or lesbian’s free speech rights as the “right to homosexual free speech.” Such a formulation is inapposite since we do not conceive of that right in terms of sexual orientation because it is immaterial to its exercise. In the same way, Maryland law has been removing sexual orientation from the conception of legal rights with increasing scope under the rationale that orientation has no bearing on those rights.<sup>164</sup>

Indeed, to carefully describe the marriage rights of same-sex couples as separate and distinct from the rights of opposite-sex couples would be to make the same kind of misapprehension made by the United States Supreme Court in *Bowers v. Hardwick*<sup>165</sup> concerning the rights of homosexuals.<sup>166</sup> Just seventeen years after *Bowers*, the Court rectified this misapprehension in *Lawrence v. Texas*.<sup>167</sup> There, the Court indicated that *Bowers* was wrong when it was decided and that the Court had “misapprehended the claim of liberty there presented to it.”<sup>168</sup> To be sure, the claim of liberty to marry asserted by homosexuals is not a new or separate right, but is rather an exercise of the choice contemplated by the privacy of marital decisions.<sup>169</sup>

### 3. Marital Choice and the History Prong of Substantive Due Process Analysis

Certainly, it has been well-established in constitutional jurisprudence that the right to marriage is not only deeply rooted in the Nation’s history and tradition,<sup>170</sup> but that it is also firmly regarded as a

160. See *supra* note 98.

161. See *supra* Part II.A.1.

162. See *supra* Part II.B.2.

163. See *infra* note 170 and accompanying text.

164. See *supra* Part II.

165. 478 U.S. 186 (1986).

166. *Id.* at 190 (“The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy . . .”).

167. 539 U.S. 558 (2003). See also *supra* Part II.B.1.

168. *Id.* at 567. The *Lawrence* majority further noted that the *Bowers* Court’s formulation of the issue in that case “disclose[d] the Court’s own failure to appreciate the extent of the liberty at stake.” *Id.*

169. See *infra* note 171 and accompanying text.

170. See *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978) (quoting *Loving v. Virginia*, 388 U.S. 1, 12 (1967)) (“The freedom to marry has long been recog-

fundamental right.<sup>171</sup> If this fundamental right to marry means anything, it must mean that one has the right to choose the person he or she truly desires to marry, including someone of the same sex, lest it lose its quality as a right.<sup>172</sup> The Court has reiterated this right and “long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”<sup>173</sup>

Maryland’s current statutory scheme necessarily abridges this personal choice aspect of marriage for homosexuals wishing to marry their same-sex partner. Although homosexuals are permitted to marry, they may only do so provided they marry a person of the opposite sex.<sup>174</sup> This Hobson’s choice frustrates the natural dynamic of intimate relationships and the essence of the freedom of choice. Under this scheme, the personal preferences of homosexuals are wrongfully disregarded and subjugated in favor of an exclusively heterosexual paradigm.<sup>175</sup>

To illustrate, imagine that the *status quo* was reversed and the Maryland statute permitted only *same-sex* marriage. Because the statute automatically eliminates the possibility of an opposite-sex spouse, the inclination of a heterosexual man to marry a woman would be stifled. This scheme, like the current one in Maryland, unfairly establishes a conception of the right to marry in terms of orientation, which in practicality ignores a significant portion of the population’s natural preferences.<sup>176</sup>

A similar problem was encountered almost forty years ago with respect to race in *Loving v. Virginia*.<sup>177</sup> There, the Court invalidated Vir-

nized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”).

171. *Id.* at 383-85 (reciting the history of marriage’s place as a fundamental right and the protections appurtenant thereto); *see also In re Matthew R.*, 113 Md. App. 701, 721, 688 A.2d 955, 964 (1997).
172. *Cf. Loving*, 388 U.S. at 12 (“The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State.”).
173. *Zablocki*, 434 U.S. at 385 (quoting *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974)).
174. MD. CODE ANN., FAM. LAW § 2-201 (LexisNexis 2004).
175. *See* Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, in BLOOD, BREAD, AND POETRY: SELECTED PROSE 1979-1985, at 23 (W. W. Norton 1986) (1980).
176. Simon LeVay & Dean H. Hamer, *Evidence for a Biological Influence in Male Homosexuality*, in THE SCIENTIFIC AMERICAN BOOK OF THE BRAIN 171 (The Lyons Press 1999); *see also* Jay Michaelson, *On Listening to the Kulturkampf, or, How America Overruled Bowers v. Hardwick, Even Though Romer v. Evans Didn’t*, 49 DUKE L.J. 1559, 1568 n.43 (2000) (noting that “ten percent is the figure frequently cited as the percentage of homosexual men in the U.S. population . . .”).
177. 388 U.S. at 1.

ginia's miscegenation statute motivated by an unconstitutional racist paradigm of white supremacy.<sup>178</sup> Just as the Equal Protection Clause of the Federal Constitution was offended by a restriction of marriage rights based upon race in *Loving*,<sup>179</sup> so too is Maryland's Equal Protection Clause<sup>180</sup> violated by the limitation of marriage rights based on sexual orientation in light of the orientation-blind principle.<sup>181</sup>

The decision of two gay men or lesbians to marry one another is conceptually no different from that of Mildred Jeter and Richard Loving's interracial marriage.<sup>182</sup> In fact, their similarities are notably instructive. At the time the Lovings were married in another jurisdiction, interracial marriage was far from being "deeply rooted in this Nation's history and tradition" as *Glucksberg* requires today.<sup>183</sup> Indeed, the Court observed that Virginia was one of sixteen states prohibiting interracial marriages<sup>184</sup> and the lower state court's opinion explaining the Loving's conviction cited an established history

178. *Id.* at 11-12.

179. *Id.* at 12 ("There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.").

180. *Verzi v. Baltimore County*, 333 Md. 411, 417, 635 A.2d 967, 970 (1994) ("[I]t is well established that Article 24 [of the Maryland Declaration of Rights] embodies the same equal protection concepts found in the Fourteenth Amendment to the U.S. Constitution."). Like the Due Process Clause of the Declaration of Rights, Maryland's equal protection doctrine is capable of divergent interpretation from the federal provision. *Id.* ("We have consistently recognized that the federal Equal Protection Clause and the Article 24 guarantee of equal protection of the laws are complementary but independent, and 'a discriminatory classification may be an unconstitutional breach of the equal protection doctrine under the authority of Article 24 alone.'") (quoting *Att'y Gen. v. Waldron*, 289 Md. 683, 715, 426 A.2d 929, 947 (1981)). Again, like the due process clause, the equal protection ensured by "Article 24 acts to vindicate important personal rights protected by the Maryland Constitution or those recognized as vital to the history and traditions of the people of this State." *Waldron*, 289 Md. at 715, 426 A.2d at 947. The sexual orientation-blind legal principle that has bestowed so many legal rights to homosexuals in the state has become one of those such traditions.

181. Although a popular argument in favor of same-sex marriage, the analogy between same-sex marriage and interracial marriage in *Loving* has been the subject of fierce public debate. Compare Josephine Ross, *The Sexualization of Difference: A Comparison of Mixed-Race and Same-Gender Marriage*, 37 HARV. C.R.-C.L. L. REV. 255, 271-79 (2002) (pointing to social science data indicating that same-sex couples and mixed-race couples experience comparable reactions to their non-traditional choice of mate), with David Orgon Coolidge, *Playing the Loving Card: Same-Sex Marriage and the Politics of Analogy*, 12 BYU J. PUB. L. 201, 204, 235-38 (1998) (arguing that those who advocate same-sex marriage using the "*Loving* analogy" are making a political statement rather than a legal argument).

182. *Loving*, 388 U.S. at 2.

183. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

184. *Loving*, 388 U.S. at 6. Moreover, Virginia's anti-miscegenation law had a considerably long history, dating back to the colonial period. *Id.*

and tradition of separating the races, particularly with respect to marriage.<sup>185</sup>

A similar body of statutory, case, and constitutional law prohibiting same-sex marriage exists across the country<sup>186</sup> as it does in Maryland. This orientation-driven restriction of marriage rights, however, is vulnerable to the same defect as the statute invalidated in *Loving*. Maryland's orientation-blind principle demonstrates that the state's heterosexual paradigm of marriage rights is repugnant to the equal protection of the rights of all orientations. *Loving* also teaches that outmoded and inequitable historical, social, and legal conventions cannot restrain the fundamental right to marry. While Maryland's legal history has not specifically recognized same-sex marriage, other critical aspects of the law have discarded the stubborn historical conventions that restrain other rights and protections of homosexuals.<sup>187</sup> The significant developments of the sexual orientation-blind evolution also provide the "crucial guideposts for responsible decisionmaking . . . that direct and restrain . . . exposition of the Due Process Clause" by its simple directive to equalize the rights and protections afforded Maryland citizens across artificial sexual orientation lines.<sup>188</sup>

### B. *The Evolution of Liberty*

The equalization of same-sex marriage rights with those of heterosexuals merely requires an acknowledgement of the already expanding notions of liberty in Maryland law.<sup>189</sup> As the *Lawrence* Court explained in its decision, the notion of liberty and the rights recognized under it evolve and expand over time.<sup>190</sup> In fact, the Supreme Court has often emphasized the importance of the evolution of liberty and due process.<sup>191</sup> One representative example of this emphasis

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185. *Id.* at 3:

'Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.'

186. See Robin Cheryl Miller, Annotation, *Marriage Between Persons of Same Sex*, 81 A.L.R.5TH 1, §§ 3-10 (2000).

187. See *supra* Part II.

188. *Glucksberg*, 521 U.S. at 721 (quoting *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992)) (citation omitted).

189. See *supra* Part II.

190. See *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003) ("As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.").

191. Justice Brennan once wrote:

[T]he genius of our Constitution resides not in any static meaning that it had in a world that is dead and gone, but in the adaptability of its great principles to cope with the problems of a developing America. A principle to be vital must be of wider application than the mischief that gave it birth. Constitutions are not

comes from *Frank v. Maryland*.<sup>192</sup>

[W]hat free people have found consistent with their enjoyment of freedom for centuries is hardly to be deemed to violate due process, does not freeze due process within the confines of historical facts or discredited attitudes. 'It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights.'<sup>193</sup>

This concept is echoed in the realm of equal protection in *Harper v. Virginia State Board of Elections*.<sup>194</sup>

[T]he Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change.<sup>195</sup>

In 1973, a federal district court in Maryland arguably signaled the beginning of the state's evolution of liberty with respect to homosexuals in *Acanfora v. Board of Education*.<sup>196</sup> There, the court found that "private, consenting, adult homosexuality" should be constitutionally protected<sup>197</sup> as a valid social relationship not to be restricted by the government.<sup>198</sup> Underlying this holding was an understanding that liberty evolves with experience<sup>199</sup> and that resistance to changing mores inhibits the full realization of liberty.<sup>200</sup>

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ephemeral documents, designed to meet passing occasions. The future is their care, and therefore, in their application, our contemplation cannot be only of what has been but of what may be.

Brennan, *supra* note 147, at 495.

192. 359 U.S. 360 (1959).

193. *Id.* at 371 (quoting *Wolf v. Colorado*, 338 U.S. 25, 27 (1949)).

194. 383 U.S. 663 (1966).

195. *Id.* at 669 (citation omitted). Put another, more illustrative, way by the Ninth Circuit: "[C]onstitutional concepts of equal protection are not immutably frozen like insects trapped in Devonian amber." *Dillenburg v. Kramer*, 469 F.2d 1222, 1226 (9th Cir. 1972).

196. 359 F. Supp. 843 (D. Md. 1973), *aff'd* 491 F.2d 498 (4th Cir. 1974).

197. *Id.* at 851.

198. *Id.* at 850-51.

199. *Id.* at 851 ("Great concepts like . . . liberty . . . were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged.") (quoting *Nat'l Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (1973) (Frankfurter, J., dissenting)).

200. *Id.* ("Intolerance of the unconventional halts the growth of liberty.").

Without decisions like that in *Acanfora* and the recognition of trends like that embodied by the sexual orientation-blind principle in Maryland, the Maryland Declaration of Rights cannot be fulfilled for the state's almost 13,000 same-sex couples.<sup>201</sup> A rote reliance on the history's dated conception of fundamental rights not only impairs the natural evolution of liberty, but also defies reason. This is never more apparent than in the argument against the recognition of same-sex marriage, particularly with respect to the history prong of the *Glucksberg* analysis.

A typical objection to same-sex marriage as a fundamental right can be found in *Standhardt v. Superior Court ex rel. County of Maricopa*.<sup>202</sup> In that case, the Court of Appeals of Arizona held that due process did not contemplate the recognition of same-sex marriage as a fundamental right.<sup>203</sup> The court's analysis of same-sex marriage in light of the right to marry demonstrates the illogic of its conclusion. The court opined that "[a]lthough same-sex relationships are more open and have garnered greater societal acceptance in recent years, same-sex marriages are neither deeply rooted in the legal and social history of our Nation or state nor are they implicit in the concept of ordered liberty."<sup>204</sup> This reliance on a historical absence of same-sex marriage presents a dizzying circular argument. In essence, the argument goes as such: same-sex marriage cannot be recognized because there is no legal or social history of such a practice, and the reason that practice does not exist is because there is no legal or social history of same-sex marriage.

The *Standhardt* court simply fails to acknowledge what the Supreme Court has reiterated with respect to evolving fundamental rights<sup>205</sup>—that they must, at some point, have a recognized time and point of origin. Quite often, it is the judiciary, the final arbiters of the Constitution, who acknowledge the emergence of these rights.<sup>206</sup> Therefore, the court's absolute dependence on the lack of a legal history of same-sex marriage as rationale for denying that right is an abrogation of its duty. *Standhardt's* denial of same-sex marriage rights is even more perplexing given that the court is willing to concede that homosexual couples have gained considerable social recognition<sup>207</sup>—a vital component of the historical analysis on which the court relied.

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201. See *supra* note 8.

202. 77 P.3d 451 (Ariz. Ct. App. 2003).

203. *Id.* at 460 (citing *Washington v. Glucksberg*, 521 U.S. at 720-21).

204. *Id.* at 459.

205. See *supra* Part III.B.

206. See *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997) ("The power to interpret the Constitution in a case or controversy remains in the Judiciary."); see also *Hillman v. Stockett*, 183 Md. 641, 645, 39 A.2d 803, 805 (1944) ("It is the province and the duty of the Courts to interpret the Constitution. . . .").

207. See *supra* note 204.

In sum, the proper careful description of same-sex marriage rights and their foundation in the historical right to marital choice militates their recognition. The *Glucksberg* Court opined in setting forth its two-prong test that “[o]ur Nation’s history, legal traditions, and practices thus provide the crucial ‘guideposts for responsible decisionmaking,’ that direct and restrain our exposition of the Due Process Clause.”<sup>208</sup> Similarly, Maryland’s adaptation of the *Glucksberg* test should analyze the assertion of the right to marry by same-sex couples in light of *Maryland’s* history, legal tradition, and practice which, as discussed above, establishes a trend of orientation equality supportive of such a right.

#### IV. CONCLUSION

For over a decade, a trend has developed in Maryland law favoring the equality of homosexuals and heterosexuals in significant respects. The sweep of this trend covers crucial aspects of the family relationship and the rights of parents,<sup>209</sup> important recognitions of the homosexual lifestyle in criminal law,<sup>210</sup> and ground-breaking state and local anti-discrimination measures.<sup>211</sup> All of these developments, taken together, amounts to a “sexual orientation-blind” concept of parity that has equalized the legal rights and protections of both homosexuals and heterosexuals.

This “orientation-blind” principle informs critical aspects of substantive due process analysis governing the interpretation of fundamental rights like marriage.<sup>212</sup> The principle first illustrates that the exercise of same-sex marriage rights does not involve the creation of a new right, but rather the recognition of a form of the already well-founded right to marry.<sup>213</sup> Second, the recognition of same-sex marriage is supported by case law discussing the importance of evolving standards of due process and the expansion of historically-founded fundamental rights.<sup>214</sup> Under this analysis, then, Maryland’s statutory scheme denying same-sex couples the right to marry is unconstitutional.

*Gregory Care\**

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208. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citation omitted).

209. *See supra* Part II.A.

210. *See supra* Part II.B.

211. *See supra* Part II.C.

212. *See supra* Part III.A.1.

213. *See supra* Part III.A.2.

214. *See supra* Part III.A.3.

\* J.D. expected May 2006, University of Baltimore School of Law; B.A., Lycoming College, 2003.

APPENDIX ONE: BENEFITS AND OBLIGATIONS GRANTED TO MARRIED COUPLES AND THEIR CHILDREN BUT DENIED TO SAME-SEX COUPLES AND THEIR CHILDREN BY MARYLAND LAW

| No. | Provision Citation  | Description of Provision  |
|-----|---|---|
| 1   | Agriculture § 2-603(b)(2)                                     | Grants spouses joint and several eligibility for the Farmer Disaster Loan Program   |
| 2   | Business Occupations and Professions § 10-605.1(b)            | Prohibits lawyers from soliciting personal injury or wrongful death clients who are relatives to the injured party until thirty days have passed since the accident or disaster   |
| 3   | Business Occupations and Professions § 10-605.2(a)(1)         | Prohibitions on lawyer communications and advertisements to potential personal injury and wrongful death clients related to the injured party   |
| 4   | Business Occupations and Professions § 17-319(a)-(d)          | Upon a real estate broker's death, family members may carry on the business for six months and may also qualify for the license itself  |
| 5   | Business Occupations and Professions § 17-511(a)(4)(i)-(b)(2) | Not more than 50% of the interest in a real estate business may be held by associate brokers or salespersons, unless these individuals are a spouse, parent, child, sibling, stepparent, stepchild, or stepsibling affiliated with the business   |
| 6   | Business Regulations § 5-603(c)                               | A trustee of a cemetery may not use any trust funds to either purchase an interest in any contract or agreement to which his spouse is a party; or make any loan or investment to his spouse or to any entity or business owned or under the control of his spouse                                    |
| 7   | Business Regulations § 7-303(b)(4)                            | A collection agency license may be denied if the applicant's spouse has had a license revoked or is responsible for the revocation of a license   |
| 8   | Business Regulations § 8-405(f)(1)                            | Providing that "[a] claim against the [Home Improvement Guaranty] Fund based on the act or omission of a particular contractor may not be made by . . . a spouse or other immediate relative of the contractor," or by "an immediate relative of an employee, officer, or partner of the contractor." |
| 9   | Business Regulations §§ 11-301(4), 11-314(a)                  | Requires a person who has been granted horse racing days for a given year to show the beneficial ownership of their stock, which includes ownership of a security by a relative of the individual who lives in the same home  |
| 10  | Business Regulations § 17-308                                 | If a general business licensee dies, "the surviving spouse or personal representative . . . may do business under the license for the rest of the term of the license."   |
| 11  | Business Regulations § 19-207(b)(1)-(2)                       | Grants spousal rights to wear the insignia of fraternal and patriotic organizations   |
| 12  | Commercial Law §§ 9-102(a)(63), 9-602(8)                      | States that, for the purposes of secured transactions, a "debtor or obligor may not waive or vary the rules" of calculating "a deficiency or surplus when a disposition is made to . . . a person related to the secured party," including a spouse and any other relative by blood or marriage       |

| No. | Provision Citation                                    | Description of Provision  |
|-----|---|---|
| 13  | Commercial Law §§ 9-102(a)(63), 9-615(f)(1)           | States that, for the purposes of secured transactions, "[t]he surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to . . . a person related to the secured party," including a spouse and any other relative by blood or marriage, if "[t]he transferee in the disposition is . . . a person related to the secured party."   |
| 14  | Commercial Law §§ 9-102(a)(63), 9-626(5)              | States that in any "action arising from a transaction in which the amount of a deficiency or surplus is in issue" and "a deficiency or surplus is calculated," then the burden of establishing that the amount of proceeds of the disposition is considerably below the price range "that a complying disposition to a person other than . . . a person related to the secured party," including a spouse or any other relative by blood or marriage, would have brought rests on the debtor or obligor |
| 15  | Commercial Law § 12-705                               | The Equal Credit Opportunity Act's prohibited discriminatory practices include refusing to recognize the legal name of a married individual, refusing to consider both applicants' income when both parties of a marriage apply for a joint account, refusing to issue separate accounts to married persons where each is creditworthy, and requesting or considering the credit rating of the applicant's spouse where the applicant is not applying for a joint account                               |
| 16  | Commercial Law § 15-302                               | For the purposes of debt collection, "[a]n assignment of wages by a married person is not valid unless also executed and acknowledged by the assignor's spouse."  |
| 17  | Corporations and Associations § 5-622                 | If spouses hold a joint membership in an electric cooperative, "either one, but not both, may be elected as a director."  |
| 18  | Corporations and Associations § 5-6B-08(a)(1), (c)(7) | Exempts a transfer between spouses from the general rule that a local government has the right of first purchase of any rental facility being purchased for purposes of conversion  |
| 19  | Correctional Services § 3-807(b)                      | States that, "[u]nder the extended work-release program, an inmate who is sentenced . . . for desertion or nonsupport of a spouse, child, or destitute parent may be granted the privilege of leaving actual confinement."  |
| 20  | Correctional Services § 3-909(a)                      | "On application of a relative, the body of an executed inmate shall be returned to the relative at the relative's cost."  |
| 21  | Correctional Services § 9-601(e)(1)                   | Custody of a baby born to an inmate may be granted to the father or other relative  |
| 22  | Courts and Judicial Procedure § 1-705                 | Supplementation of a judge's salary is prohibited, including any payment from a political subdivision to the surviving spouse of the judge  |
| 23  | Courts and Judicial Proceedings § 2-309(f)(5)(i)      | The Calvert County Commission may provide a pension to be paid to the surviving spouse of a county sheriff  |

| No. | Provision Citation                                  | Description of Provision  |
|-----|---|---|
| 24  | Courts and Judicial Proceedings § 3-502(b)          | A "husband may maintain an action of slander against any person for words spoken falsely and maliciously about his wife for her character or reputation for chastity before or during the marriage."  |
| 25  | Courts and Judicial Proceedings § 3-904(a)-(b)      | A wrongful death action "shall be for the benefit of the wife, husband, parent, and child of the deceased person." If none of these persons exist, "an action shall be for the benefit of any person related to the deceased person by blood or marriage who was substantially dependent upon the deceased."  |
| 26  | Courts and Judicial Proceedings § 3-1603            | Provides that, "a civil action for damages for the death of an individual caused by the individual's use of a controlled dangerous substance may be brought . . . by a parent, legal guardian, child, spouse, or sibling of the individual."  |
| 27  | Courts and Judicial Proceedings § 5-901(2)          | The Statute of Frauds bestows the right to sue on an agreement made in consideration of marriage, if written evidence of it exists and is signed by the allegedly breaching party   |
| 28  | Courts and Judicial Proceedings § 6-203(e)(4)       | The venue for an adoption proceeding may be the place in which "[t]he person to be adopted is domiciled, if he is related to the petitioner by blood or marriage."  |
| 29  | Courts and Judicial Proceedings § 7-406             | Under certain circumstances, former members of the armed forces and their family members are entitled to copies of court records, including marriage records, without charge  |
| 30  | Courts and Judicial Proceedings § 8-202(5)(i)(1)(c) | The juror qualification form asks about the occupation of the potential juror's spouse  |
| 31  | Courts and Judicial Proceedings § 9-105             | Confidential communications between spouses are privileged information  |
| 32  | Courts and Judicial Proceedings § 9-106             | A spouse of a person on trial for a crime may not be compelled to testify, with some exceptions. If the spouse refused to testify in any case where the spouse was the victim, the court clerk must make a record of the refusal, and when a request for expungement in an assault case is made, the record of the spouse's refusal is not expunged |
| 33  | Courts & Judicial Proceedings § 11-108(a)(2)(i)(2)  | Includes marital care in the category of noneconomic damages  |
| 34  | Criminal Law § 7-110(c)(3)                          | It is a defense to the crime of theft that the property involved was the defendant's spouse's property, unless at the time of the alleged theft they were living in separate residences   |
| 35  | Criminal Procedure § 11-103                         | If the victim of a violent crime dies, a spouse, surviving spouse, child, or sibling, parent, or legal guardian may file, in the case against the defendant, an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider various rights secured to the victim          |

| No. | Provision Citation  | Description of Provision   |
|-----|---|--|
| 36  | Criminal Procedure § 11-602(2)  | For the purposes of restitution for a crime against a burial site under Criminal Law § 10-404, a person related by blood or marriage to a person buried may act on behalf of the victim of a crime   |
| 37  | Criminal Procedure § 11-808   | A victim's spouse and dependents—defined in § 11-801 as spouses, children, and others principally supported by the victim—under certain circumstances are eligible for awards under the Criminal Injuries Compensation Board   |
| 38  | Criminal Procedure § 11-811(a)(5)   | In addition to monetary awards from the Criminal Injuries Compensation Board, a parent, child, or spouse of a victim is eligible "to receive psychiatric, psychological, or mental health counseling."   |
| 39  | Criminal Procedure §§ 11-1001(f), 11-1002   | Entitles a victim's representative, which includes a spouse, child, sibling, or parent of a victim of a crime, to certain notices, services, and treatment during the investigation and prosecution of a crime   |
| 40  | Criminal Procedure §§ 11-1001(f), 11-1003   | Entitles a victim's representative, which includes a spouse, child, sibling, or a parent of a victim of a crime, to certain notices, services, and treatment during the investigation and prosecution of a juvenile crime  |
| 41  | Education § 3-5B-02   | A spouse may not serve on the Frederick County Board of Education if the other spouse is an administrator or teacher in the district. Conversely, a spouse may not be hired as an administrator or teacher in the district if the other spouse serves on the Board, unless the board member first resigns  |
| 42  | Education § 4-122.1   | Specifies special educational provisions for children in "informal kinship care relationships," which are living arrangements in which a relative—defined as an adult related to the child by blood or marriage within the fifth degree of consanguinity—of a child "provides for the care and custody of the child due to a serious family hardship." |
| 43  | Education § 7-101(b)(1)   | Provides that, "each child shall attend a public school in the county where the child is domiciled with the child's parent, guardian, or relative providing informal kinship care."  |
| 44  | Education § 15-106.4  | The spouse of an active duty member of the armed forces is exempt from paying nonresident tuition at a public institution of higher education  |
| 45  | Education § 18-601(d)(3)(iii)(2)  | Surviving spouses are eligible to apply for the Edward T. Conroy Memorial Scholarship Program  |
| 46  | Education § 18-1009 (repealed by the Higher Education Loan Corporation and Program – Repeal, 2005 Md. Laws 1114). | Deferment from repayment of higher education loans is authorized for up to three years, during which the borrower is unable to secure employment by reason of care required by a spouse who is disabled; if both spouses have loans, then both spouses payments are combined in order to satisfy the minimum total annual payment                      |

| No. | Provision Citation                    | Description of Provision   |
|-----|---------------------------------------|--|
| 47  | Election Law § 13-231                 | States that, "[c]ontributions or loans to a campaign finance entity of a candidate from the personal funds of the . . . candidate's spouse are not subject to the contribution limits under § 13-226. . . ." The section also states that "[e]xpenditures from personal funds by the . . . candidate's spouse for personal expenses of the candidate for filing fees, telecommunication services, travel, and food are not contributions." |
| 48  | Election Law § 13-408(b)(2)           | Provides that, "[p]ublication expenses may be paid from . . . the personal funds of the . . . spouse of the incumbent," under certain circumstances  |
| 49  | Election Law § 14-101(f)(2)(i)        | For the purposes of disclosure, a contribution does not include "a bona fide gift by a spouse or relative within the third degree of consanguinity."   |
| 50  | Environment §§ 6-801, 6-818(a)(1)(ii) | Prohibits any person performing lead-contaminated dust testing or conducting an inspection to be a related party to the owner, which includes any person related to an owner by blood or marriage  |
| 51  | Estates and Trusts § 1-202            | A surviving spouse is defined as: no person who has received an absolute divorce from the decedent or whose marriage was annulled; no person who participates in a marriage ceremony with a third person, after a decree or judgment of divorce or annulment obtained by the decedent; no person convicted of bigamy while married to the decedent   |
| 52  | Estates and Trusts § 1-205            | Defines a child as "a legitimate child, and adopted child, and an illegitimate child to the extent provided in §§ 1-206 through 1-208 of this title. A child does not include a stepchild, foster child, or a grandchild or more remote descendant."   |
| 53  | Estates and Trusts §§ 1-205, 1-209    | Defines issue as "every living lineal descendant except a lineal descendant of a living lineal descendant." Legitimate, adopted, and illegitimate children are considered lineal descendants   |
| 54  | Estates and Trusts § 2-108            | The surviving spouse of every elected judge of the Court of Baltimore City shall be paid one half of the pension to which his spouse was entitled at the time of this death, provided certain requirements are met   |
| 55  | Estates and Trusts § 3-102            | In the event of intestate succession, the surviving spouse is provided at least a fractional share of the decedent's estate; if there is no other surviving issue or parent, the spouse is entitled to the whole estate  |
| 56  | Estates and Trusts § 3-104(e)         | In the event of intestate succession, if there is no surviving spouse and no surviving blood relative entitled to inherit, the estate shall be divided into equal shares for the stepchildren of the decedent; stepchild means the child of any spouse of the decedent if such spouse was not divorced from the decedent   |
| 57  | Estates and Trusts § 3-201(a)         | In the event of intestate succession, "[t]he surviving spouse is entitled to receive an allowance of \$5,000 for personal use."  |
| 58  | Estates and Trusts § 3-203(b)         | Provides that, "[i]nstead of property left to the surviving spouse by will, the surviving spouse may elect to take a one-third share of the net estate if there is also a surviving issue, or a one-half share . . . if there is not a surviving issue."   |

| No. | Provision Citation                            | Description of Provision   |
|-----|---|--|
| 59  | Estates and Trusts § 4-105(3)                 | The event of a marriage followed by the birth or adoption of a child by the testator subsequent to the execution of a will effects to revoke the will  |
| 60  | Estates and Trusts § 4-401                    | Spousal exception to the general rule that a legatee who fails to survive the testator by thirty days is considered to have predeceased the testator, unless otherwise provided in the will  |
| 61  | Estates and Trusts §§ 4-501(d), 4-508(a)      | Provides that, if an anatomical gift "is only a part of the body, promptly following the removal of the part named, custody of the remaining parts of the body shall be transferred to the next of kin," which includes a spouse   |
| 62  | Estates and Trusts §§ 4-501(d), 4-509(a)      | States that, "[t]he Chief Medical Examiner, the deputy chief medical examiner, or an assistant medical examiner may provide an organ or tissue upon the request of the federally designated organ procurement organization or tissue bank" if, <i>inter alia</i> , "[a] reasonable, unsuccessful search has been made by the treating physician and the hospital where the patient is located to contact the next of kin [including a spouse] . . . [and] [n]o objection by the next of kin is known by the medical examiner." |
| 63  | Estates and Trusts §§ 4-501(d), 4-509.1(a)(3) | States that, if there is a need for corneal tissue for either transplant or research, "the Chief Medical Examiner, the deputy chief medical examiner, or an assistant medical examiner shall provide the cornea upon the request of the Medical Eye Bank of Maryland, Incorporated, or the Lions of District 22-C Eye Bank and Research Foundation, Incorporated," if the next of kin does not make his or her objection known to the medical examiner   |
| 64  | Estates and Trusts § 4-503(b)(1)              | In the event that a decedent has not made a gift of all or part of the decedent's body, and not expressed otherwise, a surviving spouse has first priority in deciding whether or not to donate all or part of the body.   |
| 65  | Estates and Trusts § 4-504                    | A donee "hospital, surgeon, or physician that receives a gift for the purpose of a transplantation may not bill the estate of the donor, a surviving spouse of the donee, any heirs of the donor, or an insurer of the donor for the costs associated with the removal of the gift."   |
| 66  | Estates and Trusts § 5-104(3)                 | In granting letters in administrative or judicial probate, or in appointing a successor personal representative, or a special administrator, spouses are given third priority only subsequent to "personal representatives named in a will admitted to probate" and "personal representatives nominated in accordance with a power conferred in a will admitted to probate."   |
| 67  | Estates and Trusts § 5-105                    | Spousal exception to the general rule that letters may not be granted to non-citizens  |
| 68  | Estates and Trusts § 5-601                    | Non-spouse can avoid probate when the estate has value of \$30,000 or less; if the surviving spouse is the sole legatee or heir, he or she can avoid probate when the estate has value of \$50,000 or less   |

| No. | Provision Citation                            | Description of Provision  |
|-----|---|---|
| 69  | Estates and Trusts § 5-702(2)                 | Provides that, "[a]n election for modified administration may be filed by personal representative of an estate within 3 months from the date of appointment" if among other things, "[a]ll trustees of each trust that is a residuary legatee are limited to the decedent's: Personal representative; Surviving spouse; and Children."  |
| 70  | Estates and Trusts § 9-103                    | Bequests to non-spouses are more vulnerable to abatement than bequests to spouses   |
| 71  | Estates and Trusts § 11-106(a)                | Authorizes fiduciary to exercise discretion to maximize estate tax marital deduction  |
| 72  | Estates and Trusts § 13-207                   | A spouse is automatically third in line to be appointed as guardian for a minor or disabled person, and may be elevated to first or second  |
| 73  | Estates and Trusts §§ 13-301(j), 13-307(c)    | States that, if no custodian has been nominated under the Maryland Uniform Transfers to Minors Act, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family, which includes the minor's parents, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of whole or half blood or by adoption, or to a trust company unless the property exceeds \$10,000 in value  |
| 74  | Estates and Trusts §§ 13-301(j), 13-318(d)(1) | States that, if a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian an adult member of the minor's family, which includes the minor's parents, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of whole or half blood or by adoption  |
| 75  | Estates and Trusts §§ 13-301(j), 13-318(d)(3) | States that, a minor who has attained the age of 14 years, an adult member of the minor's family, which includes the minor's parents, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of whole or half blood or by adoption, may petition the court for an accounting by the custodian or the custodian's legal representative; or a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under § 13-317 of this subtitle to which the minor or the minor's legal representative was a party |
| 76  | Estates and Trusts § 13-503(a)                | States that, "[a] minor who holds title to property as a tenant by the entirety with a spouse who has reached the age of majority is authorized to join with the spouse in any deed . . . note, or financing statement in the same manner and effect as an adult."  |
| 77  | Estates and Trusts § 13-707                   | A disabled person's spouse is automatically third in line to be appointed guardian, and may be expressly elevated higher  |

| No. | Provision Citation                                | Description of Provision   |
|-----|---|--|
| 78  | Estates and Trusts § 14-104                       | Prohibits a judge of any court or any clerk of court or register of wills from serving as a trustee of any inter vivos or testamentary trust "unless he is the surviving spouse of the grantor of the trust."  |
| 79  | Estates and Trusts § 14-107                       | A trust may not be terminated under this section if the trust would be eligible for the marital deduction from the federal estate tax or for federal gift tax purposes under the IRS Code, "unless all beneficiaries agree that all of the trust estate shall be distributed to the spouse of the creator of the trust."   |
| 80  | Estates and Trusts § 14-109                       | Various restrictions on a trustee's powers do not apply "if a marital deduction from the trust property would not be allowed to a spouse who is a trustee and to whom a marital deduction would otherwise be allowed under the [IRS] Code."  |
| 81  | Estates and Trusts §§ 14-401(i), 14-403(h)(5)     | States that, if the trustee of a discretionary trust is unable or unwilling to serve and no successor trustee will serve, an adult member of the beneficiary's family, which includes a spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, aunt, whether of whole or half blood or by adoption, may petition the court to designate a successor trustee |
| 82  | Estates and Trusts §§ 14-401(i), 14-405(j)(1)(iv) | States that, a member of the beneficiary's family, which includes a spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, aunt, whether of whole or half blood or by adoption, "may request an accounting of trust property and transactions" from the trustee of a discretionary trust  |
| 83  | Estates and Trusts § 15-116                       | Provides duties of loyalty and fair dealing for trustees "regarding the acquisition, retention, and ownership of a contract of insurance on the life of the grantor of the trust, or on the lives of the grantor and the grantor's spouse, children, or grandchildren."  |
| 84  | Estates and Trusts § 15-502.2(d)(1)               | Provides that, a trustee may not make an otherwise lawful adjustment "[t]hat diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed . . . if the trustee did not have the power to make the adjustment."  |
| 85  | Estates and Trusts § 15-503                       | States that, in the case of an estate, or after an income interest in a trust ends, in the case of an estate, the following rules apply: "A fiduciary shall distribute the remaining net income . . . to all other beneficiaries . . . but excluding a beneficiary other than a surviving spouse who receives a pecuniary amount that is not in trust."                                      |
| 86  | Estates and Trusts § 15-520(a)(1)                 | Under certain conditions, a "spouse may require the trustee to make property not productive of income into property productive of income, convert property within a reasonable time, or may request the trustee exercise the power conferred by § 15.502.02 of this subtitle."   |

| No. | Provision Citation                         | Description of Provision   |
|-----|--|--|
| 87  | Estates and Trusts §§ 16-101(d), 16-108(c) | States that, a registering entity is released from all claims to a security by heirs, including the surviving spouse of a deceased owner, if it registers the transfer of the security in accordance with the Maryland Uniform Transfer-on-Death (TOD) Security Registration Act and "does so in good faith reliance on the registration, on this title, and on information provided to it" by affidavit of the personal representative of the deceased owner, the surviving beneficiary, the surviving beneficiary's representatives, or by other information available to the registering entity |
| 88  | Family Law § 3-102(a)                      | Creates an action for breach of promise to marry for a pregnant individual   |
| 89  | Family Law § 3-104(b)                      | Allows a holder in due course of a negotiable instrument for payment or settlement of a claim for breach of promise to marry or alienation of affections to enforce the instrument   |
| 90  | Family Law § 4-202                         | Creates a right and sets forth a procedure for a surviving spouse to bring a personal action to recover the rights of the deceased spouse  |
| 91  | Family Law § 4-205(d)                      | Allows a depository who received a deposit from a woman before or during her marriage in fraud of the woman's husband's creditors, to attach or restrain the payment of the money  |
| 92  | Family Law § 4-206(a)                      | States that, whenever any interest or estate of any kind of property within the state is in any way transferred from husband to wife or in any way transferred by the couple to another party, the fact of such transactions does not give a present creditor "any other or greater right, lien, or cause of action against the interest or estate" than had the property been transferred by the husband directly to a third person   |
| 93  | Family Law § 4-206(b)                      | States that, the fact of a transfer of any kind of an interest or estate from a husband to a wife, or the recital of it in any instrument of writing, does not constitute notice to any third person of the possibility of, or actual, "existence of any present creditor of the husband."   |
| 94  | Family Law § 4-301(a)(1)(i)                | States that, an individual is not liable for the debts contracted by that person's spouse or any claim or demand that arose before the marriage  |
| 95  | Family Law § 4-301(b)-(c)                  | States that, a husband is not liable for the torts or contracts of his wife, or for any judgment or decree against his wife  |
| 96  | Family Law § 4-301(d)                      | States that, a wife's property acquired before or after marriage "is not liable for the payment of her husband's debts."   |
| 97  | Family Law § 4-401                         | States the General Assembly's policy and "responsibility to provide services that prevent . . . family dissolution and breakdown that require[ ] protective services or out-of-home placement."  |
| 98  | Family Law § 4-402(b)                      | Establishes a program of services to families with children, including, functional services to help a family resolve a situational crisis, family and marital counseling, referral services, and home management services  |

| No. | Provision Citation  | Description of Provision   |
|-----|---|--|
| 99  | Family Law § 4-403(b)   | Requires that, the Department of Human Resources "coordinate for families with children the delivery of day care, health, educational, mental health, employment, housing, and crisis services."                 |
| 100 | Family Law § 4-602(b)   | States the General Assembly's intent to provide displaced homemakers, as defined in Family Law § 4-601, with "counseling, training, employment placement assistance, services, and health care."                 |
| 101 | Family Law § 4-606(a)   | Requires that, Multipurpose Service Centers of the Department of Human Resources provide: "counseling; training; skills; services; and education" to assist displaced homemakers in obtaining gainful employment |
| 102 | Family Law § 4-607  | Requires that, Multipurpose Service Centers of the Department of Human Resources provide job counseling, job training, employment placement, and service programs to displaced homemakers                        |
| 103 | Family Law § 5-202  | States that, children of annulled or void marriages remain the legitimate children of the parties of the marriage  |
| 104 | Family Law § 5-308(b)(1)(ii) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws page number forthcoming Ch464) (to be reenacted as Family Law §§ 5-341(a)(2)(ii) (adoption without prior termination of parental rights), 5-352(a)(2)(ii) (adoption with prior termination of parental rights), 5-3A-35(a)(2)(ii) (private adoption), 5-3B-24(a)(2)(ii) (independent adoption)) | Entitles adoptive children to all the rights and privileges as well as obligations of a child born to the adoptive parent in wedlock   |
| 105 | Family Law § 5-315(a) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581) (to be reenacted as Family Law §§ 5-331(b)(2) (adoption without prior termination of parental rights), 5-345(b)(2) (adoption with prior termination of parental rights), 5-3A-29(c)(1) (private adoption), 5-3B-13(b)(2) (independent adoption))   | Requires that, a spouse of a petitioner for adoption join the adoption petition except in certain circumstances  |

| No. | Provision Citation   | Description of Provision  |
|-----|--|---|
| 106 | Family Law § 5-321(1) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581)   | Allows an independent adoption by a spouse of the natural parent of the adoptee without the requirement of advice of counsel, adoption counseling, written consent, the assessment of attorneys fees and costs, an accounting report, and a medical history of the natural parents  |
| 107 | Family Law § 5-329.1(a) (repealed by the Permanency for Families and Children Act of 2005, 2005 Md. Laws 2581) (to be reenacted as Family Law §§ 5-356 (adoption with prior termination of parental rights), 5-3A-39 (private adoption)) | Allows adoptive parents to obtain access to an adoptive child's medical or other health records   |
| 108 | Family Law § 5-507(b)(1)   | Provides an exception to the rule that a person should be licensed by the Social Services Administration as a child placement agency before that person may engage in the placement of minors if the person with whom the child is to be placed is "related to the child by blood or marriage within 4 degrees of consanguinity or affinity." |
| 109 | Family Law § 5-508(b)(2)   | Provides an exception to the rule that a person should be licensed by the Social Services Administration as a child care home before that "person may exercise care, custody, or control" of minors if the person is "related to the child by blood or marriage within five degrees of consanguinity or affinity."                            |
| 110 | Family Law § 5-552(b)(1)   | Allows family day care homes to operate without being registered "if the day care provider . . . is related to each child by blood or marriage."  |
| 111 | Family Law § 5-1027(c)(1)  | Establishes "a rebuttable presumption that a child is the legitimate child of the man to whom its mother was married at the time of conception."  |
| 112 | Family Law § 5-1032(b)(1)(iii)   | States that, a father in a paternity action is no longer responsible for support to a child upon the child's marriage   |
| 113 | Family Law § 7-101(b)  | Requires that, a spouse seeking a divorce must present corroborating testimony  |
| 114 | Family Law § 7-102   | Provides a married individual with a cause of action for limited divorce  |
| 115 | Family Law § 7-103   | Provides a married individual with a cause of action for absolute divorce   |
| 116 | Family Law § 7-103.2(b)  | Allows a court to order a married couple, seeking a divorce, to participate in an educational seminar prior to granting a divorce decree  |
| 117 | Family Law § 7-107(a), (b)   | Allows a court to order a party to pay reasonable expenses, including: "suit money; counsel fees; and costs," to a party for prosecuting or defending an action for divorce   |
| 118 | Family Law § 8-101   | Allows a married couple to create enforceable private agreements regarding "alimony, support, property rights, or personal rights."   |

| No. | Provision Citation         | Description of Provision   |
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| 119 | Family Law § 8-103(a)      | Allows a court to modify the private agreement between spouses to reflect the best interest of the child   |
| 120 | Family Law § 8-201(e)      | Defines marital property as any property acquired by one or both parties during the marriage, any real property titled as tenants by the entirety, and excludes property obtained before the marriage, acquired by inheritance or gift, excluded by agreement, or directly traceable to any of the forgoing                              |
| 121 | Family Law § 8-203(a)      | Allows a court to determine marital property in a proceeding for an annulment or absolute divorce  |
| 122 | Family Law § 8-204(a)      | Allows a court to determine the value of all marital property in a proceeding for an annulment or absolute divorce   |
| 123 | Family Law § 8-205(a)      | Allows a court to grant a monetary award or transfer ownership in a retirement account in a proceeding for an annulment or absolute divorce  |
| 124 | Family Law § 8-207(a)      | Allows a court to determine which property is the family home and family use personal property before or when granting an annulment or a limited or absolute divorce   |
| 125 | Family Law §§ 8-208, 8-209 | Allows a court to award the possession and use of the family home or family use property as well as allocate financial responsibilities of that property in granting an annulment or absolute divorce; allows a court to set terms and conditions on and modify an award of possession and use of the family home or family use property |
| 126 | Family Law § 8-210         | States the circumstances requiring the termination of an order for the possession and use of the family home or family use property  |
| 127 | Family Law § 8-212         | Allows a Maryland court to exercise its powers with respect to the use and possession of the family home and family use property in an annulment or absolute divorce granted in a foreign jurisdiction   |
| 128 | Family Law § 8-214(a), (b) | Allows a court to order a party to pay reasonable expenses, including: "suit money; counsel fees; and costs," to a party for prosecuting or defending an action for division of marital property   |
| 129 | Family Law § 9-101.1(b)(2) | Allows a court to consider abuse of a spouse in making determinations in a custody or visitation proceeding  |
| 130 | Family Law § 9-104         | Provides a noncustodial parent with "access to medical, dental, and educational records concerning the child."   |
| 131 | Family Law § 9-105         | Provides a court with several remedies for a party who can show that another "party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order."   |
| 132 | Family Law § 9-106         | Allows a court to require a party to a custody or visitation order to give 45 days notice to the other party of their intention to relocate the permanent residence of the child   |

| No. | Provision Citation            | Description of Provision  |
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| 133 | Family Law § 9-302(a)(1)      | Provides a Maryland equity court with "jurisdiction over custody and visitation of a child who is removed from [Maryland] by a parent of the child, if . . . the parents are separated or divorced" and Maryland was either "the marital domicile . . . or the domicile in which the marriage contract was last performed." |
| 134 | Family Law § 9.5-310(d)       | Precludes the invocation of the spousal communication privilege or a defense of immunity based on the husband and wife relationship   |
| 135 | Family Law § 10-103           | States that, the State's Attorney, the Child Support Enforcement Administration of the Department of Human Resources, or a local support enforcement office may "use any civil or criminal remedy to enforce a child or spousal support order."   |
| 136 | Family Law § 10-121(a)        | Allows a court to impose an earnings withholding notice pursuant to a child or spousal support order  |
| 137 | Family Law § 10-134(a)(3)(ii) | Establishes an element in a motion for a support order obligor to terminate a withholding order that the arrearage of support that gave rise to the withholding order was <i>inter alia</i> the result of the death of the obligor's spouse   |
| 138 | Family Law § 10-201(a), (b)   | Provides a criminal offense and penalty for willful failure to provide for the support of a spouse without just cause   |
| 139 | Family Law § 10-202(a)        | Allows a court to impose an order to pay spousal support upon the conviction of a party for willful failure to pay spousal support or by consent of the accused party   |
| 140 | Family Law § 10-207(a)        | Allows a court to order the Commissioner of Correction to deduct an amount of an inmate's earnings in order to pay the inmate's spousal support order   |
| 141 | Family Law § 10-328(g), (h)   | Precludes the invocation of both the spousal communication and testimonial privilege so that a spouse may be compelled to testify against the other in any proceeding under the Maryland Uniform Interstate Family Support Act  |
| 142 | Family Law § 10-332(a)        | Allows a court to issue a support order, including spousal support, for an individual or support enforcement agency from another state  |
| 143 | Family Law § 10-338(a)        | Provides a means for a support order obligor to "contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in [Maryland]."  |
| 144 | Family Law §§ 11-101, 11-106  | Allows a court to award definite and indefinite alimony as part of a decree of divorce or annulment   |
| 145 | Family Law § 11-102(a)        | Allows a court to award alimony <i>pendente lite</i> as part of a proceeding for a divorce or annulment   |
| 146 | Family Law § 11-104(a)        | Allows a court to award alimony <i>pendente lite</i> as part of a proceeding for a divorce against a nonresident defendant  |
| 147 | Family Law § 11-105           | Allows a Maryland court to award alimony to either party of a divorce or annulment granted by a court of another jurisdiction   |

| No. | Provision Citation                    | Description of Provision   |
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| 148 | Family Law § 11-107                   | Allows a court to extend an alimony award period and modify the amount awarded   |
| 149 | Family Law § 11-108(2)                | States that, alimony terminates upon the remarriage of the recipient   |
| 150 | Family Law § 11-110(a), (b)           | Allows a court to order a party to pay reasonable expenses, including "suit money; counsel fees; and costs," to a party for prosecuting or defending an action for alimony   |
| 151 | Family Law § 11-111(a)                | Allows a court to allocate "additional costs of providing hospital, medical, or surgical benefits" between the parties to a divorce either <i>pendente lite</i> or after the divorce is granted  |
| 152 | Family Law § 11-112                   | Allows a court to order a party to pay alimony, pay a lump sum, or give bond to the state to provide for the support one party found "permanently and incurably insane."   |
| 153 | Family Law § 12-101(a)                | Allows a court to award child support, both <i>pendente lite</i> and for a fixed period  |
| 154 | Family Law § 12-101(d)                | Allows a court to order a party to pay a portion or all of "the mother's medical and hospital expenses for pregnancy, confinement, and recovery and . . . medical support for the child, including neonatal expenses."                                       |
| 155 | Family Law § 12-102(b)                | Allows a court to order a parent to include a child in their health insurance coverage as part of any support order  |
| 156 | Family Law § 12-103(a)                | Allows a court to order a party to pay costs and counsel fees in any case involving the application, recovery, or enforcement of any custody, support, or visitation proceeding  |
| 157 | Financial Institutions § 6-302(b)(5)  | Allows a spouse of an individual who is eligible for membership in a credit union to be a member   |
| 158 | Financial Institutions § 8-307(d)     | With regards to Savings and Loan Associations, the spouse of the Division Director or any Division staff "may not become indebted to any association or related entity that is subject to the jurisdiction of the Division Director."                        |
| 159 | Financial Institutions § 11-301(a)(1) | Exempts the extension of credit or granting of a loan between relatives from the licensing provision required for installment loans  |
| 160 | Financial Institutions § 11-405       | Allows the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation to deny the application for a license to deal as a sales finance company if the spouse of the applicant has, <i>inter alia</i> , had a license revoked |
| 161 | Financial Institutions § 11-502(b)(8) | Exempts a person "making a mortgage loan to a borrower who is that person's spouse . . . child's spouse . . . or grandchild's spouse" from the licensing requirement for mortgage lenders  |
| 162 | Health General § 4-215(e)(5)(iii)     | States that, the Department of Health and Mental Hygiene may not deny inspection of a burial permit record to the spouse of the deceased "whose human remains have been disinterred or reinterred."  |

| No. | Provision Citation                | Description of Provision  |
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| 163 | Health General § 4-217(e)         | Requires the Secretary of Health and Mental Hygiene to include "a notice which advises that certain individuals may be entitled to continuation of group health insurance benefits" with every copy of a death certificate  |
| 164 | Health General § 5-501(b)(1)(ii)  | Allows a spouse to grant consent for a postmortem examination of a body by a physician if the spouse has assumed control of the body for its final disposition  |
| 165 | Health General § 5-509(c)(1)      | States that, the surviving spouse of a deceased individual has first priority to "the right to arrange for the final disposition of the body of the decedent" if the decedent had not executed a document that expresses the decedent's wishes concerning the disposition of their body                               |
| 166 | Health General § 5-602(b)(1), (3) | Prohibits a spouse of an owner, operator, or employee of a health care facility from which the declarant of an advance directive is receiving health care from serving as a health care agent   |
| 167 | Health General § 5-605(a)(2)      | Allows a patient's spouse "to make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent."   |
| 168 | Health General § 7-1003(f)        | Provides that, "[i]f it is feasible to do so and not medically contraindicated, spouses who are both residents of a licensed residential facility [for developmental disabilities] shall be given the opportunity to share a room."   |
| 169 | Health General § 7-1003(i)(2)     | Provides that, "[e]ach married individual in a licensed residential facility [for developmental disabilities] shall have privacy during a visit by the spouse."   |
| 170 | Health General § 10-616(c)(2)     | Prohibits a certificate for involuntary admission to a state mental health facility to be used "if the physician or psychologist who signed the certificate . . . [i]s related, by . . . marriage, to the individual or to the applicant."  |
| 171 | Health General § 10-807(e)(2)     | Prohibits an individual from being transported between mental health facilities without the individual's spouse   |
| 172 | Health General § 13-104(a)(2)(iv) | Prohibits a voting member of the State Advisory Council on Hereditary and Congenital Disorders appointed by the Governor from being a "spouse of a health professional . . . or spouse of an individual involved in the administration or ownership of any health care institution or health insurance organization." |
| 173 | Health General § 15-122(a)        | States that, "[t]he spouse of a [Maryland Medical and Pharmacy Assistance] Program recipient is responsible for payments for the health care needs of the Program recipient to the extent that the spouse is able to pay."  |

| No. | Provision Citation                          | Description of Provision  |
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| 174 | Health General §§ 15-201(c) (ii), 15-202(c) | States that, an individual is eligible for the Maryland AIDS Insurance Assistance Program if, <i>inter alia</i> , the individual's family, which includes the applicant/recipient's spouse, "cash assets do not exceed \$10,000," and "[t]he individual's family income does not exceed 300 percent of the federal poverty level."  |
| 175 | Health General §§ 16-101(f), 16-203(a)(4)   | Exempts from the cost of care of a recipient of services in a facility or program that is operated or funded by the Department of Health and Mental Hygiene who is a responsible relative, which includes a spouse of a recipient, if the spouse "has been the victim of sexual abuse, physical abuse, or a crime of violence . . . perpetrated by the recipient of services."      |
| 176 | Health General §§ 16-101(f), 16-204(d)(4)   | States that, if a responsible relative, which includes the spouse of a recipient of services, "who is liable for the cost of care of the recipient of services" has submitted fraudulent information or misrepresented assets, thus avoiding any part of the claim for the cost of care, "there is no limitation on the time in which the claim may be brought against the estate." |
| 177 | Health General §§ 16-101(f), 16-404(c)      | States that, the liability of a responsible relative, which includes the spouse of a recipient of services, "for the cost of care of a mentally retarded individual in a residential, state facility" ends when the cost of care has been charged for a period or periods that total 16 years   |
| 178 | Health General § 19-310                     | For the purposes of organ donation, a spouse has first priority to consent as the deceased's representative to any donation   |
| 179 | Health General § 19-344(h), (k)             | Spouses who are both admitted to a hospital or related institution "shall be given the opportunity to share a room," if it is feasible and medically appropriate. Further, "each married resident of a facility shall have privacy during a visit by the spouse."   |
| 180 | Health General § 20-102                     | States that, minors have "the same capacity as an adult to consent to medical treatment" if the minor is married or is a parent. Further, "without the consent of or over the express objection of a minor," physicians and others may "give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor."            |
| 181 | Health General § 20-104                     | "Without the consent of or over the express objection of a minor," various physicians and others may "give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment of a mental disorder needed by the minor."   |
| 182 | Health General § 20-105                     | For the purposes of informal kinship care, "relative," as it relates to a minor's consent, is defined as "an adult related to the child by blood or marriage within the fifth degree of consanguinity."   |
| 183 | Health Occupations §§ 1-301(j)(1), 1-302(a) | Prohibits a health care practitioner from referring a patient to a health care entity in which the health care practitioner's spouse owns a beneficial interest   |

| No. | Provision Citation                              | Description of Provision  |
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| 184 | Health Occupations §§ 1-301(j)(1), 1-303(a)-(b) | Requires a health care practitioner making a lawful referral to "disclose the existence of the beneficial interest" of a spouse in the health care entity to which the referral is being made   |
| 185 | Health Occupations §§ 7-101(s), 7-308(a)        | Requires the Maryland State Board of Morticians to "issue a surviving spouse license to an applicant if the applicant . . . [i]s the surviving spouse of a licensed mortician or licensed funeral director whose license was in good standing at the time of death and who was operating and wholly or partly owned a mortuary science business" at the time of death |
| 186 | Health Occupations §§ 7-101(s), 7-308.1         | Requires that, "[a] personal representative who wishes to continue operation of a mortuary science business upon expiration of the executor license must be . . . the holder of a surviving spouse license."  |
| 187 | Health Occupations §§ 7-101(s), 7-310(c)(2)     | Requires the Maryland State Board of Morticians to "issue a funeral establishment license to a funeral establishment that . . . [w]ill be owned and operated by . . . a holder of a surviving spouse . . . license."  |
| 188 | Health Occupations §§ 7-101(s), 7-405(b)(1)     | Allows a holder of a surviving spouse license "to offer or agree . . . to provide services or merchandise under a pre-need contract."   |
| 189 | Health Occupations §§ 7-101(s), 7-407(a)        | Requires a licensed funeral director to "provide to the surviving spouse . . . of the deceased or authorized representative a notice which advises that certain individuals may be entitled to continuation of group health insurance benefits."  |
| 190 | Health Occupations §§ 7-101(s), 7-410(c)        | States that the surviving spouse of a deceased individual has first priority to "the right to arrange for the final disposition of the body of the decedent" if the decedent had not executed a document that expresses the decedent's wishes concerning the disposition of his or her body   |
| 191 | Insurance § 8-606(a), (d)                       | Requires that, "[b]efore an offer to purchase a policy can be made to the viator, a viatical settlement provider shall provide the viator with a disclosure statement" containing specified language notifying the viator of the requirement to disclose the identity of the insured's spouse   |
| 192 | Insurance § 10-120(a)                           | Allows the Maryland Insurance Commissioner to "issue a temporary license to act as an insurance producer" to a surviving spouse of a deceased or a spouse of a mentally or physically disabled insurance producer   |
| 193 | Insurance § 12-202(b)(1)                        | Allows a spouse to put into effect a life or health insurance policy on the other spouse  |
| 194 | Insurance § 14-115(e)(9)                        | Prohibits a member of the board of directors of a nonprofit health services plan from being another member's spouse, child's spouse, spouse's parent, or sibling's spouse   |
| 195 | Insurance § 15-201(c)(2)                        | Allows a health insurance policy to insure a policyholder's spouse upon application of an adult member of a family  |

| No. | Provision Citation        | Description of Provision   |
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| 196 | Insurance § 15-215        | Allows an insurer to include in a policy an optional provision permitting an indemnity for loss of life payable to an estate or beneficiary under 18 years of age which may be paid to any relative by blood or connection by marriage   |
| 197 | Insurance § 15-404(b)     | Allows the coverage on a group or blanket health insurance policy of a subscriber's dependent children at any time and without evidence of insurability if the children were covered under the policy of the subscriber's deceased spouse  |
| 198 | Insurance § 15-407(b)(2)  | Requires a group contract insurance provider to provide continuation coverage for a qualified secondary beneficiary, which includes the spouse of the insured, after the insured's death   |
| 199 | Insurance § 15-408(b)(2)  | Requires a group contract insurance provider to provide continuation coverage for a qualified secondary beneficiary, which includes the spouse of the insured, after the divorce of the insured and the beneficiary spouse   |
| 200 | Insurance § 15-409(d)(5)  | Requires a group contract insurance provider to provide continuation coverage for the spouse of the insured if the group contract provides benefits for spouses and the insured's spouse was covered on the group contract before the insured was involuntarily terminated   |
| 201 | Insurance § 15-411(a)     | Requires a group contract insurance provider to provide continuous open enrollment to allow "a married employee who is enrolled . . . to alter the terms of the employee's coverage to include the employee's spouse . . . if the employee's spouse loses coverage under another group health insurance contract . . . because of the involuntary termination of the spouse's employment." |
| 202 | Insurance § 15-414(b)     | Requires a group contract insurance provider to "provide the same conversion rights and conditions to a covered dependent spouse of an employee . . . that are provided to the covered employee . . . if the dependent spouse ceases to be a qualified family member because of divorce or the death of the employee."   |
| 203 | Insurance § 15-810(b)     | An insurer or nonprofit health service plan that provides pregnancy-related benefits "may not exclude benefits for all outpatient expenses arising from in vitro fertilization procedures performed on the . . . dependent spouse of a policyholder or subscriber."  |
| 204 | Insurance § 15-1206(c)(3) | States that, employees who have group spousal coverage may not be eligible for certain other forms of insurance  |
| 205 | Insurance § 15-1208(b)    | States that, a late enrollee in a health services plan will not be subject to a waiting period for preexisting conditions if "a court has ordered coverage to be provided for a spouse," or "a request for enrollment is made within 30 days after the eligible employee's marriage."  |

| No. | Provision Citation                 | Description of Provision   |
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| 206 | Insurance § 15-1208.1(c)           | Requires small employer health benefit plans to offer a special enrollment period such that "an individual who becomes a dependent of the eligible employee through marriage, . . . an eligible employee who acquires a new dependent through marriage, . . . [or] the spouse of an eligible employee at the birth or adoption of a child" can be enrolled under the health benefit plan   |
| 207 | Insurance § 15-1406.1(c)           | Requires a group health benefit plan that makes coverage available to dependents of an eligible employee to offer a special enrollment period such that "an individual who becomes a dependent of the eligible employee through marriage, . . . an eligible employee who acquires a new dependent through marriage, . . . [or] the spouse of an eligible employee at the birth or adoption of a child" can be enrolled under the group health benefit plan |
| 208 | Insurance § 16-110(a)              | Allows an insurer to pay the life insurance proceeds of a resident of the state who dies intestate with an estate not exceeding \$1,000 to the decedent's surviving spouse without the grant of letters of administration under certain circumstances  |
| 209 | Insurance § 16-111(a)              | Exempts from creditors the proceeds of a policy of life insurance made for the benefit of or assigned to the spouse of an individual   |
| 210 | Insurance § 16-212(b)(1)(ii)       | Allows for a clause to be included on a policy of life insurance that allows the insurer to "make a payment under the policy . . . to any relative of the insured by . . . connection by marriage."  |
| 211 | Insurance § 16-305(c)              | Sets the cash surrender value of family life insurance policies that "define[ ] a primary insured and provide[ ] term insurance on the life of the spouse of the primary insured that expires before the spouse's age 71."   |
| 212 | Insurance § 17-209(a), (c)         | Allows group life insurance policies to "be extended to cover the spouse . . . of each insured employee" and to provide rights of conversion to an insured spouse if the policy terminates or is amended to terminate the spouse's coverage  |
| 213 | Insurance § 20-519                 | Provides that, the suspension or revocation of a Maryland Automobile Insurance Fund policyholder's license cannot result in the cancellation of the coverage of a spouse included on the policy  |
| 214 | Insurance § 20-601(e)(1)(iii)      | Prohibits an uninsured driver's spouse who lives in the uninsured driver's household from submitting a claim against the Maryland Automobile Insurance Fund  |
| 215 | Labor and Employment § 3-403(a)(7) | Excludes a spouse of an employer from the requirement of minimum wage  |
| 216 | Labor and Employment § 8-215(1)    | Excludes employment for a spouse from covered employment with regard to unemployment insurance benefits  |

| No. | Provision Citation                         | Description of Provision   |
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| 217 | Labor and Employment § 8-220(b)            | Excludes employment at an educational institution by a spouse of a student enrolled and regularly attending classes at that institution from covered employment with regard to unemployment insurance benefits   |
| 218 | Labor and Employment § 8-808.1             | States that, alimony and spousal support can only be withheld from unemployment insurance to the extent provided under federal law   |
| 219 | Labor and Employment § 8-1001(d)(2)        | Requires disqualification of an individual from receiving unemployment benefits "if an individual leaves employment . . . to accompany . . . or to join a spouse in a new location."   |
| 220 | Labor and Employment § 9-509(d)            | Allows a surviving spouse of a covered employee killed as a result of the deliberate intent of the employer to bring a claim for worker's compensation   |
| 221 | Labor and Employment § 9-632(d)(1)         | Provides a surviving spouse of a covered employee with a permanent partial disability who died with a legal obligation to support that spouse with the right to the unpaid worker's compensation due the employee  |
| 222 | Labor and Employment § 9-640(d)(1)         | Provides a surviving spouse of a covered employee with a permanent total disability who died with a legal obligation to support that spouse with the right to the unpaid worker's compensation due the employee  |
| 223 | Labor and Employment § 9-646(d)(1)         | Provides a surviving spouse of a covered employee with a hernia who died with a legal obligation to support that spouse with the right to the unpaid worker's compensation due the employee  |
| 224 | Labor and Employment § 9-680(a)            | Precludes a surviving spouse of a covered employee whose death was caused by an accidental personal injury or an occupational disease from receiving worker's compensation benefits if "the surviving spouse deserts the covered employee for more than 1 year before the time of the occurrence" of the accident or disablement   |
| 225 | Labor and Employment § 9-681(d)            | Requires an employer to continue to pay weekly death benefits to a wholly dependent surviving spouse who remains wholly dependent after \$45,000 is paid, for as long as the surviving spouse is totally dependent   |
| 226 | Labor and Employment §§ 9-681(e), 9-682(a) | Requires an employer to continue to pay weekly death benefits to a wholly dependent surviving spouse who becomes wholly self-supporting before the employer pays \$45,000 until \$45,000 is paid, and requires an employer to pay weekly death benefits to a partially self-supporting surviving spouse for the period of partial dependency or until \$60,000 has been paid |
| 227 | Labor and Employment § 9-681(f)            | Requires an employer to discontinue payment of weekly death benefits to a wholly dependent surviving spouse who remarries before \$45,000 is paid unless the surviving spouse does not have dependent children   |

| No. | Provision Citation                           | Description of Provision   |
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| 228 | Labor and Employment § 9-682(d)              | Requires an employer to continue payment of weekly death benefits to a partially dependent surviving spouse who remarries, does not have dependent children, and who had not received more than \$60,000 before the remarriage   |
| 229 | Natural Resources § 4-604(d)(1)              | Exempts a spouse of the owner or tenant of land bordering nontidal water or "the spouse of any child who resides on the land with the owner or tenant when he fishes in nontidal water adjoining his land" from the requirement of an angler's license   |
| 230 | Natural Resources § 4-701(i)(2)              | Allows a tidal fishing license holder to transfer the license to a spouse subject to the approval of the Department of Natural Resources   |
| 231 | Natural Resources § 10-301(b)                | Exempts a spouse of the owner of farmland, tenant's spouse, and the owner's and tenant's children's spouse residing on the property from the requirement of a hunting license for farmland hunting only  |
| 232 | Public Safety § 1-202(b)(a)                  | Provides a death benefit of \$50,000 to be paid to the surviving spouse of several kinds of public safety officers who are killed or die in the performance of their duties  |
| 233 | Public Safety § 1-202(d)                     | Provides a funeral benefit of \$10,000 to be paid to the surviving spouse of several kinds of public safety officers who are killed or die in the performance of their duties  |
| 234 | Public Safety § 5-136(a)(2)                  | Requires a spouse receiving a regulated firearm as a gift from the purchasing spouse to "complete an application to purchase or transfer a regulated firearm; and forward the application to the Secretary" of State Police  |
| 235 | Public Safety § 7-203                        | Requires the Board of Trustees of the Maryland State Firemen's Association to pay a death benefit to a decedent member of a volunteer fire company or volunteer rescue squad's surviving spouse in certain circumstances   |
| 236 | Public Safety §§ 7-203(c)(1)(i), 7-209(c)(3) | Provides that, a surviving spouse benefit is discontinued when the survivor remarries  |
| 237 | Public Safety § 14-212(a)                    | Precludes an action for eviction or distress from being "brought against a person in emergency management service or person suffering injury or damage if . . . the premises are occupied for dwelling purposes by the spouse . . . of the person in emergency management service or person suffering injury or damage."                               |
| 238 | Public Utility Companies § 2-303(a)-(b)      | Prohibits the spouse of each commissioner, the People's Counsel, the General Counsel, a hearing examiner, and each officer or employee of the Public Service Commission or Office of People's Counsel from holding "an official relation to or connection with a public service company" or having "a pecuniary interest in a public service company." |

| No. | Provision Citation                                       | Description of Provision  |
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| 239 | Public Utility Companies § 2-307(a)-(b)                  | Prohibits the spouse of each commissioner, the People's Counsel, the General Counsel, a hearing examiner, and each officer or employee of the Public Service Commission or Office of People's Counsel from accepting "a gift, gratuity, or special consideration" from a public service company or its officer, agent, or employee  |
| 240 | Public Utility Companies § 2-308(b)(1)                   | Prohibits "[a] public service company or its officer, agent, or employee" from offering "a gift, gratuity, or special consideration" to the spouse of each commissioner, the People's Counsel, the General Counsel, a hearing examiner, and each officer or employee of the Public Service Commission or Office of People's Counsel   |
| 241 | Real Property § 4-108(b)                                 | Allows a husband and wife holding property as tenants by the entirety to avoid straw deeds by acting jointly or individually to transfer to property interest to another type of estate   |
| 242 | Real Property §§ 7-301(j) to 7-321                       | Provides certain protections for a residence in foreclosure, defined as a residential real property consisting of less than five single family dwelling units, "one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order issued under . . . the Family Law Article, as the individual's principal place of residence, and against which an order to docket or a petition to foreclose has been filed."  |
| 243 | Real Property § 8-326                                    | Subjects all goods on a leased premises naming husband or wife as tenant "to levy under distress to the same extent as if both were named in the lease as tenants."   |
| 244 | Real Property § 11-138(d)(7)                             | Limits a local government's right to purchase a rental facility transferred to a spouse   |
| 245 | Real Property § 14-121(b), (d)                           | Allows a spouse to request the owner of a burial site to grant reasonable access to the burial site for the purposes of restoring, maintaining, viewing, or transporting human remains for interment to a burial site   |
| 246 | State Finance and Procurement § 13-221(b)(2), (c)(1)     | Includes any interests held by an individual's spouse as interests held by that individual for purposes of disclosures to the Secretary of State regarding information about businesses contracting with the State for \$100,000 or more  |
| 247 | State Finance and Procurement §§ 14-301(g), 14-302(a)(7) | States that, "[i]f, during the performance of a contract, a certified minority business enterprise contractor or subcontractor becomes ineligible to participate in the Minority Business Enterprise Program because one or more of its owners has a personal net worth," which includes in an individual's personal net worth any share of assets held jointly or as community property with the individual's spouse, that exceeds \$750,000, "that ineligibility alone may not cause the termination of the certified minority business enterprise's contractual relationship for the remainder of the term of the contract; and the certified minority business enterprise's participation under the contract shall continue to be counted toward the program and contract goals." |

| No. | Provision Citation                                | Description of Provision   |
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| 248 | State Government § 2-107(b)(1)                    | Prohibits a member of the General Assembly from employing a member's spouse or a spouse of another member from the same legislative district for legislative business "using public funds over which the member has direct control."   |
| 249 | State Government § 9-123(2)                       | Prohibits a spouse of an officer or employee of the State Lottery Agency who resides in the principal residence of the officer or employee from buying a state lottery ticket or receiving a prize   |
| 250 | State Government §§ 15-102(s), 15-512(a)(1)(i)(2) | States that, a disqualification of a member of the General Assembly from participating in any legislative action because of a conflict with the public interest cannot be suspended if the conflict is direct and personal to a member of the legislator's immediate family, which includes a spouse   |
| 251 | State Government §§ 15-102(s), 15-513(b)(3)       | Requires a legislator to report in writing to the Joint Ethics Committee "the name of any business enterprise subject to regulation by a State agency in which the legislator and . . . spouse . . . together or separately" have a certain amount of financial interest   |
| 252 | State Government §§ 15-102(s), 15-607(e)(1)       | Exempts a member of the General Assembly from filing a financial disclosure statement regarding any gift received from the member's spouse   |
| 253 | State Government §§ 15-102(s), 15-704(b)(2)(vi)   | Requires a regulated lobbyist to "file with the Ethics Commission, under oath and for each registration, a separate report concerning the regulated lobbyist's lobbying activities" including "total expenditures in connection with influencing executive action or legislative action" such as meals and beverages for members of the immediate families, including spouses, of officials or employees |
| 254 | State Government §§ 15-102(s), 15-705(a)          | Requires a regulated lobbyist to file a separate report disclosing the name of a member of the lobbyist's immediate family, including a spouse, "of a State official of the Executive Branch who has benefitted during the reporting period from gifts of meals or beverages from the regulated lobbyist, whether or not in connection with lobbying activities."  |
| 255 | State Government §§ 15-102(s), 15-710             | Exempts a regulated lobbyist from disclosing gifts to the regulated lobbyist's immediate family, including a spouse, "if the gift is: purely personal and private in nature and not related to the regulated lobbyist's lobbying activities; and from the regulated lobbyist's personal funds and not attributable to any other entity or entities."   |
| 256 | State Government § 15-505(c)(2)(x)(1)             | Exempts an official or employee of State government from the general prohibition on solicitation or acceptance of gifts if the "gift is from . . . an individual related to the official or employee by blood or marriage."  |
| 257 | State Government § 15-608(a)(1)                   | Includes an interest held by a spouse of an individual to be reported as an interest of that individual in § 15-607  |

| No. | Provision Citation                             | Description of Provision   |
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| 258 | State Government § 15-849(a)(2)(i)             | Requires a spouse who has made contributions to the treasurer of a candidate or a political committee "having a cumulative value of \$500 or more during the 48-month period before the application was filed or during the pendency of the application," to file a disclosure providing certain information   |
| 259 | State Government § 19-111(a)                   | Allows a spouse of a person serving in the armed forces of the United States to acknowledge an instrument  |
| 260 | State Personnel and Pensions § 2-307(a)        | Prohibits a state employee from directly supervising the employee's spouse   |
| 261 | State Personnel and Pensions § 2-507(b)        | Allows a "surviving spouse of a State employee who died while employed by the State" to enroll and participate in the State Employee and Retiree Health and Welfare Benefits Program   |
| 262 | State Personnel and Pensions § 2-508(b)(2)     | Allows a surviving spouse of a deceased retiree to enroll and participate in the State Employee and Retiree Health and Welfare Benefits Program  |
| 263 | State Personnel and Pensions § 2-509(a)(3)     | Allows a surviving spouse of a State employee with optional retirement to enroll and participate in the State Employee and Retiree Health and Welfare Benefits Program   |
| 264 | State Personnel and Pensions § 2-511(b), (c)   | Allows a surviving spouse of an employee or former employee of the Maryland Environmental Service and Northeast Maryland Waste Disposal Authority to enroll and participate in the State Employee and Retiree Health and Welfare Benefits Program  |
| 265 | State Personnel and Pensions § 2-514(a)        | Provides a special enrollment period in the State Employee and Retiree Health and Welfare Benefits Program "for a nonparticipating State employee after the death of a spouse who was not a State employee."   |
| 266 | State Personnel and Pensions § 7-207(c)(2)     | Provides "the spouse of an eligible veteran who has a service connected disability; or . . . the surviving spouse of a deceased eligible veteran" with ten points on any selection test for an appointment in skilled or professional service  |
| 267 | State Personnel and Pensions § 9-604           | States that, "[a]n employee may voluntarily donate unused annual, sick, or personal leave to another employee who has exhausted all available annual, personal, sick, and compensatory leave because of a serious and prolonged medical condition of the employee or a catastrophic illness or injury of a member of the employee's immediate family." |
| 268 | State Personnel and Pensions § 10-404(c)(1)(i) | Provides a death benefit of \$100,000 to the surviving spouse of certain state employees   |
| 269 | State Personnel and Pensions § 10-404(c)(2)(i) | Provides a death benefit of \$50,000 to the surviving spouse of certain state employees  |
| 270 | State Personnel and Pensions § 21-401(a)(2)    | Allows a member of the Law Enforcement Officers' Pension System, State Police Retirement System, or Judges' Retirement System to elect a reduced allowance to be paid instead of the basic allowance provided by the system only if the member is not married at the time of retirement  |

| No. | Provision Citation                                     | Description of Provision  |
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| 271 | State Personnel and Pensions § 21-503(2)               | Requires the Board of Trustees to offer counseling regarding retirement benefits to an immediate family member if a member, former member or retiree in the State Retirement and Pension System consents  |
| 272 | State Personnel and Pensions § 21-602(b)               | Allows a surviving spouse of a member, former member, or retiree in the State Retirement and Pension System to "elect to have all or any part of the eligible rollover distribution to be paid in a direct rollover to an individual retirement account."                               |
| 273 | State Personnel and Pensions § 22-305(a)(4)            | Allows "[t]he surviving spouse of a member of the Teachers' Retirement System [to] pay for the appropriate final adjustment" in certain circumstances   |
| 274 | State Personnel and Pensions § 22-405(e), (f)          | Allows the surviving spouse of a retired Governor or a Governor who died while in office to receive one-half of the Governor's retirement allowance   |
| 275 | State Personnel and Pensions § 23-308(e)               | Allows the surviving spouse of a member of the Teachers' Pension System who was making alternative methods of payment for service credit to pay for the appropriate final adjustment in certain circumstances   |
| 276 | State Personnel and Pensions § 24-401.1(i)(2)(i)       | States that, a surviving spouse is a designated beneficiary of a member of the Deferred Retirement Option Program in the State Police Retirement System   |
| 277 | State Personnel and Pensions § 24-403(b)(1)            | Requires the Board of Trustees of the State Police Retirement System to pay 50% of a deceased retiree's retirement allowance to a surviving spouse  |
| 278 | State Personnel and Pensions § 24-404(a)(2)(i), (3)(i) | Requires the Board of Trustees of the State Police Retirement System to pay of a deceased retiree's special disability retirement allowance, service retirement allowance, or ordinary disability retirement allowance to a surviving spouse  |
| 279 | State Personnel and Pensions § 26-401.1(i)(2)(i)       | States that, a surviving spouse is a designated beneficiary of a member of the Deferred Retirement Option Program in the Law Enforcement Officers' Pension System   |
| 280 | State Personnel and Pensions § 26-402(b)(1)            | Requires the Board of Trustees of the Law Enforcement Officers' Pension System to pay 50% of a deceased retiree's retirement allowance to a surviving spouse  |
| 281 | State Personnel and Pensions § 27-103                  | States that, Title 27, outlining the Judges' Retirement System, "does not impair or reduce any benefit that a . . . spouse of a member, former member, or retiree has been or would be entitled to receive under any public general law."   |
| 282 | State Personnel and Pensions § 27-403(a), (b)          | Requires the Board of Trustees of the Judges' Retirement System to pay 50% of the retirement allowance of a member, former member, or retiree to the surviving spouse   |
| 283 | State Personnel and Pensions § 27-404                  | States that, the "payment of an allowance ends and further rights may not arise from service as a member [of the Judges' Retirement System]" if the member does not leave a surviving spouse or the surviving spouse dies and there are no children of the member under 18 years of age |

| No. | Provision Citation                                | Description of Provision  |
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| 284 | State Personnel and Pensions § 27-407(b)          | Prohibits a county from paying a supplement to a surviving spouse of a member, former member, or retiree of the Judges' Retirement System   |
| 285 | State Personnel and Pensions § 29-203(a)(2)(i)(1) | Requires the Board of Trustees of the Law Enforcement Officers' Pension System to pay 50% of the ordinary disability retirement allowance of a member to the surviving spouse in certain circumstances  |
| 286 | State Personnel and Pensions § 29-204(a)(2)       | Requires the Board of Trustees of the State Police Retirement System to pay the accumulated contributions to the designated beneficiary and 50% of the average final compensation of a member to the surviving spouse in certain circumstances  |
| 287 | State Personnel and Pensions § 29-205             | Allows a surviving spouse of a member of the Correctional Officers' Retirement System, Employees' Retirement System, Local Fire and Police System, or Teachers' Retirement System to elect to receive the death benefit or an allowance equal to the amount payable under Option 2 of the optional allowances under certain circumstances |
| 288 | State Personnel and Pensions § 29-206             | Allows a surviving spouse of a member of the Employee's Pension System, Teachers' Pension System, or the Local Fire and Police System to elect to receive the death benefit or an allowance equal to the amount payable under Option 2 of the optional allowances under certain circumstances   |
| 289 | State Personnel and Pensions §§ 29-410 to 29-413  | Sets out the manner in which unlimited adjustments are computed and minimum benefits are awarded for the surviving spouse of a member of certain retirement systems   |
| 290 | State Personnel and Pensions §§ 29-416 to 29-418  | Sets out the manner in which five percent limited adjustments are computed for the surviving spouse of a member of certain retirement systems   |
| 291 | State Personnel and Pensions §§ 29-421, 29-422    | Sets out the manner in which combinations adjustments are determined for the surviving spouse of a member of certain retirement systems   |
| 292 | Tax General § 7-203(b)(2)                         | Exempts "a spouse of the decedent . . . a spouse of a child of the decedent or a spouse of a lineal descendant of a child of the decedent" from the inheritance tax   |
| 293 | Tax General § 7-203(k)(2)(ii)                     | Exempts a spouse of a Holocaust victim from the inheritance tax on "amounts received by a decedent as reparations or restitution for loss of liberty or damage to health."  |
| 294 | Tax General § 7-209(c)(2)                         | States that, "[w]hen property passes from a decedent to a husband and wife as tenants by the entireties and only 1 spouse is entitled to the [inheritance tax] exemption," 50% of property is exempt from taxation and the remaining 50% is subject to the tax  |
| 295 | Tax General § 10-207(e-1)(2)                      | States that, the subtraction from the federal adjusted gross income to determine Maryland adjusted gross income "includes a payment from a pension system to the surviving spouse . . . of a law enforcement officer or fire fighter whose death arises out of or in the course of employment."   |

| No. | Provision Citation                     | Description of Provision  |
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| 296 | Tax General § 10-207(r)(2)             | States that, the subtraction from the federal adjusted gross income to determine Maryland adjusted gross income "includes the lesser of \$1,200 or the modified Maryland adjusted gross income of the spouse with the lesser modified Maryland adjusted gross income" for a two-income married couple filing a joint tax return   |
| 297 | Tax General § 10-207(t)(2)(ii)         | States that, the subtraction from the federal adjusted gross income to determine Maryland adjusted gross income includes "amounts received by an individual as reparations or restitution for loss of liberty or damage to health" because he or she is a spouse of a Holocaust victim  |
| 298 | Tax General § 10-209(b)                | States that, the subtraction from the federal adjusted gross income equal to the lesser of certain retirement benefits to determine Maryland adjusted gross income is allowed if a Maryland resident's spouse is totally disabled   |
| 299 | Tax General § 10-217(c)                | Sets out the amounts of the standard deduction to compute Maryland taxable income for an individual described as a surviving spouse and for spouses filing a joint return   |
| 300 | Tax General § 10-709(a), (b)           | Allows an eligible low income taxpayer's spouse filing a joint tax return to claim a credit against the state income tax for a taxable year   |
| 301 | Tax General § 10-718(b)                | Allows an individual to "claim a credit against the State income tax in an amount equal to 100% of the eligible long-term care premiums paid by the individual during the taxable year for long-term care insurance covering . . . the individual's spouse."  |
| 302 | Tax General § 10-807                   | Requires that, "a husband and wife who file a joint federal income tax return shall file a joint Maryland income tax return" except in certain circumstances  |
| 303 | Tax General § 10-808(c)(2)             | Requires an individual's surviving spouse to file their decedent spouse's tax return if there is no personal representative   |
| 304 | Tax General § 13-905(b)                | Requires the Comptroller to pay a claim of refund to the estate of a decedent if the decedent's tax return was filed jointly by the surviving spouse and the personal representative  |
| 305 | Tax Property § 7-207(c)                | Exempts the dwelling house of a surviving spouse of a blind individual from property tax if the house had formerly been exempt  |
| 306 | Tax Property § 7-208(b), (c), (g), (h) | Exempts the dwelling house of a surviving spouse of a disabled veteran from property tax given certain requirements and authorizes refunds of property tax not exempted as well as interest for such tax assessed   |
| 307 | Tax Property §§ 8-226 to 8-228         | Provides homeowners, including spouses and former spouses who have been permitted under a court order or separation agreement to reside in a dwelling in which they have interest, with an application process to rezone real property as residential real property for property assessment purposes, with an exception stating that for spouses that transfer rezoned real property, the property ceases to be rezoned |

| No. | Provision Citation                    | Description of Provision   |
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| 308 | Tax Property § 9-101(f)               | Allows an unmarried surviving spouse of a homeowner to claim a property tax credit for elderly or disabled homeowners  |
| 309 | Tax Property § 9-104(h)               | Allows an unmarried surviving spouse of a homeowner to claim a property tax credit for eligible homeowners   |
| 310 | Tax Property § 9-210(b)               | Allows "[t]he Mayor and City Council of Baltimore City or the governing body of a county or municipal corporation" to grant a property tax credit "against the county or municipal corporation property tax imposed on a dwelling that is owned by a surviving spouse of a fallen law enforcement officer or rescue worker." |
| 311 | Tax Property § 12-108(c)(1), (d)      | Exempts a spouse or former spouse from the recordation tax if property subject to a mortgage or deed of trust, or an instrument of writing that transfers property, is transferred to a spouse or former spouse  |
| 312 | Tax Property § 13-207(a)(2), (3)      | Exempts a spouse or former spouse from the transfer tax if property subject to a mortgage or deed of trust, or an instrument of writing that transfers property, is transferred to a spouse or former spouse   |
| 313 | Tax Property § 13-403                 | Exempts a spouse or former spouse from the county transfer tax if an instrument of writing that transfers property in accordance with a property settlement or divorce decree is transferred to a spouse or former spouse  |
| 314 | Transportation § 8-309(i)             | Establishing the right of a former owner, including a decedent's surviving spouse, to reacquire land to be conveyed by the Board of Public Works   |
| 315 | Transportation § 13-118               | Requires a person whose name has changed by marriage to both notify and apply for a corrected certificate of title for a vehicle at the Motor Vehicle Administration within 30 days of the change  |
| 316 | Transportation § 13-414(b)            | Requires a person "who has applied for or obtained the registration of a vehicle" and whose name has changed by marriage to notify the Motor Vehicle Administration within 30 days and "apply for a corrected registration certificate."   |
| 317 | Transportation 13-503.1               | Allows a married couple to execute certain kinds of transfers of vehicle registration plates and enable the transferee to continue using the transferred plates  |
| 318 | Transportation § 13-619               | Allows a surviving spouse of a member of an eligible organization to apply for a special registration number   |
| 319 | Transportation § 13-810(c)(1)(i), (5) | Exempts a vehicle from the excise tax on the transfer of the vehicle and subsequent issuance of a certificate of title to a spouse, or a former spouse as a result of divorce or separation  |
| 320 | Transportation § 13-903(a)(9)         | Exempts a vehicle from registration fees if the vehicle is "owned and personally used by an individual who is at least 65 years old and is the surviving spouse of a deceased disabled veteran."   |

| No. | Provision Citation                | Description of Provision  |
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| 321 | Transportation § 16-116(b)        | Requires a person who has applied for or obtained a driver's license and whose name has changed by marriage to notify the Motor Vehicle Administration within 30 days in writing  |
| 322 | Transportation § 23-106(a)(2)(i)  | Exempts a spouse from providing the inspection certificate when transferring a used automobile to another spouse  |
| 323 | Article 2B § 8-217(a)(1)          | Making it unlawful in Prince George's County for any person under the age of 18 years, between 10:00 p.m. and 6:00 a.m., to be on the premises of the holder of any Class B or Class D alcohol license, unless the person is in the immediate company of a designated person, including his or her spouse   |
| 324 | Article 2B § 9-212(c)(4)          | In Garrett County, a surviving spouse that holds a deceased licensee's alcohol license is exempt from any issuing fees on the license   |
| 325 | Article 2B § 10-506(b)            | Provides that, "[u]pon the death of any married [alcohol] licensee, . . . a new license shall be issued to the surviving spouse," who may also be eligible for a renewal license  |
| 326 | Article 2B § 11-502(h)            | In Anne Arundel County, no person under the age of 18 is allowed on the premises of any bowling alley with a Class B or Class D alcohol license between 2:00 a.m. and 6:00 a.m., unless the person is accompanied by a designated individual, including his or her spouse   |
| 327 | Article 25 § 3(g-1)               | Various pension plans for Charles County employees, contain disability provisions and death benefits for spouses and/or minor children  |
| 328 | Article 25 § 3(pp)(1)-(2)         | If the Board of Commissioners of Calvert County establishes a pension plan for the Calvert County Sheriff's Department, the plan shall include death benefits for spouses and children  |
| 329 | Article 25 § 51(j)(3)             | States that, in Garrett County, "[t]he deputy treasurer may not be related to the County Treasurer by blood or marriage."   |
| 330 | Article 28 § 2-115(a)(1)          | No commissioner on the Maryland-National Capital Park and Planning Commission may "knowingly participate in a decision affecting the financial interest of a person related to the commissioner or the commissioner's spouse."  |
| 331 | Article 28 § 5-105.1              | Whenever the Maryland-National Capital Park and Planning Commission acquires real property that results in the displacement of a person from his place of business or farm, eligible persons are entitled to a payment equal to the average annual net earnings, "includ[ing] any compensation paid by the business or farm operation to the owner, [or] his spouse," of the business or farm operation displaced |
| 332 | Article 41 § 6-7A-03(e)(2)(ii)(4) | Under the Community Attendant Services and Supports Program, of the Department of Human Resources, the consumer's spouse is "barred from receiving medical assistance payments for providing services."   |

| No. | Provision Citation       | Description of Provision   |
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| 333 | Article 66B § 5.03(d)(2) | Refers to Real Property Code § 14-121's provision regarding access to a burial site and the granting of an easement to an individual who is related to the interred by blood or marriage   |
| 334 | Article 70B § 1(c)       | Defining "congregate housing services" as "services provided in an apartment building that promote independent living and include congregate meals, house-keeping, and personal services for . . . an individual at least 62 years old who has temporary or periodic difficulty with one or more essential activities of daily living," and the spouse of a person previously described who is at least 55 years old and who has difficulty with life activities as well |
| 335 | Article 70B § 26         | For the purposes of the Senior Citizens Activities Centers Capital Improvement Grants Program, projects that receive grants shall be for "elderly citizens," defined as "a person 60 years old or older or a spouse of a person 60 years old or older."  |
| 336 | Article 83B § 2-611(i)   | The Maryland Home Financing Program permits the "[t]ransfer of the mortgaged property or an interest therein without monetary consideration to a spouse, child, or other immediate family member, or in connection with the death of a borrower, a divorce decree, or a legal separation agreement."   |
| 337 | Article 88A § 77         | On the death of any recipient of public assistance, the amount of assistance paid "shall be allowed as a claim against the estate . . . [but] no such claim shall be enforced against any real estate . . . while it is occupied by the recipient's surviving spouse or dependents."   |
| 338 | Article 88A § 85(b)      | Under the Department of Human Resources, Community Home Care Services, "elderly persons" is defined as those of at least 65 years of age, and their spouses regardless of their age  |
| 339 | Article 96 1/2 § 48      | Special credit and merits may be extended to the spouses of veterans for the purposes of appointment to positions in municipal or county government made by merit based system   |