

HOUSE SIMPLE RESOLUTION 1

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By: **Delegates Dwyer, Aumann, Bates, Boteler, Eckardt, Frank, Haddaway, Impallaria, Jennings, Kach, Krebs, McConkey, McDonough, Miller, Norman, Shewell, Smigiel, Sossi, and Stocksedale**

Introduced and read first time: March 26, 2010

Assigned to: Judiciary

HOUSE SIMPLE RESOLUTION

1 A House Resolution concerning

2 **Articles of Impeachment of Attorney General Douglas F. Gansler**

3 FOR the purpose of impeaching Attorney General Douglas F. Gansler and having the
4 Attorney General tried by the Senate of Maryland for incompetency, willful
5 neglect of duty, violating the oath of office, obstruction of justice, and usurping
6 the authority of the Maryland General Assembly.

7 WHEREAS, Section 2–201 of the Family Law Article of the Annotated Code of
8 Maryland states that “Only a marriage between a man and woman is valid in this
9 State”; and

10 WHEREAS, Section 2–201 of the Family Law Article was passed by the General
11 Assembly and has been the statutory law of this State for almost four decades; and

12 WHEREAS, On February 24, 2004, Attorney General J. Joseph Curran, Jr.,
13 informed the General Assembly that, in the opinion of the Office of the Attorney
14 General, “Family Law § 2–201 currently prohibits the recognition of a same sex
15 marriage validly contracted in another state”; and

16 WHEREAS, The General Assembly did not revise § 2–201 of the Family Law
17 Article after receiving the opinion of Attorney General Curran in 2004; and

18 WHEREAS, On January 2, 2007, Attorney General–Elect Douglas F. Gansler,
19 as required by Article I, § 9 of the Maryland Constitution, swore an oath to be “faithful
20 and bear true allegiance to the State of Maryland, and support the Constitution and
21 Laws thereof ... and ... to the best of [his] skill and judgment, diligently and faithfully,
22 without partiality or prejudice, execute the office of Attorney General according to the
23 Constitution and Laws of this State ...”; and



1 WHEREAS, Article I, § 11 of the Maryland Constitution clearly states that if an
2 Attorney General violates the oath of office, in addition to any other penalties, he is
3 “incapable of holding any office of profit or trust in this State”; and

4 WHEREAS, On September 18, 2007, the Maryland Court of Appeals upheld
5 Maryland’s marriage law as constitutional, strongly confirming that the Maryland
6 General Assembly is the only body that can decide if Maryland legally recognizes same
7 sex marriage in the State (Conaway v. Deane, No. 44, Sept. Term 2006); and

8 WHEREAS, Article 8 of the Maryland Declaration of Rights expressly calls on
9 the legislative, executive, and judicial branches of our State government to “be forever
10 separate and distinct from each other” and allows “no person exercising the functions
11 of one of said Departments [to] assume or discharge the duties of any other”; and

12 WHEREAS, On February 14, 2008, Douglas F. Gansler, not as a private citizen
13 but in his official capacity as the Maryland Attorney General, testified before the
14 Senate Judicial Proceedings Committee urging the passage of Senate Bill 290 of 2008,
15 legislation that would have legalized same sex marriages in Maryland; and

16 WHEREAS, Article V, § 3 of the Maryland Constitution, which details the
17 powers and duties of the Attorney General, does not authorize the Attorney General to
18 use the power of the office to testify in favor of or in opposition to proposed legislation
19 for personal, political reasons; and

20 WHEREAS, A Washington Post article describing the February 14, 2008,
21 hearing stated that the proceeding had been “headlined” by Attorney General Gansler,
22 noting that he “became Maryland’s first elected statewide official to endorse legislation
23 allowing same sex marriage”; and

24 WHEREAS, Senate Bill 290 of 2008 failed in committee despite the efforts of
25 Attorney General Gansler; and

26 WHEREAS, On May 30, 2009, another Washington Post article disclosed that
27 Attorney General Gansler was “planning to issue a formal opinion in coming weeks on
28 whether the state can recognize same sex marriages performed in other jurisdictions”;
29 and

30 WHEREAS, Despite the facts that (1) § 2–201 of the Family Law Article clearly
31 states that only a marriage between a man and woman is valid in this State, (2) a
32 previous opinion issued by the Office of the Attorney General assured the General
33 Assembly that the State law prohibits the recognition of a same sex marriage validly
34 contracted in another state, (3) Maryland’s highest court upheld the constitutionality
35 of this law, (4) the General Assembly had pointedly refused to change its position on
36 the issue of same sex marriage, despite the “official” urging of Attorney General
37 Gansler, who improperly attempted to use the power of his office for personal, political
38 reasons, and (5) Attorney General Gansler had sworn an oath to be faithful to the laws
39 and Constitution of our State and also to execute those laws according to the laws and

1 Constitution, the Attorney General violated the law and Constitution by issuing an
2 opinion (95 Op. Att’y 3) on February 23, 2010, that:

3 (1) stated that “a marriage that is valid in the place of celebration
4 remains valid in Maryland”;

5 (2) despite Maryland’s clear policy against the validity of same sex
6 marriages, advised State agencies that the Maryland Court of Appeals was “likely” to
7 respect the law of other states and recognize a same sex marriage contracted in
8 another jurisdiction; and

9 (3) claimed that the Maryland Court of Appeals would give “full faith
10 and credit” to same sex marriages from other jurisdictions because, in his view, the
11 Court “would not readily invoke” the public policy exception allowing a state not to
12 recognize foreign laws that are against their strong public policy; and

13 WHEREAS, State agencies that have relied on the previous advice from the
14 Office of the Attorney General in setting agency policies concerning recognition of
15 out-of-state same sex marriages are now being forced to rely on the contradictory
16 advice issued by Attorney General Gansler in the February 23, 2010, opinion or risk
17 litigation from dissatisfied individuals and organizations seeking to enforce the terms
18 of the opinion; and

19 WHEREAS, Since the issuance of the February 23, 2010, opinion, calls have
20 been made to impeach Attorney General Gansler and remove him from office in
21 accordance with Article V, § 1 of the Maryland Constitution, which provides that the
22 Attorney General is “subject to removal for incompetency, willful neglect of duty or
23 misdemeanor in office, on conviction in a Court of Law” and Article III, § 26, which
24 expressly grants the Maryland House of Delegates “the sole power of impeachment in
25 all cases ...”; and

26 WHEREAS, In response to the calls by certain members of the Maryland House
27 of Delegates for impeachment of the Attorney General for these actions, the Attorney
28 General sought to obstruct this process by directing members of his staff to draft and
29 release letters to members of the General Assembly claiming, without citation to any
30 legal or valid precedential authorities other than the authors of the letters themselves,
31 that, no matter what the circumstances and despite the clear authority cited above to
32 the contrary, the Attorney General of Maryland is never subject to impeachment; now,
33 therefore, be it

34 RESOLVED BY THE MARYLAND HOUSE OF DELEGATES, That, in
35 accordance with Article V, § 1 and Article III, § 26 of the Maryland Constitution,
36 Maryland Attorney General Douglas F. Gansler is impeached for incompetency, willful
37 neglect of duty, violating his oath of office, obstruction of justice, and usurping the
38 authority of the Maryland General Assembly, and that the following articles of
39 impeachment are to be exhibited to the Senate of Maryland:

1

ARTICLE I

2 Attorney General Douglas F. Gansler has demonstrated incompetency and willful
3 neglect of duty by testifying in his official capacity to overturn Maryland's current
4 marriage law, to wit:

5 Maryland Attorney General Douglas F. Gansler violated his constitutional duty to
6 execute the Office of the Attorney General, to be faithful and bear true allegiance to
7 the State of Maryland, to support the Constitution and laws of Maryland, to the best of
8 his skill and judgment, diligently and faithfully, without partiality or prejudice.

9 On February 14, 2008, Douglas F. Gansler, in his official capacity as Maryland
10 Attorney General, testified before the Senate Judicial Proceedings Committee on
11 behalf of Senate Bill 290 of 2008 to legalize same sex marriages in Maryland. By this
12 action, the Attorney General publicly exposed his partial and prejudiced position on
13 the subject of same sex marriage. Subsequently, Douglas F. Gansler, using the powers
14 of his high office, engaged personally and through his subordinates and agents, in a
15 course of conduct designed to undermine Maryland's current marriage law that clearly
16 states "only a marriage between a man and a woman is valid in this State".

17 The means used to implement this course of conduct or plan included one or more of
18 the following:

19 (1) Testifying in his official capacity as Maryland's Attorney General in his
20 person before the members of the Senate Judicial Proceedings Committee;

21 (2) Acting in his official capacity to directly influence the Senate Judicial
22 Proceedings Committee regarding the outcome of a bill intended to overturn decades of
23 common and codified law defining marriage as between a man and a woman in this
24 State;

25 (3) Misusing the office and staff and subordinates of the Office of the
26 Attorney General to further his personal agenda; and

27 (4) Making or causing to be made public statements for the purpose of
28 deceiving the people of Maryland into believing that the Office of the Attorney General
29 has the constitutional authority to act with the intent to overturn or subvert
30 Maryland's marriage law rather than uphold and defend it as his oath requires.

31 In all of this, Douglas F. Gansler has acted with a willful neglect of duty, contrary to
32 his trust as Maryland Attorney General and subversive of constitutional government,
33 to the great prejudice of the cause of law and justice and to the manifest injury of the
34 citizens of the State of Maryland. Wherefore, Douglas F. Gansler, by such conduct,
35 warrants impeachment and trial, and removal from office.

36

ARTICLE II

1 Attorney General Douglas F. Gansler displayed incompetency and willful neglect of
2 duty by attempting to usurp the authority of the Maryland General Assembly.

3 Using the powers of the Office of the Attorney General, Douglas F. Gansler, in
4 violation of his constitutional oath, has failed to be faithful and bear true allegiance to
5 the State of Maryland, and support the Constitution and laws of this State, to the best
6 of his skill and judgment, diligently and faithfully, without partiality or prejudice, and
7 has acted with a willful neglect of his constitutional duty to take care that the laws of
8 Maryland be faithfully supported. He has engaged in conduct violating the historical
9 precedent that an existing opinion on a matter of the same subject remains in effect
10 unless action by the legislature or the court is taken.

11 The February 24, 2010, opinion by Attorney General Gansler, claiming that Maryland
12 should recognize out-of-state same sex marriages, was badly reasoned, directly in
13 contradiction to State law and precedent, and an unexplained and uncalled for
14 reversal of an Attorney General's existing opinion. The issuance of this opinion was a
15 clear attempt to usurp the legislative authority of the General Assembly in direct
16 violation of the express separation of powers doctrine found in Article 8 of the
17 Maryland Declaration of Rights. Attorney General Gansler sought to effectively
18 invalidate the law on marriage that was enacted in 1973 by the Maryland General
19 Assembly. Not unimportantly, this opinion will also have a direct fiscal impact on
20 State agencies in the future since the Attorney General and the Governor have
21 instructed State agencies to immediately recognize out-of-state same sex marriages
22 for the purpose of marital benefits.

23 This conduct has included one or more of the following:

24 (1) Usurping the legislative authority of the Maryland General Assembly to
25 effectively redefine Maryland's current marriage law that states: "Only a marriage
26 between a man and a woman is valid in this State";

27 (2) Effectively overturning an Attorney General's existing opinion, that was
28 in full effect, when there was no change to Maryland's existing marriage law by the
29 legislature or the courts;

30 (3) Effectively overturning § 2-201 of the Family Law Article that currently
31 prohibits recognition of a same sex marriage when there was no change to existing law
32 by an action of the court;

33 (4) Misusing the Office of the Attorney General to further a personal agenda
34 evidenced by his testimony of February 14, 2008;

35 (5) Misusing the staff and subordinates of the Office of the Attorney General
36 to further a personal agenda as evidenced by the letter of March 1, 2010, addressed to
37 the Speaker of the Maryland House of Delegates;

1 (6) Making public statements for the purpose of directing State agencies to
2 immediately recognize out-of-state same sex marriages for the purpose of benefits in
3 violation of current law;

4 (7) Making public statements for the purpose of deceiving the people of
5 Maryland into believing that his action is legitimate and that he has the constitutional
6 authority to effectively overturn existing law;

7 (8) Effectively overturning current law by ignoring the constitutional
8 limitations of the Office of the Attorney General as described in Article V, § 3 of the
9 Maryland Constitution;

10 (9) Misusing the Office of the Attorney General to further a personal agenda;
11 and

12 (10) Making public statements for the purpose of deceiving the people of
13 Maryland into believing that the Office of the Attorney General has the constitutional
14 authority to change the law of the land.

15 In all of this, Douglas F. Gansler has acted with a willful neglect of duty, contrary to
16 his trust as Maryland Attorney General and subversive of constitutional government,
17 to the great prejudice of the cause of law and justice and to the manifest injury of the
18 citizens of the State of Maryland in that he has engaged in conduct violating the
19 historical precedent that an existing opinion on a matter of the same subject remains
20 in effect unless action by the legislature or the court is taken. Wherefore, Douglas F.
21 Gansler, by such conduct, warrants impeachment and trial, and removal from office.

22 ARTICLE III

23 Attorney General Douglas F. Gansler demonstrated incompetency and willful neglect
24 of duty by obstructing justice under Article 13 of the Maryland Declaration of Rights.

25 Using the powers of the Office of the Attorney General, Douglas F. Gansler, in
26 violation of his constitutional oath, has shown a willful neglect of duty in that he has
27 personally sought to obstruct justice by declaring himself unimpeachable by the
28 Maryland House of Delegates, despite the fact that the authority to impeach is given
29 "solely" to the members of the House under Article III, § 26 of the Maryland
30 Constitution.

31 On March 1, 2010, at the direction of his employer, the Attorney General, Assistant
32 Attorney General Dan Friedman, Counsel to the General Assembly, released a letter
33 claiming that the Attorney General "may only be removed by a court proceeding for
34 the specified grounds, not by impeachment by the legislature". His letter leaves
35 unexplained, among other points, the nature of a criminal proceeding in a courtroom
36 on the charges of "incompetence" or "willful neglect of duty". This letter clearly intends
37 to prevent a redress of grievances as authorized under Article 13 of the Maryland
38 Declaration of Rights. Of greatest concern to the citizens of the State of Maryland, the

1 letter also seeks to preclude, under any circumstances, the bringing of a charge of
2 impeachment against the Attorney General by the Maryland House of Delegates, who
3 have the sole constitutional power to bring an impeachment in this State.

4 This action has included one or more of the following:

5 (1) Obstructing justice by releasing a letter under his authority whereby he
6 essentially declares himself unimpeachable and unaccountable to the citizens of the
7 State of Maryland and prohibits a redress of grievances authorized under Article 13 of
8 the Maryland Declaration of Rights;

9 (2) The release of the March 1, 2010, letter from the Office of the Attorney
10 General directed to the Speaker of the Maryland House of Delegates intent on
11 preventing a charge of impeachment being brought against the Attorney General
12 himself;

13 (3) Releasing the March 1, 2010, letter that is being used as advice to the
14 Speaker of the Maryland House of Delegates, in which the authority for the opinion
15 expressed in the letter is a book written by the very author of the letter;

16 (4) That there was no written request regarding the subject of impeachment
17 or removal and that it has always been the policy of the Attorney General to only
18 provide answers to questions provided in writing;

19 (5) Abusing the Office of the Attorney General by releasing the letter of
20 March 1, 2010, advising the Speaker of the Maryland House of Delegates that the
21 Attorney General could not be removed by impeachment; and

22 (6) Making public statements for the purpose of deceiving the people of
23 Maryland into believing that there is no constitutional authority for the Attorney
24 General to be impeached.

25 In all of this, Douglas F. Gansler has acted with a willful neglect of duty, contrary to
26 his trust as Maryland Attorney General and subversive of constitutional government,
27 to the great prejudice of the cause of law and justice and to the manifest injury of the
28 citizens of the State of Maryland, in that he has engaged in conduct violating the clear
29 language of Article III, § 26 of the Maryland Constitution. Wherefore, Douglas F.
30 Gansler, by such conduct, warrants impeachment and trial, and removal from office;
31 and be it further

32 RESOLVED, That the majority of all the elected members of the Maryland
33 House of Delegates concur in the impeachment of Attorney General Douglas F.
34 Gansler; and be it further

35 RESOLVED, That the Senate of Maryland shall conduct a trial of Attorney
36 General Douglas F. Gansler for impeachment in accordance with Article V, § 1 of the
37 Maryland Constitution; and be it further

HOUSE SIMPLE RESOLUTION 1

1 RESOLVED, That a copy of this Resolution be forwarded by the Department of
2 Legislative Services to the Honorable Martin O'Malley, Governor of Maryland; the
3 Honorable Thomas V. Mike Miller, Jr., President of the Senate of Maryland; and the
4 Honorable Michael E. Busch, Speaker of the House of Delegates.