Secular Coalition for Maryland Secular Coalition for America http://secular.org

January 21, 2020

The Honorable Luke Clippinger

Judiciary Committee

Room 101, House Office Building

Annapolis, MD 21401-1991

Re: SUPPORT FOR HB 0081, Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice - Repeal

Chairman and Members of the Committee:

Criminal Law §3-321 & 322 defines sodomy as a felony and also broadly outlaws fellatio, cunnilingus, and any “unnatural or perverted sexual practice”. The U.S. Constitution’s Equal Protection clause forbids subtle discrimination just as much as it forbids obvious discrimination. This law is not subtle. The ACLU won its Maryland challenge against enforcement of this law on equal protection grounds in the lowest court in 1999. The state, instead of appealing, consented to the judgment and agreed that the law was invalid. Yet as of now, over twenty years later, the Maryland General Assembly has failed to repeal these invalid provisions from state law.

Illinois became the first state in the U.S. to get rid of its sodomy law in 1961. Connecticut followed Illinois' lead in 1971 and 20 more states (CT, CO, CA, DE, HI, IN, IO, ME, NE, NJ, NM, ND, OH, OR, RI, SD, VT, WA, WV, WY) repealed their sodomy laws in the 1970s. High Courts in New York and Pennsylvania struck down their state sodomy laws in the 1980s, in both cases relying at least in part on the federal constitution. Legislatures in Alaska (80) and Wisconsin (83) continued the trend of repeals. State courts overturned sodomy laws in Kentucky (Commonwealth v. Wasson 1992), Tennessee (Campbell v. Sundquist 1996), Montana

(Gryczan v. Montana, 1997) Georgia (Powell v. State, 1998) and Minnesota (Lavander Bar v. Ventura, 2001). Arizona repealed in 2001.

Originally, sodomy laws were part of a larger body of law - derived from church law - designed to prevent nonprocreative sexual activity anywhere, and any sexual activity outside of marriage. Sodomy laws began to be used in a new way, distinctly against gay people, in the late 1960's. As a gay rights movement began to make headway, and the social condemnation of being gay began to weaken, social conservatives, with the encouragement of some clergy, began invoking sodomy laws as a justification for discrimination. In Maryland (Court of Appeals, Schochet v. State, 1990) and Oklahoma, courts decided that sodomy laws could not be applied to private heterosexual conduct, leaving what amounted to same-sex only laws in effect.

The U.S. Supreme Court said in 1996, in Romer v. Evans, that states could not discriminate against gay people on the basis of "disapproval," undermining the leveraging of anti-sodomy laws as justification for discrimination against gay people. The Supreme Court ruled in Lawrence et al. v. Texas (2003) “The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.” So why does Maryland state law, almost 20 years later, still declare private sexual conduct to be a felony?