

**STATEMENT OF NATHAN LEWIN IN SUPPORT OF
MARYLAND BILL REGARDING REMOVAL OF BARRIERS TO REMARRIAGE
IN DIVORCE PROCEEDINGS
February 20, 2020**

I appear to support House Bill 833.

The bill is familiar to me because I personally drafted and actively supported the 1983 enactment of Section 253 of New York’s Domestic Relations Law. That law has been effective over the past 37 years, and it has successfully prevented recalcitrant spouses who seek a divorce in a New York court from maintaining barriers to the remarriage of the spouse that they are divorcing. It has, during all that time, successfully withstood challenges to its constitutionality.

This legislation assists Jewish women who were married in a Jewish religious ceremony from being victimized by husbands in a divorce action. Absent such a law a husband may refuse or delay the process of Jewish religious divorce – *i.e.*, a “get” – and make extortionate demands on his wife in the divorce action. The “get” procedure does not require the husband to profess any religious belief or to perform any religious ritual. He need only authorize the writing, by an expert scribe, of a Hebrew document and authorize its transmission to his spouse. Experience has shown that, in some divorce proceedings between couples who have been married according to Jewish religious law, withholding a “get” may be employed by a husband to gain improper advantage in the divorce.

The law of Maryland and of many other jurisdictions in the United States (including New York) recognizes a couple as married following a religious ceremony over which an authorized clergy officiates. Such a ceremony creates a marital relationship recognized by both secular and religious law. Annulment and divorce differ from marriage in that no jurisdiction permits the clergy, on its own, to dissolve the legal marriage status. A court order is required. Both annulment and divorce are designed, however, to sever the parties’ marital relationship and to leave each free to remarry. The purpose of a divorce decree would be frustrated if one party to the divorce could prevent the other party from ever remarrying.

The bill prevents such an inequitable result. It requires the parties to a religiously solemnized marriage to swear under penalty of perjury that each has taken all steps in his or her power to remove barriers to the other party’s remarriage. The prescribed affidavit (or sworn statement in a complaint for divorce) covers *any* barrier to remarriage, including religious and conscientious barriers, which the affiant can remove by his or her own conduct. The court where the divorce action is pending has no authority to investigate the truth or falsity of the sworn declaration, but a prosecutor may charge a lying affiant with criminal perjury.

The bill has been structured to raise no constitutional church-state issue. It does not “entangle” the court in any religious issue. Nor does it compel the performance of any religious ritual. It is limited to situations in which both parties to a marriage have voluntarily chosen, when they entered into this legal status, to solemnize their marriage with a religious ceremony. It tells the husband and wife that, having made this choice, neither is free to dissolve the legal relationship in a court of law while he or she is failing to perform an act that frees the other party to remarry under the rules both accepted when they married.

The law gives a couple the choice to create their legal marital status by invoking the authority given to clergy to create that status. It is equitable for the law to tell them that they can dissolve that status with a court-ordered divorce *only* if neither retains a power that would, under the ground rules of their marriage, prevent remarriage by the other. This is basic equity and even-handedness. A court should not permit a party to sever the legal ties of marriage if it knows that one party to that marriage continues, by his or her voluntary action or inaction, to prevent the other party from remarrying. A judge seeking equity should inquire, before granting a judgment of divorce, whether both parties will, after the divorce judgment, be free to remarry. So long as the court does not enter into a religious controversy or direct performance of religious ritual, it applies only neutral secular legal principles if it denies a divorce because one party to the marriage is maintaining a barrier to the other’s remarriage.