Written Testimony of Steven M. Klepper
In Favor of HB0885 and SB0666, With Amendments

I am an appellate attorney appearing regularly before the Court of Appeals, the Court of Special Appeals, federal appellate courts, and other states' appellate courts. Although I do not provide this testimony on behalf of any organization, I am co-editor of the treatise, *Appellate Practice for the Maryland Lawyer: State and Federal* (5th edition 2018), co-chair of the Appellate Practice Committee of the Maryland State Bar Association's Section of Litigation, and the founder and editor-in-chief of the Maryland Appellate Blog. In addition to my law degree, I hold a master's degree in legal history from the University of Virginia.

I agree as a general matter with changing the names of Maryland's appellate courts. In nearly all states, the highest court is the "Supreme Court" and the intermediate appellate court is the "Court of Appeals." Those names are descriptive and intuitive.

Our courts' names are confusing to Marylanders and non-Marylanders alike. There's nothing intuitive about a system where we call our highest court the Court of Appeals and our intermediate court the Court of Special Appeals. I often have to remind my clients—lawyers and laypeople alike—which court is which.

Although proponents of the name-change have focused on confusion among members of the general public as to the relative roles of the two appellate courts, that confusion carries over to courts and advocates.

The development of the common law is a national conversation among appellate courts, and the confusing names for our appellate courts diminishes Maryland's voice in that conversation. When an appellate judge outside Maryland tasks a law clerk to survey decisions of state appellate courts on an issue of the common law, it is easy for a law clerk to mistake Court of Appeals decisions for intermediate appellate decisions, which carry less weight in the national conversation. For that reason, when I cite Court of Appeals decisions in federal courts or in other states' courts, I often refer to the "Maryland high court." Similarly, if non-Maryland attorneys are looking for persuasive authority to bring to a court's attention, they are less likely to cite a Court of Appeals decision if they assume it is an intermediate appellate decision.

But I have concerns about the proposed names, which, although designed to reduce confusion, could create confusion in other ways. My proposal would be to rename them as follows:

1. The Supreme Court of Appeals of Maryland
2. The Court of General Appeals of Maryland

First, I suggest the "Supreme Court of Appeals of Maryland" to mitigate one potential downside of the name change. As soon as there is a "Supreme Court of Maryland," it will become even more natural for judges, their clerks, and advocates to assume that pre-name-change Court of Appeals decisions are intermediate appellate decisions, and to give them less weight in the national conversation.

Although my proposed name is a mouthful, our neighbors in West Virginia colloquially refer to the Supreme Court of Appeals of West Virginia as the "West Virginia Supreme Court" in

conversation and court filings, without any confusion. And our neighbors in Virginia originally changed the name of their high court from the Court of Appeals of Virginia to the Supreme Court of Appeals of Virginia in 1830, before changing it to the Supreme Court of Virginia in 1971.

Perhaps future generations of Marylanders would eventually drop the "of Appeals," as happened in Virginia, but the "Supreme Court of Appeals of Maryland" would give greater continuity and clarity in the short- and medium-term.

Second, I think it far more important to avoid changing the name of the Court of Special Appeals to the "Appellate Court of Maryland" or, as proposed in prior sessions, the "Maryland Appellate Court." Either of these names would be too easily confused with the Court of Appeals of Maryland. For example, lawyers and judges outside Massachusetts often refer to the Massachusetts Appeals Court as the "Massachusetts Court of Appeals," even though no court by that name exists. If there is no longer a court called the Court of Appeals going forward, it would be natural for a reader to assume that a pre-name-change decision is from the Appellate Court of Maryland.

Renaming the Court of Special Appeals to the "Appellate Court of Maryland" or "Maryland Appellate Court" would thus devalue pre-name-change Court of Appeals precedents—issued during the tenures of the great Chief Judges Murphy, Bell and Barbera—in the nationwide development of the common law.

Instead, I suggest the "Court of General Appeals of Maryland." The acronym "COGA" would be a smooth transition from "COSA." It would be a signal to judges, law clerks, and advocates that our appellate courts' names are different when they are surveying nationwide decisions for persuasive value. Most importantly, "COGA" would accurately describe our intermediate appellate court's jurisdiction to the public.

Thank you for the opportunity to present this written testimony.

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