STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. KEN-14-456

ELISABETH M. KINNEY,
Plaintiff/Appellee

v.

TANYA J. BUSCH,
Defendant/Appellant

ON REPORT OF A QUESTION TO THE LAW COURT
FROM THE MAINE DISTRICT COURT
PURSUANT TO M.R.App.P. 24(a) and (c)

REPLY BRIEF OF THE DEFENDANT/APPELLANT

Scott J. Lynch, Esq.
Lynch & Van Dyke, P.A.
261 Ash Street
P.O. Box 116
Lewiston, ME 04243-0116
Attorney for
Defendant/Appellant
(207) 786-6641

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II. STATEMENT OF PROCEDURAL HISTORY AND FACTS

Appellant Tanya J. Busch (hereinafter "Tanya") repeats and incorporates by reference her Statement of Procedural History and Facts as set forth in her Brief (blue) of the Defendant/Appellant filed on February 11, 2015.

III. ISSUES PRESENTED FOR REVIEW

A. WHETHER THE RESPONDENT AND THE *AMICI* ARE PRETENDING THAT SECTION 650-B DOES NOT HAVE AN EFFECTIVE DATE?

B. WHETHER THE RESPONDENT AND THE *AMICI* ARE URGING AN ILLEGAL RETROACTIVE APPLICATION OF SECTION 650-B?

C. WHETHER THE RESPONDENT AND THE *AMICI* ARE COMMITTING THE SLIPPERY SLOPE LOGICAL FALLACY?

IV. SUMMARY OF ARGUMENT

Both Elisabeth and the *Amici* are pretending that a stated effective date to legislation does not matter. Section 650-B has an effective date of December 29, 2012, and this section has not been changed or amended by the Legislature since the successful referendum in 2012. Additionally, both Elisabeth and the *Amici* want to project the impact of section 650-B backwards in time to transactions already completed long before the effective date of section 650-B. Answering the reported question in the affirmative violates clear anti-retroactivity precedent of this Court. Finally, the *Amici* have resorted to the slippery slope fallacy that many terrible results will necessarily follow if the Court does not retroactively apply section 650-B to

this marriage. All of the examples cited by the *Amici* are illusory or untenable.

V. ARGUMENT

A. THE RESPONDENT AND THE *AMICI* ARE PRETENDING THAT SECTION 650-B DOES NOT HAVE AN EFFECTIVE DATE.

I.B. 1, 2011 c. 1 entitled "An Act to Allow Marriage Licenses for Same-Sex Couples and to Protect Religious Freedom" was approved by the voters on November 6, 2012, and was effective on December 29, 2012. This referendum was codified as 19-A M.R.S.A. sec. 650-B, and, this law does not provide for an earlier recognition date, an earlier effective date, nor an antecedent operative date. The Legislature also has not made any subsequent amendment to section 650-B that adjusts the timing of the original effective date.

Thus, Maine recognizes a same-sex marriage from another jurisdiction but only as of December 29, 2012. The Respondent and the *Amici* repeatedly argue in their respective briefs that the referendum is about marriage equality; however, both have ignored that the referendum has a specific and constitutionally based effective date. *See* Maine Constitution, Art. IV, Part 3, Section 17. It was certainly within the prerogative of the *Amici* to have sought a retroactivity provision in the referendum as part of the democratic process. They did not do so. The People of the State of Maine did not vote for retroactive application of

section 650-B. It is respectfully submitted that this Court should not do so now for:

> It will frequently be true, as petitioner and *amici* forcefully argue here, that retroactive application of a new statute would vindicate its purpose more fully. That consideration however, is not sufficient to rebut the presumption against retroactivity. *Landgraf v. USI Film Products,* 511 U.S. 244, 286, 114 S.Ct. 1483, 1498 (1994) (refusing to retroactively apply new damages provisions to Civil Rights Act of 1964 to conduct that had already occurred).

Accordingly, the reported question should be answered in the negative.

B. THE RESPONDENT AND THE *AMICI* ARE URGING AN ILLEGAL RETROACTIVE APPLICATION OF SECTION 650-B.

The U.S. Supreme Court dealt fully with the meaning of "retroactive effect" in *Landgraf.* 511 U.S. at 268-83, 114 S.Ct. at 1498. While the Court eschewed a rigidly mechanical standard, it generally defined "retroactive effect" of a statute as one that "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. *Id.* at 280, 114 S.Ct. at 1506. One appellate court has further described the test as follows:

> "Under the *Landgraf* test, if the legislature has clearly indicated what the temporal reach of an amended statute should be, then absent a constitutional prohibition, that expression of legislative intent must be given effect. However, when the legislature has not indicated what the reach of a statute should be, then the court must determine whether applying the statute would have retroactive impact, i.e., whether it would impair rights a party possessed when he

> acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If there would be no retroactive impact, as that term is defined by the court, then the amended law may be applied. If, however, applying the amended version of the law would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied." *Commonwealth Edison Co. v. Will County Collector*, 196 Ill.2d 27, 38 (2001)

Here, the Legislature has not stated the temporal reach of the sec. 650-B. Nonetheless, Elisabeth and the *Amici* would automatically give the statute retroactive impact. Their collective logic creates a marital interest in 40 Greenville Street that simply did not exist before -- inchoate or otherwise. On September 1, 2012, Elisabeth conveyed all her right, title and interest to this realty to Tanya. Elisabeth and the *Amici* want to impose a new obligation on Tanya (a marital property liability) with respect to this real estate transaction, which was completed before the effective date of sec. 650-B.

The *Amici* have referred to Tanya's position as producing absurd results. To the contrary, it not absurd to ask this Court to correctly apply the *Landgraf* test as it has been given to us by the United States Supreme Court.

Accordingly, the reported question should be answered in the negative.

C. THE RESPONDENT AND THE *AMICI* ARE COMMITTING THE SLIPPERY SLOPE LOGICAL FALLACY.

Elisabeth and the *Amici* assert that answering the reported question in the negative would cause the derailment of Maine family law, probate law, public benefit law, income tax law, estate tax precedent and the end of the real estate transfer tax system as we know it. Elisabeth and the *Amici* have resorted to hyperbole and a scattergun approach in addressing the narrow question reported here. Moreover, this divorce case has nothing to do with the rearing of children, public benefit law, the Maine State Retirement System, a surviving spouse's elective share, the unified credit, nor federal nor state income taxation. It bears repeating what the narrow reported question is here:

> "May property acquired between October 14, 2008 and December 29, 2012, by a same-ex couple married in the State of Massachusetts on October 14, 2008, be treated as marital property for purposes of equitable division of property in a divorce action filed on January 18, 2013?"

Both Tanya and Elisabeth agreed that the aforesaid question was the only question to be submitted on report from the District Court. The *Amici* have taken great liberties in expanding on this narrow issue and are essentially asking the Court to render an advisory opinion on multiple issues that are not on report and are simply not present in this divorce. Nonetheless, Tanya responds to each of the arguments raised by Elisabeth and the *Amici* by combining topics with a common rejoinder.

i. Parental Rights and Responsibilities and Child Support:

The *Amici* propose that all children born following the marriage of a same-sex couple prior to December 29, 2012, must now be presumed to be the children of both parties. (*Amici* Brief 13-14) Thus, even an unwilling same-sex spouse will have parental responsibilities and obligations retroactively imposed upon them that necessarily follow this presumption. *See Stitham v. Henderson*, 2001 ME 52, par. 14, 768 A.2d 598 (common law presumption); M.R.Evid 302 (evidentiary presumption).

A hypothetical applied to the couple now before this Court demonstrates the injustice of such retroactive parenthood. Tanya and Elisabeth were married in Massachusetts on October 14, 2008. Suppose that, in 2009, while residing in Maine, Elisabeth decided to have a child by means of *in vitro* fertilization and implantation of a zygote, carried the embryo and fetus to term, and gave birth to a healthy child. Suppose that Tanya did not want a child, did not consent to be a parent, and did not participate in the prenatal or postnatal care of the child. However, under the *Amici's* rationale, Tanya would now have the presumptive responsibilities and financial liabilities of parenthood imposed on her years after the birth of a child she did not create by biology, by adoption, by judicial estoppel or by acts and deeds sufficient to be a *de facto* parent.

The *Amici's* position forgets that "parenthood is forever" and should never be taken lightly. *Pitts v. Moore*, 2014 ME 59, par. 39, 90 A.3d 1169,

1183. The *Amici's* position also assumes that both members of the same-sex couple willingly participated in the decision to be parents. However, that assumption is just not always the case:

> The "best interest of the child" is not a free-floating concept that empowers ... judges to impose legal obligations on people who have no legal obligations to begin with.... It may be the case that a child is better off with two persons responsible for providing support than with only one such person, and that it will always be in the child's "best interest" to impose a support order on some second person. But that second person may not be imposed on, by way of equity or the "best interests" standard, until and unless the Legislature establishes that he or she is among a class of persons who have a legal obligation to the child. The "best interest" standard in and of itself is not a mechanism by which the courts may reach beyond the law to obtain an equitable result. *T.F. v. B.L.*, 442 Mass. 522, 813 N.E.2d 1244, 1253 (2004)(declining to impose a child support obligation on a same-sex partner who was "legally a stranger to the child.")

The position of the *Amici* is revealed to be draconian in this hypothetical, for it would require Tanya to presumptively pay child support. Such an obligation would remain in force until the child turned eighteen or graduates from secondary school, or married or joined the armed services. 19-A M.R.S.A. 1653(2).

Also, by following the logic of the *Amici*, the judicial requirement that the non-biological putative parent has undertaken a "permanent, unequivocal and responsible parenting role in the child's life" would be completely evaded. *Moore*, at par. 27, 90 A.3d at 1179. The *Amici* have also sidestepped the judicial requirement that there be a showing of "exceptional circumstances" sufficient to allow the State to be involved in

the fundamental parenthood question in the first instance. *Id.* Finally, the *Amici* completely ignore the "clear and convincing" standard as the quantum of proof necessary before a putative "*de facto*" parent can be declared the legal parent of a child. *Id.*

Finally, it is worth noting that the putative parent in *Moore* at least wanted to be declared the *de facto* parent of the child. *Moore*, at par. 3, 90 A.3d at 1172. Parenthood was not forced upon him by the retroactive application of a statute.

Parenthood and the responsibilities and financial liabilities that go with it should not be casually and retroactively applied to all same-sex couples married out-of-state prior to December 29, 2012, who now live in Maine. Parenthood exists as the result of biology, adoption, legal estoppel or actions and deeds sufficient for a person to be the *de facto* parent of that child. The *Amici* create a new category of parenthood, a presumptive parenthood, which is unprecedented in Maine family law.

ii. Probate Related Statutes cited by the Amici:

The *Amici* have cherry-picked selected statutes from the Maine Probate Code in support of their argument that sec. 650-B should be given retroactive effect. Those statutes are discussed below.

However, before confronting each of the *Amici's* statutory arguments, including those relating to the Maine Probate Code, it is important to address what Elisabeth and the *Amici* have ignored--Elisabeth and Tanya were registered domestic partners in the State of

Maine since May 2007. (App. 71) As registered domestic partners, Elisabeth and Tanya shared the same rights under the Probate Code as heterosexual married couples to:

a. be an heir of the deceased domestic partner, 18-A M.R.S.A. sec. 1-201(17);

b. be considered as the surviving spouse for purposes of intestate succession, 18-A M.R.S.A. sec. 2-102;

c. be considered as a surviving spouse for purposes of priority of appointment as personal representative, 18-A M.R.S.A. sec. 3-203(a)(4-A);

d. be considered as the surviving spouse for purposes of appointment of guardian of the incapacitated domestic partner, 18-A M.R.S.A. sec. 5-311(b)(2-A);

e. be considered as the surviving spouse for purposes of appointment of a conservator, 18-A M.R.S.A. sec. 5-410(a)(3-A); and

f. be considered as the surviving spouse for purposes of disposing of the other's remains, 22 M.R.S.A. sec. 2843-A(1)(D)(1-A).

With respect to the Maine Probate Code, it is strained reasoning for the *Amici* to argue that this same-sex couple was treated disparately prior to December 29, 2012.

iii. The Spousal Elective Share and the Omitted Spouse:

In Maine, a surviving spouse has a right of election to take an elective share of 1/3 of the deceased spouse's augmented estate. 18-A

M.R.S.A. sec. 2-201. There is a single scenario declaimed by the *Amici* where the value of the augmented estate is purportedly effected by answering the reported question in the negative: when the decedent transferred property for less than full consideration to anyone (other than the surviving spouse and a *bona fide* purchaser) at any time during the marriage. 18-A M.R.S.A. sec. 2-202. The *Amici* argue that if such property was transferred after a same-sex couple was married out-of-state but before December 29, 2012, Tanya's interpretation would under-value the augmented estate and, thus, unfairly reduce the value of the augmented estate.

The *Amici's* argument is moot, or nearly so, because of the deadlines contained within the Maine Probate Code. 18-A M.R.S.A. sec. 2-205(a) provides that the surviving spouse must petition to take the elective share in the augmented estate by filing an election within 9 months of the date of death or within 6 months of the probate of decedent's will, whichever last expires. The 9-month limitation period has expired many times over for the surviving same-sex spouse married out-of-state (prior to December 29, 2012) and who has already probated the deceased spouse's will.

For same-sex spouses who have not yet probated their deceased spouse will, there is a strict three-year limitations period to probate the will. 18-A M.R.S.A. sec. 3-108(a). If the same-sex spouse died on December 29, 2012, then the deadline for probating the will is December 29, 2015. If the will is probated on the absolute last day possible, then the

deadline for filing the elective share is June 29, 2016 ("within 6 months of the probate of the decedent's will"). It is obvious that there are few, if any, situations where the *Amici's* elective share argument exists in the real world. With each passing day, the *Amici's* elective share argument gets closer and closer to absolute mootness.

Next, the *Amici* argue that responding in the negative to the reported question will undermine the purpose of the omitted spouse share contained in 18-A M.R.S.A. sec. 2-301. Again, the *Amici* have ignored the deadline contained in the Maine Probate Code. The date of death of the same-sex spouse is critical but not for the reason asserted by the *Amici*. 18-A M.R.S.A. sec. 3-108(a) sets the deadline for probate of the decedent's will at three years. If the date of death were December 29, 2012, then the deadline for petitioning the probate court to be declared an omitted spouse is December 29, 2015. Even if Section 650-B is given retroactive effect, the deadline for filing an omitted spouse petition has already run for nearly all same-sex couples.

iv. Estate Tax and the Marital Deduction:

The *Amici* argue that Tanya's approach would make "hash" of the Maine estate tax system. (*Amici* Brief 22-23) This hyperbole ignores the deadlines contained in Maine statutes such as the Maine Estate Tax Code. All estate tax returns must be filed within 9 months of the decedent's death. 36 M.R.S.A. sec. 4107 and 36 M.R.S.A. sec. 4068. The State Tax

Assessor may grant a reasonable extension not to exceed 8 months to file the return. 36 M.R.S.A. sec. 4110 and 36 M.R.S.A. sec. 4070.

The *Amici* present the Court with a hypothetical couple married in Massachusetts in 2008, who then domiciled in Maine, who owned real property in Maine, and one spouse died before December 29, 2012. The *Amici* assert in this hypothetical that the Maine Revenue Service should now recognize a valid marital deduction and the taxable estate would be zero.

The *Amici's* hypothetical could never be true at this point in time. The marital deduction would never be available to this hypothetical surviving spouse whose same-sex spouse died before December 29, 2012, because the 9-month filing period to file the return and claim the marital deduction would have already passed in all instances. *See* 36 M.R.S.A. sec. 4068. Put another way, no matter how the Court answers the reported question, it will have no real effect on the marital deduction for estate tax purposes for same-sex couples that married out-of-state before December 29, 2012.

v. Pensions and Alimony:

In Maine, portions of a pension that accrue during the marriage are considered marital property and the portion that accrued prior to the marriage is considered non-marital property. *Stotler v. Wood*, 687 A.2d 636, 638 (Me. 1996).

Strangely, Elisabeth and the *Amici* assert that the fraction applied to a defined benefit plan has as its numerator the "number of years the party was a participant in the plan" and the denominator as "the number of years of marriage." (Amici Brief p. 17) This is not the correct marital-nonmarital fraction frequently referred to as the "coverture fraction." The correct fraction never has the "number of years married" as the denominator. Instead:

> "The numerator (top) of the coverture fraction is the number of years service that overlaps the marriage, while the denominator (bottom) of the fraction is the total number of years service by the participant under the plan." Carrad, C., The Complete QDRO Handbook, 3rd ed., sec. 5.3, p. 53-54.

Assuming Elisabeth and the *Amici* intended to argue the correct coverture fraction, the number of years of service that overlaps the marriage is still important. On the one hand, a retroactive increase in the numerator of the coverture fraction results in a windfall award to one spouse who had no reason to believe that the pension benefits that accrued prior to December 29, 2012, would ever be considered marital property. On the other hand, such a retroactive change in the numerator takes away property from the earner spouse who had every reason to believe the years of service at his/her employer prior to December 29, 2012 would be considered non-marital service. Simply put, people cannot plan their lives on what the law might be some day. In other words, retroactive application of section 650-B wrongly applies "the new law of

today to the conduct of yesterday." *Pitts v. Perluss*, 58 Cal.2d 824, 826 377 P.2d 83

The same analysis applies to the calculation of spousal support. 19-A M.R.S.A. sec. 951-A(2)(A)(1) establishes "a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of action for the divorce." The statute also applies "a rebuttable presumption that general support may not be awarded for a term exceeding ½ the length of the marriage if the parties were married at least 10 years but not more than 20 years as of the filing of the action for divorce." 19-A M.R.S.A. sec. 951-A(2)(A)(1).

The logic of the *Amici* results in a retroactive increase in the length of the marriage. The effect is to unfairly, arbitrarily, unjustifiably and suddenly imposes an alimony obligation on certain same-sex spouses who had no reason to anticipate such a financial liability. Moreover, the spousal support obligation will now be "presumed" to exist where before there was none whatsoever. This is exactly the type of "uncertainty in the private as well as the public sphere," the Massachusetts Supreme Court warned about in *Charron v. Amaral*, 451 Mass. 767, 774 (2008), 889 N.E. 2d 946) (declining to grant retroactive recognition of marital status to a same-sex couple).

vi. Income Taxes:

Answering the reported question in either the affirmative or the negative will have no impact on the Maine Revenue Service. The

application of Maine income tax law to a same-sex couple is straightforward and mechanical. For Maine income tax purposes, same sex couples who were legally married on the last day of tax years ending on or after December 29, 2012, must file their individual income tax returns for those tax years using the filing status of "married filling joint return" or "married filing separate return." Maine Tax Alert, Vol. 23, Issue 3 (January 2013). In other words, same-sex couples were required to file "married filing joint return" or "married filing separate return" in tax years 2012, 2013, 2014 and thereafter. Maine Tax Alert, Vol. 22, Issue 11 (December 2012). This is true even if a member of the same-sex couple had filed a federal return using a filing status of "single" or "head-of-household". *Id.* In addition, same-sex married couples filing a Maine joint return must now combine the number of dependents for Maine tax purposes. *Id.*

Neither the IRS nor the Maine Revenue Service require same-sex couples to amend prior tax returns to their date of marriage in another state. The IRS only recognized same-sex marriages "prospectively" as of September 16, 2013, but it did allow same-sex couples to file amended returns and claims for credit and refunds for prior tax years provided the limitations period had not run. Rev.Rul. 2013-17, 2013-38 I.R.B. 201 (9/16/2013) Moreover, practically speaking, same-sex couples cannot now apply for refunds for tax years prior to 2012 at this point since the

statute of limitations has run. 26 U.S.C. 6013(b)(2). Put another way, tax year 2011 and all prior tax years are now closed tax years.

The *Amici* do not elaborate on how the Maine Revenue Service and "the lawyers and accountants who practice before it will be burdened with administering an inefficient, two tiered [tax] system ...." (*Amici* Brief p. 21) The Maine Revenue Service has and will continue to process same-sex couples' tax returns as "married filing joint return" or "married filing separate return" no matter how this Court answers the reported question.

In other words, answering the reported question in the negative will have a neutral result with respect to the Maine Revenue Service and concerned lawyers and accountants.

vii. Real Estate Transfer Taxes:

Title 36 M.R.S.A. sec. 4641-C(4) provides that "[d]eeds between husband and wife ... and deeds between spouses in divorce proceeds" are exempt from the real estate transfer tax at recording. Tanya and Elisabeth already paid their real estate transfer tax for the September 1, 2012 conveyance from Elisabeth to Tanya when the deed was recorded on September 10, 2012. (App. 68) If the Court accepts the *Amici's* logic and grants section 650-B retroactive effect, it follows that every same-sex couple that married out-of-state before December 29, 2012 would be entitled to a refund of the transfer tax paid for any transfers between them.

Such unplanned retroactivity would create (not eliminate) the "unintended and detrimental consequences" the *Amici* are concerned about in their submission. (*Amici* Brief p. 11)

viii. Social Security and Veterans Benefits:

The United States Supreme Court has not expanded its federal estate tax ruling in *United States v. Windsor*, 570 U.S. ___, 133 S.Ct. 2675 (2013) to social security and veteran's benefits. These issues remain to be finally adjudicated by the Court at some later date.

The *Amici* proclaim that they fear a two-tier system for purposes of the administration of social security benefits. (*Amici* Brief p. 19) Presently, the Social Security Administration already has a multi-tiered state specific process that has at its core "the date same-sex marriages were permitted in the state" and "the date same-sex marriages from any other state were recognized". SSA Program Operations Manual System GN00210.003 (effective 3/20/15). The effective date for Maine same-sex marriages for social security purposes is December 29, 2012, and same-sex marriages are not recognized prior to that date. *Id.* Social security appears to have no less than a dozen tiers for agents to determine whether a same-sex couple is considered "married" for social security purposes. *Id.*; *see also* SSA Program Operations Manual System GN00210.800 (effective 4/3/15)(for SSI purposes same-sex marriage date must be during a period when the law of the state where the marriage took place permitted same-sex marriage); SSA Program Operations Manual System

GN00210.002 (effective 12/03/14)(for Title I and Medicare purposes if the same-sex couple were married outside the period that the law in that state permitted same-sex married, then the marriage is not recognized for benefits purposes).

For purposes of veteran's benefits, the Department of Defense announced on August 14, 2013, its plan to extend spousal and family benefits to legally married same-sex spouses of uniformed service members. CCH Tax Briefing, "IRS Guidance on Same-Sex Marriage," Special Report (9/3/13). Benefits including health care, housing allowances, and family separation allowances will be provided retroactively to June 26, 2013 (the date of the *Windsor* decision) and no benefits will be granted for any period before that date. *Id.* Put another way, the Department of Defense is only giving prospective effect to *Windsor*.

There is quite literally nothing for the Court to do with respect to social security and veteran's benefits. Those fields have been completely occupied by the agencies of the federal government.

ix. Marital Privilege:

Both Elisabeth and the *Amici* argue that the marital privilege contained in M.R.Evid. 504(a) should be expanded retroactively to communications made between same-sex couples that pre-date December 29, 2012. Tanya asserts that the date the marriage was recognized in Maine is critical for determining whether the privilege applies. Courts have consistently declined to retroactively apply changes to the Rules of

Evidence to conduct which has already occurred. *See Bierwith v. AH4R I TX, LLC*, 01-13-0049-CV (TexasApp. 10-30-14)(declining to retroactively apply amendment to business record authentication Rule 902(10)); *State v. Miller*, 234 Ariz. 31, par. 30, 41, 316 P.3d 1219 (declining to retroactively apply change to expert witness Rule 702).

Likewise, changes or expansion of the evidentiary privilege rules should be skeptically viewed. Chief Justice Burger for a unanimous court in *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090 (1974), stated:

> The privileges referred to by the Court are designed to protect weighty and legitimate competing interests. Thus, the Fifth Amendment of the Constitution provides that no man 'shall be compelled in any criminal case against himself.' And, generally, an attorney or a priest may not be required to disclose what has been revealed in professional confidence. These and other interests are recognized in law as privileges against forced disclosure, established in the Constitution, by statute, or at common law. Whatever their origins, these exceptions to the demand for every man's evidence are not lightly treated nor expansively construed, for they are in derogation of the search for the truth.

Apparently, Elisabeth and the *Amici* want to retroactively expand the marital privilege. Ample precedent and the "search for the truth" are generally against this unique proposition.

Accordingly, the reported question should be answered in the negative.

VI. CONCLUSION

For the reasons noted above, Tanya respectfully requests that this Honorable Court answer the question reported to it by the Maine District Court on October 20, 2014, in the negative.

Dated: May 6, 2015

Respectfully submitted,

Scott J. Lynch, Esq.
Bar No. 7314
Attorney for Defendant/Appellant
Tanya J. Busch

VII. CERTIFICATE OF SERVICE

I hereby certify that two (2) true copies of the foregoing were sent this day by postpaid first-class mail to each of the following:

Tammy Ham-Thompson, Esq.
Farris Law Office
6 Central Maine Crossing
P.O. Box 120
Gardiner, Maine 04345

Michael P. Asen, Esq.
Mittel Asen, LLC
P.O. Box 427
85 Exchange Street
Portland, ME 04112-0427

Dated: May 6, 2015

Scott J. Lynch, Esq.
Bar No. 7314
Attorney for Defendant/Appellant
Tanya J. Busch