

Statement by Janson Wu, Esq.
Before the House Judiciary Committee in Support of House Bill 436,
An Act Relating to Civil Marriage and Civil Unions,
And in Opposition to House Bills 147 and 453

Honorable Chairman Cote and Members of the Committee:

I am a staff attorney at Gay & Lesbian Advocates & Defenders (GLAD), a New England-wide public interest legal organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression. I submit this testimony in strong support of House Bill 436 and in opposition to House Bills 147 and 453.

Gay and lesbian families share the same love, commitment and responsibility in taking care of each other as any other family. Some have been together for decades. They work in our communities and pay taxes. Some have served in the armed forces, and others still put their lives on the line as police and firefighters. They are parents and caregivers of elderly parents and relatives.

And they live in every county in New Hampshire according to the 2000 census. Of 2,703 same-sex couples who were willing to acknowledge themselves in that census, 29% of female couples and 23% of male couples had a child under the age of 18 living at home with them. These couples and their kids are our neighbors and co-workers, relatives and friends.

Gay people who fall in love and want to marry do so for the same reasons as non-gay people. In our society, marriage is many things: a loving, committed, lifelong partnership between two people; an adult rite of passage; a way for two people to honor their relationship; an opportunity for family and friends to bind together; a bundle of legal rights; and a respected cultural institution.

Yet, in 1987 New Hampshire amended its laws to make clear that a man is forbidden from marrying a man and a woman is forbidden from marrying a woman. In April 2004, New Hampshire further amended its marriage laws to prevent recognition of any out-of-state same-sex marriages.

In 2008, New Hampshire took an important step towards equality for its gay and lesbian families when it joined Vermont, Connecticut and New Jersey as the fourth state to allow same-sex couples to enter into a civil union, which is a legal status separate from civil marriage at the state level.

However, civil unions are not equal to marriage, nor will they ever afford the same degree of respect, security and benefits that marriage offers. Marriage is more than the sum of its parts, and no different-sex couple would willingly trade in their marriage and the unparalleled respect and recognition of their relationship that comes with marriage, for a civil union.

It is time for New Hampshire to continue that progress towards full equality for gay and lesbian families by ending the discriminatory exclusion of same-sex couples from marriage.

There are a few specific points I would like to make:

1. Marriage is a respected and unparalleled institution that society understands and recognizes as the ultimate expression of commitment between two people.

Marriage is a unique legal status conferred by and recognized by our society and government. It brings with it a host of reciprocal obligations, rights, and protections. Yet it is more than the sum of its legal parts. It is also a cultural institution. The word itself is a fundamental protection, conveying clearly that you and your life partner love each other, are united and belong by each other's side. It represents the ultimate expression of love and commitment between two people. No other word has that power, and no other word can provide that protection.

Because of this unequalled status in society, marriages are far more likely to be respected by others than civil unions. Because of the relative newness of civil unions and because they were created precisely as a separate and inferior institution for gay people only, civil unions do not receive the same dignity and respect from society that marriage receives.

Many do not even know what a civil union is, and same-sex couples in a civil union are constantly forced to have to explain their relationship to people they interact with every day. Others may know of civil unions, but do not understand that it is supposed to confer familial protections, such as in emergency rooms and hospital settings.

For example, the New Jersey Civil Union Review Commission recently heard testimony from couples in civil unions, many of whom have faced unequal treatment and uncertainties during a health care crisis, particularly in hospital settings, due to the public's unfamiliarity and lack of respect for the institution of civil unions. In one of those instances, the healthy civil union partner was forced to waste precious time trying to explain to the emergency room physician and staff that she was legally authorized to make medical decisions for her sick partner, during a pressing medical emergency. In its December 2008 final report, the New Jersey commission, after considering the many harms that civil unions impose on same-sex couples, unanimously recommended that same-sex couples be allowed to marry.¹

2. Creating a second class institution only for same-sex couples stigmatizes and harms their families.

It is discrimination that we have marriage for different sex couples but have created another whole legal structure with a different name for gay and lesbian couples. We know that it is not fair to treat people differently in other areas of life for no good reason – it should be no different for marriage.

The fact that a civil union remains a separate legal status created just for gay people represents real and powerful inequality. We have long learned that separate is not equal; our constitution requires legal equality for all.

Treating one group of people differently also stigmatizes that group and denotes them as unworthy. This mark of inferiority harms the children of same-sex couples in particular, who must grow up learning the hard lesson that our society and our government does not believe that their families are worthy of full respect. For example, one high school student reported to the New Jersey commission of being harassed by another classmate, who argued that because her

¹ A full copy of this report can be found at <http://www.nj.gov/oag/dcr/downloads/CURC-Final-Report-.pdf>.

two moms could not get married, there must be something “wrong with it.”² Another child testified that civil unions sent her the very clear message that her family was “second rate.” She continued: “And it was really, really difficult for me . . . because I grew up in an area where there wasn’t a lot of diversity and I really needed someone to affirm me, and unfortunately the state failed me in that.”³

In addition, providing civil unions instead of marriages to same-sex couples invites discrimination from the private sector. For example, private employers are less likely to provide health care benefits to a civil union partner than a same-sex married spouse of an employee. Even though employers that self-insure their health insurance benefits are not legally required to provide equal benefits to same-sex married spouses due to the federal law ERISA, most do so because otherwise these employers would be forced to admit that they have no excuse not to provide equal employment benefits to gay and lesbian married employees other than discrimination.⁴ In contrast, civil unions make it easier for an employer to hide behind the separate status of civil unions as an excuse for the denial. Indeed, the New Jersey commission found that “employers may decline to provide insurance and health benefits to civil union partners not because of an objection to the government recognition of same-sex couples, but because of the term used . . .”⁵

Three state supreme courts – Massachusetts, California, and Connecticut – have now held that the separate and unequal status of civil unions only perpetuates unconstitutional discrimination against gay people and same-sex couples.⁶ New Hampshire should similarly uphold its proud constitutional history of equality and fairness by ending the discriminatory segregation of gay and lesbian families from the institution of marriage.

3. Marriage has greater portability across state lines than civil unions.

It is harder to gain respect for one’s civil union in many other states – in whole or in part – than it is for marriage. While marriages of same-sex couples will face discrimination in some places, marriages are advantaged over civil unions because all states have a marriage-system (with rich histories of respect for marriages validly licensed elsewhere).

For that reason, marriages are generally respected state to state for all purposes. However, because civil unions are a new and unfamiliar institution that only a few states have, questions

² Final Report of the New Jersey Civil Union Review Commission, 18-19 (December 10, 2008).

³ *Id.* at 18.

⁴ *Id.* at 20-21.

⁵ *Id.* at 13.

⁶ As the Massachusetts Supreme Judicial Court said in 2004, to create civil unions in lieu of marriage would be “assigning . . . same sex . . . couples to a second class status,” and “maintaining and fostering a stigma of exclusion.” *Opinion of the Justices*, 440 Mass. 1201, 1208 (Mass. 2004). The California Supreme Court held that assigning a different designation to families of same-sex couples (in that state, “domestic partners”) denies same-sex couples “equal dignity and respect,” “cast[s] doubts” on whether the families of same-sex couples are equal to married couples, and is a “mark of second class citizenship.” *In re Marriage Cases*, 43 Cal. 4th 757, 784-85 (Cal. 2008). And finally, most recently in Connecticut, the Supreme Court there held that “... the institution of marriage carries with it a status and significance that the newly created classification of civil unions does not embody...” *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 412 (Conn. 2008).

remain about how civil unions will be treated in other states. For example, a Connecticut appellate court denied jurisdiction to hear a case to dissolve a civil union on the fact that their states do not grant civil unions themselves (although since that decision Connecticut has created its own civil union system). See Rosengarten v. Downes, 71 Conn. App. 372, 802 A.2d 170 (Conn. App. 2002).

4. Civil unions do not provide access to the 1,138 federal marital rights and protections.

According to a 1997 GAO report, civil marriage brings with it at least 1,138 federal marital rights and protections, including the right to take leave from work to care for a family member, the right to sponsor a spouse for immigration purposes, and Social Security survivor benefits that can make a difference between poverty and security in old age.

In contrast, same-sex couples in civil unions have no claim to these 1,138 federal protections afforded to married couples only. While those protections are presently withheld from married couples of the same-sex (due to the so-called federal “Defense of Marriage Act”), we do not believe that discriminatory federal law will stand the test of time. President Obama and Congressional leaders now support repeal of the DOMA. More importantly, only by being legally married can same-sex couples legally challenge the discriminatory nature of DOMA.

5. HB 436 codifies and affirms the religious freedom to define religious marriages.

HB 436 codifies already existing constitutional protections for religions to impose different standards for a marriage within their faith tradition and does not force any religion to solemnize marriages between same-sex couples. Religions will still be able to determine their own requirements for solemnization and religious marriage ceremonies, as they do now in refusing to marry couples of different religious or people who have been divorced.

Many people of faith struggle to reconcile their religious traditions with their desire to be fair to their fellow citizens. And many religious traditions embrace marriage equality for same-sex couples. Regardless, it is important to remember that we are talking about the exclusion of same-sex couples from civil marriage only.

6. The public increasingly supports fairness in New Hampshire’s marriage laws.

Polling data shows growing support for marriage equality nationally and in New Hampshire, as more people learn about the reality of lesbian and gay relationships and their families from their friends, family members, coworkers, neighbors and friends.

In addition, contrary to some political expectations, voting to support the freedom to marry and opposing anti-marriage measures helps rather than hurts politicians, a new study Pro-Marriage Legislators Win Elections released by Freedom to Marry, a national organization dedicated to ending marriage discrimination in our country, unequivocally shows.

For example, in Massachusetts, after 5 years of legislative votes on equal marriage rights for same-sex couples, not one state legislator has lost his or her seat due to their vote regarding marriage equality. And this trend has been reflected across the country, in red and blue states alike.⁷

⁷ See http://www.freedomtomarry.org/pdfs/pro-marriage_legislators_win_elections.pdf.

7. **House Bills 147 and 453 would wreak havoc on families by creating uncertainty regarding their legal status and relationship with each other, with their children and with the public.**

Contrary to the goal of full inclusion set forth in House Bill 436, House Bills 147 and 453 would wreak havoc in New Hampshire by casting doubt on the legal relationships already entered into by same-sex couples and call into question the legal rights and protections that came with those legal relationships.

House Bill 453 is a mean-spirited attempt to take away hundreds of legal protections currently granted by the civil union law that provide security to gay and lesbian families and their children. And it would forbid recognition of civil unions already entered into by over 600 same-sex couples.

In addition, House Bill 147 would strip away any legal relationship between a same-sex married couple who decides to travel or move to New Hampshire. It would undermine the established common law tradition of respecting the legal commitments of couples made in other states. These recognition principles emanate from a sense of mutual respect for sister states' laws. Same-sex couples who come to New Hampshire should not have to give up all of their legal protections when they cross the border.

When a couple gets married or enters into a civil union, they rely upon that legal status in determining how to interact with the rest of the world and how to structure their families' future together. For example, would creditors still be able to look to a civil union partner or married same-sex spouse for debts unpaid by the other partner/spouse, if their civil union or married were stripped away mid-stream?

In the end, however, children will be most hurt by this bill. Children need stability and security in their family structures for healthy development. House Bills 147 and 453 would threaten the legal relationships that children have with their parents by virtue of their parents' legal relationship with each other. And taking away from children their legal relationship with one of their parents harms everyone and helps no one.

It is always the right time to do what is right. Many of New Hampshire's same-sex couples and families struggle needlessly because they are denied marriage. It is time for New Hampshire to fulfill its promise of equal treatment and fairness to all of its citizens by opposing House Bills 147 and 453 and supporting House Bill 436. By doing so, we can strengthen all of New Hampshire's families.

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Submitted by:

Janson Wu, Esq.
Staff Attorney
Gay & Lesbian Advocates & Defenders
jwu@glad.org