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**Testimony of Carrie Evans Before the
Maryland Senate Judicial Proceedings Committee
SUPPORT Senate Bill 290
OPPOSE Senate Bill 169
Feb. 14, 2008**

My name is Carrie Evans and I am the Policy Director for Equality Maryland. I urge you to favorably report Senate Bill 290, *The Religious Freedom and Civil Marriage Protection Act*. I also urge you to reject Senate Bill 169.

Today you have heard from individuals and families who represent the wonderful and cherished diversity of our great state. Each person has shared, sometimes very personal and touching, reasons why you should vote to end marriage discrimination. I will join this choir lifting their voices for fairness of gay and lesbian families.

As an advocate for the freedom to marry for same-sex couples I know that marriage is a personal commitment and an important choice that belongs to couples in love. I know that marriage is a social statement that preeminently describes and defines a person's relationships and place in society. I know that marriage is a relationship between a couple and the government - couples need the government to get in and out of marriage. I also know that marriage is the key that unlocks the door to thousands of state and federal protections and responsibilities.

Make no mistake; there is no other key that opens the door to all of these dimensions of marriage. There are some keys that may fit in the keyhole and you can jiggle it around and almost get the door open, but alas the door remains locked. You can go to the best locksmith in town and have a key made out of platinum and encrusted with precious diamonds but if it is not the key of civil marriage, it won't open the door.

I know that some of you earnestly believe there are other keys that can open the door, keys called civil unions or domestic partnerships. But we know from our colleague and families in Vermont, Connecticut, New Hampshire and New Jersey that these keys don't unlock the door (see attachments). Some of you will then say, "well at least you are on the porch out of the rain" with a civil union; to just be patient because the marriage key will be ours someday. To that I respond as Martin Luther King Jr. did when he was confronted with a similar situation, he said:

What is implied here is the amazing assumption that society has a right to bargain with the Negro for the freedom which inherently belongs to him. Some of the most vocal liberals believe they have a valid basis for demanding that, in order to gain certain rights, the Negro ought to pay for them out of the funds of patience and passivity ... to accept half a loaf and to pay for that half by waiting willingly for the other half to be distributed in crumbs over a hard and protracted winter of injustice."

Sadly, 44 years later society is offering the same bargains, this time to its gay and lesbian citizens. And when gays and lesbians don't jump at the

deal, we are characterized as impractical, naïve and impatient. There is nothing impractical in asking for marriage licenses when we know that our opponents will resist even civil unions and domestic partnerships. Maryland asks the same things of its gay and lesbian citizens as it does its straight ones, and so there is nothing naïve in asking our elected officials to treat us the same in all aspects of civil life, including marriage. It is not naïve to expect that people will not hide behind religious rationalizations to deny state-granted protections to thousands of Marylanders.

On behalf of Equality Maryland and the thousands of families we fight for every day, we ask you to not prolong this winter of injustice and to favorably report Senate Bill 290.

This op-ed originally appeared in The Hartford Courant on June 10, 2005.

A lot of people think that the civil union statute confers all state marriage rights on same-sex couples who register in Connecticut. But this is not true. There are five classes of substantive rights that may still be denied same-sex couples under the civil union statute (when it takes effect on Oct. 1). Those rights would not be denied if the lawsuit on behalf of seven gay and lesbian couples succeeds in striking down the marriage exclusion.

You might have thought that Connecticut had created a separate-but-equal regime of civil union and marriage. Let's be clear. Civil union is a true advance. Being able to ride in the back of the bus is a lot better than not being able to ride at all. But the civil union statute is better characterized as separate but substantively unequal.

Here are the top five reasons that Connecticut civil union rights are substantively different than equal marriage rights:

5. The civil union statute discriminates against young same-sex couples. Different-sex couples are allowed to marry at 16 or 17 in Connecticut with permission of a parent or probate judge. The Connecticut House of Representatives amended the original civil union bill by a whopping 126-22 margin to limit unions to same-sex couples who were at least 18.

Why is a 17-year-old fit to marry someone of the different sex, but not fit to enter into a civil union with someone of the same sex? I don't have a strong feeling that 17-year-olds should have the right to do either. But Connecticut cannot say it gives same-sex couples the same legal rights. You get the same rights only if you are old enough.

4. The new law has a provision giving public officials the explicit right not to officiate at a civil union. There is no such explicit exemption in the marriage laws. If the marriage exclusion were abolished, public officials would have the same duty to perform same-sex and different-sex weddings.

3. Same-sex marriages are more likely than civil unions to be recognized by some other states. All states have their own marriage systems and rich histories of respect for marriages validly licensed elsewhere. If the marriage exclusion were abolished, some states would be more likely to recognize a same-sex marriage than they would a same-sex civil union.

2. Employers may deny benefits to same-sex couples who are joined in civil union but unmarried. An employer who denies marriage benefits to civil union couples could argue that it was not discriminating on the basis of sexual orientation. But if the marriage exclusion were abolished, the employer would find it hard to deny marriage benefits to same-sex couples who were married.

1. And the No. 1 reason civil union is substantively different than marriage: The word "marriage" is the gateway to the 1,138 federal protections afforded married couples. Without that word, same-sex couples in civil unions have no claim for those legal protections. If the marriage exclusion were abolished, same-sex married couples would have a stronger standing - both legal and political - to challenge the federal discrimination.

The state argues, "We're not to blame for same-sex spouses not qualifying for Social Security, because the feds wouldn't give them to you even if we allowed you to marry." The feds argue, "We're not to blame for same-sex spouses not qualifying for Social Security, because even if we granted benefits to married spouses, Connecticut will not allow you to marry."

This is just like the classic problem in tort law: The mechanic can say, "My failure to fix your brakes did not cause the accident because you didn't push on the brake." The driver says, "My failure to push on the brakes did not cause the accident because the mechanic hadn't fixed them." Tort law knows how to deal with the problem - by saying, in effect, a pox on both your houses - and we should, too.

The Connecticut legislature did not really make same-sex couples equal to married couples with its separate-but-equal civil union law. The seats on the back of the bus are never quite as nice.

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Editorial

A FLAWED LAW

It is hardly a surprise that New Jersey's civil union law is not working very well. During the past several weeks, dozens of same-sex couples have testified that the law has not provided the equal benefits that were promised when it passed.

Now, the special commission that heard the testimony has made it official: the civil union law has been a "failure." Frank Vespa-Papaleo, who is chairman of the commission as well as the state's director of civil rights, said the law is not as effective "as if the word 'marriage' were used."

The obvious conclusion is that the Legislature should give same-sex couples the right to marry.

In October 2006, the state Supreme Court mandated that under the state's Constitution same-sex couples be given the same rights as heterosexual couples. It gave the Legislature the option of calling the unions marriage or something else, and legislators opted for "civil unions."

But as the three dissenters argued in the 4-to-3 Supreme Court decision, the word "marriage" itself conveys tremendous importance and advantages. Now we have some real-world experience to back that up.

An electrician told the commission that her labor union informed her she could not get health benefits for her partner of nine years under the civil union law. She proceeded to inform the union that she and her partner had married in Massachusetts and -- voila -- the partner got covered.

Earlier this year, United Parcel Service reversed its original intention not to give partners health benefits under the New Jersey law, but only after pressure from Gov. Jon Corzine and the state attorney general's office. The kind of political intercession should not be necessary.

To his credit, Mr. Corzine has said he is open to signing a same-sex marriage law, but he would prefer to take up the issue in 2009 so it does not become a poster child for conservatives during the presidential election. Sadly, that is the reality of today's politics.

Nevertheless, New Jersey should give same-sex couples the equal rights they deserve and enact a marriage equality law as quickly as possible.

What's The Difference?

MARRIAGE: Equality

CIVIL UNIONS: Separate and Unequal

	MARRIAGE	CIVIL UNIONS	NO MARITAL STATUS
Portability of rights	Automatically recognized in all 50 states	Recognition not guaranteed outside the state that grants it	Some of the documents named below must be carried at all times to ensure they are enforced.
Medical decisions/ Emergencies	A spouse or family member may make decisions for an incapacitated, incompetent or disabled person unless contrary written instructions exist, and can generally visit their partner in the hospital	Partner's right to visitation and medical decision-making may not be recognized out of state	A health care proxy is required to convey decision-making authority
Gift and property transfer tax	May make unlimited transfers and gifts to each other without paying taxes	Large gifts and transfers are subject to federal tax.	Must pay federal tax and state tax in many states for large gifts and transfers
Inheritance	Automatic right to inherit without a will; inheritance not taxed at the state or federal level	Not taxed at the state level; fully taxed at the federal level; not automatic outside granting state	No automatic inheritance; must be designated in will and is fully taxable; without a will, relationship is invisible
Income tax	Can file taxes jointly, which works to the advantage of couples when one earns much more than the other, but creates a penalty when their incomes are similar	Can file only state returns jointly; federal returns must be filed as single	Must file individually
Social Security and Veteran Death Benefits	Married people receive Social Security and veteran benefit payments upon the death of a spouse	None	None
Divorce	Divorce provides legal structure for couples to dissolve their marriages and divide property equitably	No such system can be guaranteed for the dissolution of civil unions outside of the state where the union is granted	Relationship contract dictating property division in advance may be enforced upon dissolution of relationship
Spousal support	Criminal penalties are imposed on spouses who abandon a child or a spouse	Outside granting state, partners may have no legal obligation to support their partner	Unmarried partners have no legal obligation to support their partner
Immigration Benefits	US citizens and legal permanent residents can sponsor their spouse and other family members for immigration	None	None
Cost to Establish	License fees – under \$100	License fees – under \$100	Each document requires attorney fees. Can total thousands of dollars for piecemeal protection in limited areas
Religious Freedom	Religious institutions are free to decide what marriages to perform or recognize	Religious institutions are free to decide what civil unions to perform or recognize	Some religions perform commitment ceremonies; convey no legal protection
The Word	Marriage is the ultimate expression of love and commitment; people understand and respect it	Civil unions are unfamiliar; people don't understand them or know how to treat them	None

Based on information provided by *Gay and Lesbian Advocates and Defenders*. For further information, please visit www.glad.org. February 2008