



Byron J. Babione
Senior Counsel
Alliance Defense Fund

May 3, 2012

Testimony on SB 002
House Judiciary Committee

Well-meaning folks,¹ including legislators, who oppose redefining marriage, yet support civil unions and domestic partnerships for same-sex couples, do so with the mistaken belief that both sides of the marriage debate will be satisfied with this apparent compromise. In practice, however, neither side is happy. And more importantly, as a legal matter, civil union laws absolutely undermine the case for marriage.

Make no mistake about it; a vote for this bill is a vote for same-sex marriage. In every U.S. jurisdiction where civil unions or domestic partnerships have been enacted, those who advocated for their passage subsequently rejected them as inadequate and demanded that marriage be redefined.² For example, the proponents of a civil union bill in New Jersey hailed it as “a wonderful moment—and a step toward equality.”³ Now, those who wanted civil unions characterize the law as “a failed experiment.”⁴ Why is that? It’s because achieving civil unions is a calculated step to achieving court-ordered same-sex marriage.

Here’s how the strategy works. Civil union and same-sex marriage proponents push for civil unions, claiming that it’s only fair to give some formal government recognition to same-sex relationships. Once passed or judicially imposed, they sue arguing that the laws are discriminatory because they are really marriages deprived of the name.

¹ David Blankenhorn & Elizabeth Marquardt, *Amendment Goes Too Far*, Newsobserver.com (Apr. 11, 2012), <http://www.newsobserver.com/2012/04/11/1992920/amendment-goes-too-far.html>.

² That dynamic has occurred in California, Washington state, New Jersey, Vermont, Washington, D.C., New Hampshire, Maine, Connecticut, Hawai’i, Illinois, and Nevada where civil unions provided the legal rights and privileges of marriage, the celebration of those new legal rights were immediately followed with demands for a new definition of marriage.

³ See *Civil Unions for Same-Sex Couples Becomes Law in N.J.*, ACLU of N.J., <http://www.aclu-nj.org/theissues/gaylesbianrights/civilunionsforsamesexcoupl/> (last visited May 2, 2012).

⁴ See *New Jersey’s Civil Union Law: A Real World Mess*, Garden State Equality, <http://www.gardenstateequality.org/civilunionsdontwork/mess.html> (last visited May 2, 2012).



In New Jersey, the proponents of the civil union bill claimed to have played “a key role” in drafting it.⁵ But they are now attacking the very law that they helped pass, claiming that it is discriminatory because it allegedly creates a “separate and unequal”⁶ status.

In Connecticut, proponents of civil unions bragged that they “took the lead” in supporting civil union legislation but later brought suit arguing—without even a hint of irony—that the civil unions law violated equal protection.⁷ The Connecticut Supreme Court agreed and ruled⁸ that the civil union law effectively undermined the state’s interest in marriage as an opposite-sex union.

That same strategy worked in California, where the Ninth Circuit held⁹ in *Perry v. Brown* that the state’s domestic partnership scheme (which gave all the rights and benefits of marriage to same-sex couples) undermined the state’s interests in marriage as a union of a man and a woman. As UCLA law professor Eugene Volokh noted¹⁰ about *Perry*, “if the decision is upheld, this means that the arguments that civil unions are a ‘slippery slope’ to same-sex marriage were absolutely right.”

So far, this tactic has worked well. So it’s not surprising that recently proponents of same-sex marriage in Hawaii¹¹ and Nevada¹² filed suit in Federal Court claiming that, as a result of their respective civil union laws, their states’ laws defining marriage as the union of a man and a woman now violate the Equal Protection Clause of the Federal Constitution.

⁵ *Get Busy, Get Equal: ACLU-NJ Advances LGBT Rights*, ACLU of N.J., <http://www.aclu-nj.org/theissues/gaylesbianrights/getbusygetequalaclunjadvan/> (last visited May 2, 2012).

⁶ *Making the Case for Marriage in New Jersey*, Lambda Legal, <http://data.lambdalegal.org/take-action/nj-marriage/> (last visited May 2, 2012).

⁷ Mem. of Law in Supp. of Pls.’ Mot. for Summ. J., *Kerrigan v. Connecticut*, No. NNH-CV-04-4001813, available at <http://www.glad.org/uploads/docs/cases/kerrigan-mock-v-connecticut-dept-of-public-health/2005-07-28-kerrigan-plaintiffs-memorandum.pdf>.

⁸ Opinion, *Kerrigan v. Connecticut*, No. S.C. 17716, available at <http://www.jud.state.ct.us/external/supapp/Cases/ARocr/CR289/289CR152.pdf>.

⁹ Opinion, *Perry v. Brown*, No. 10-16696, available at <http://www.ca9.uscourts.gov/datastore/opinions/2012/02/07/1016696com.pdf>.

¹⁰ Eugene Volokh, *Thoughts on the Ninth Circuit’s Same-Sex Marriage Decision*, The Volokh Conspiracy (Feb. 7, 2012), <http://volokh.com/2012/02/07/thoughts-on-the-ninth-circuits-same-sex-marriage-decision/>.

¹¹ Complaint, *Jackson v. Abercrombie*, No. CV11-00734, available at http://lawprofessors.typepad.com/files/jackson_hawaii_ssm_complaint.pdf

¹² Press Release, *ACLU of Nevada Hails Lambda Legal Lawsuit Seeking Marriage Equality in Nevada*, ACLU of Nevada (Apr. 10, 2012), <http://www.aclunv.org/press/lambda-legal-marriage-equality>.



It should be clear by now that opposing same-sex “marriage” while supporting civil unions and domestic partnerships is akin to the Trojans dragging a wooden horse into the middle of Troy. This Committee should be well aware that any civil union scheme that they chose to wheel through the front gate will unravel the institution of marriage, which the people of this State continue to cherish.