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**TESTIMONY IN SUPPORT OF 13-H 5015,**

**THE SAME SEX MARRIAGE BILL**

On behalf of the Rhode Island ACLU, I am here to express, once again, our organization's strong support for Rep. Handy's legislation guaranteeing marriage equality.

In my testimony, I want to focus particularly on the issue of civil unions vs. marriage. When the law currently in effect was before the General Assembly, virtually all the proponents of same-sex marriage opposed this attempted compromise as failing to promote true equality. Two years later, there can no longer be any doubt about it. Despite the legislature's sincere intention to protect same sex-couples and their families from discrimination through the civil union law, passage of this bill is absolutely essential to truly meet that goal. The civil union law generated tremendous attention, but ultimately has done too little for too few. This law has, on every level, simply been a failure. Civil unions simply are not the same as marriage, and the people the civil union law was purportedly aimed to help have also recognized this basic truth from the beginning.

As for civil unions not being the same as marriage, it's worth going back to Governor Chafee's signing statement back in 2011. In signing the civil union bill over the strenuous objections of the LGBT community and other promoters of marriage equality, the Governor noted that the "religious" exemption contained in the law, the Corvese amendment, was "of unparalleled and alarming scope," and "eviscerates the important rights that enacting a civil union law was meant to guarantee for same sex couples in the first place."

In particular, he observed that as a result of that amendment:

> *A party to a civil union could be denied the right to make medical decisions for his or her partner, denied access to health insurance benefits, denied property rights in adjoining burial plots or denied family memberships at religiously-affiliated community centers. If religiously-affiliated hospitals, cemeteries, schools and community centers refuse to treat civil unions as valid, it would significantly harm civil union partners by failing to protect their medical, physical and commercial interests at critical moments in their lives.*

In other words, *from the start*, the civil union law never even purported to mirror the protections that are available to married couples. Claims to the contrary were simply wishful thinking.

But the difficulties with this alternative approach to marriage equality go well beyond the Corvese amendment. By creating a separate and second-tier status that, by its very nature, could not be considered identical to marriage, the law inevitably left numerous questions unresolved. Just this past Saturday, the *Providence Journal* ran a story that summarized some of the problems that the state has had to deal with in response to the state's doomed-from-the-start attempt to create "separate but equal" partnerships:

* In May, the Governor had to issue an executive order requiring state executive agencies to recognize the lawful marriages of same-sex couples from other states "as valid for any purpose arising within the execution of its duties."

* A widow from a same-sex marriage was forced to file an appeal with the state Division of Taxation in order to obtain a ruling that she was eligible for a marital deduction from the estate tax the same way that the widow of a two-gender marriage was eligible.

* The Governor's office noted that intervention was required when a same-sex couple from Massachusetts gave birth to a child in Rhode Island but initially could not get both of their names listed on the birth certificate.

You may also hear testimony tonight from a Warwick city employee whose civil union was initially deemed insufficient for purposes of receiving spousal retirement benefits, and he ultimately had to fight to get his civil union recognized.

These are real problems that people, often in stressful moments in their lives – including birth and death – have had to grapple with because of the inequalities created by civil union status. The list could go on and on. So long as the state maintains two separate mechanisms for unions of couples, these issues will crop up over and over. Separate simply cannot be equal.

Same-sex couples have recognized this, and have stayed away in droves from making use of this law from the start. For a year after the civil union law was enacted, the ACLU carefully monitored the law's implementation. It became clear very quickly that the law was a debacle. In the first two months of the law's passage, only 14 couples took advantage of the law, and after a full year only 68 couples had. At the time, we analyzed the twelve other states that had domestic partnership, civil union or marriage laws for same-sex couples, and not one of them came close to seeing the poor response that Rhode Island couples gave to this law. For example, compare Rhode Island's figures to Vermont where, just one month after its marriage law took effect, 300 marriages took place. When New Hampshire's marriage law kicked in on New Year's Day 2010, 54 gay and lesbian couples married *the first day alone*.

At least some of the reasons for this enormous disparity seem obvious. Almost certainly, one significant and substantive reason for the lack of enthusiasm by gay and lesbian couples for civil union status is the one that was emphasized in the Governor's signing statement: the Corvese amendment, which undermined rights that gay and lesbian couples already had under Rhode Island law. Under the circumstances, one can hardly fault couples for failing to take advantage of this new "benefit."

Further, civil unions simply do not receive the same respect and symbolic value in our society as marriage. Only marriage is universally understood as the union between two loving and committed individuals. That enormous symbolic value, when withheld to gay couples only, denotes the inferiority of their relationships. This legislation

is not just about ensuring that gay and lesbian couples receive all the tangible benefits of marriage, but also allowing them to be able to formally proclaim their love and commitment for each other in a way that only marriage can.

Also, as committee members probably know, the U.S. Supreme Court is expected to decide by the end of June the constitutionality of the federal Defense of Marriage Act. If the Court strikes down that law, married same-sex couples would immediately get access to the hundreds of federal laws and protections available to married couples only. Couples in civil unions would get none, and they would have to likely wait at least another year for this legislature to correct that.

Perhaps most crucially, there is no way to get around the fact that civil union status is second-class citizenship, and that status has become impossible to justify as more and more states approve marriage equality. Rhode Islanders can travel a few hours in just about any direction and be in a state that, unlike their own, recognizes full marriage equality. It is clear that the time for considering civil unions as a “temporary” alternative to full marriage equality has elapsed, at least in New England, where every other state recognizes same-sex marriage.

We believe these reasons go a long way towards explaining why so few couples have entered into civil unions, and why they will continue to shun this law. Even if there were no significant differences in the way the law treated marriages and civil unions – which, as this testimony has attempted to show, there are – the fact that a civil union remains a separate legal status created just for gay and lesbians represents real and powerful inequality. We learned long ago that claiming “separate but equal” in treatment of the races was both wrong and unworkable. We urge this committee to recognize the same truth in the context of LGBT relationships and to pass this legislation at long last.