



New Jersey Civil Union Review Commission

FIRST INTERIM REPORT OF THE NEW JERSEY CIVIL UNION REVIEW COMMISSION

February 19, 2008

Members of the Commission

J. Frank Vespa-Papaleo, Esq., *Chairman*

Steven Goldstein, Esq., *Vice Chairman*

Stephen J. Hyland, Esq., *Secretary*

Barbara G. Allen, Esq.

Rev. Charles Blustein Ortman

Robert Bresenhan, Jr.

Barbra Casbar Siperstein

Sheila Kenny, Esq.

Joseph A. Komosinski

Erin O'Leary, Esq.

Elder Kevin E. Taylor

Melissa H. Raksa, Deputy Attorney General (DAG)

INTRODUCTION

On December 21, 2006, in response to the holding of the Supreme Court of New Jersey in Lewis v. Harris, 188 N.J. 415 (2006), the Legislature enacted Public Law 2006, Chapter 103, establishing civil unions for same-sex couples effective February 19, 2007. The intent of the Civil Union Act (“the Act”) is to provide all the benefits and responsibilities of marriage to same-sex couples in civil unions.¹ The Act also established the New Jersey Civil Union Review Commission (“the Commission” or “CURC”), to evaluate the effectiveness of the law and issue semi-annual reports to the Legislature and Governor.²

The Commission is an independent body consisting of both public members and governmental ex-officio members, consisting of six ex-officio members and seven public members, appointed as follows: five appointed by the Governor with the Advice and Consent of the Senate, one appointed by the Senate President, and one appointed by the Speaker of the General Assembly. The six ex-officio members consist of the Attorney General, the Commissioners of the Departments of Human Services, Banking and Insurance, Children and Families, and Health and Senior Services, and the Director of the Division on Civil Rights.³

As of the date of the issuance of this report, one public member nominee has not yet been approved by the Senate. Therefore, the members of the Commission are as follows:

Public Members (7):

Appointed by Senate President:	Rev. Charles Blustein Ortman
Appointed by Assembly Speaker:	Steven Goldstein, Esq.
Appointed by Governor:	Robert Bresenhan, Jr.
	Stephen J. Hyland, Esq.
	Barbra Casbar Siperstein
	Elder Kevin E. Taylor
	Vacant ⁴

Ex-Officio Members (6):

Director of the Division on Civil Rights:	J. Frank Vespa-Papaleo, Esq.
Designee of Attorney General:	Melissa H. Raksa, DAG
Designee of Department of Human Services:	Barbara G. Allen, Esq.
Designee of Department of Banking & Insurance:	Sheila Kenny, Esq.
Designee of Department of Health & Senior Services:	Joseph A. Komosinski
Designee of Department Children and Families:	Erin O’Leary, Esq.

For purposes of convenience and operational consistency, the Commission has been formally placed in, but not of, the Department of Law & Public Safety. As of the date of this report, the Legislature has not issued any appropriation for the costs of operating the Commission, which includes the costs of transcription services, certified interpreters, advertising costs associated with public notices, and other operational and administrative costs. Since there has been no legislative appropriation for the operations of the Commission, it receives substantial fiscal and staff support from the Division on Civil Rights.⁵

According to the Act, this Commission “shall report semi-annually its findings and recommendations to the Legislature and the Governor.” The Commission will continue to study and evaluate the Civil Union Act, and may issue legislative recommendations in any of its semi-annual reports, in accordance with the Act. This First Interim Report is unanimously endorsed by the members of the Commission.⁶

According to the Act⁷ it is the duty of the Commission to study all aspects of the Civil Union Act—which authorizes civil unions—including, but not limited to the following:

- (1) To evaluate the implementation, operation and effectiveness of the Civil Union Act;
- (2) To collect information about the Act's effectiveness from members of the public, State agencies and private and public sector businesses and organizations;
- (3) To determine whether additional protections are needed;
- (4) To collect information about the recognition and treatment of civil unions by other states and jurisdictions including the procedures for dissolution;
- (5) To evaluate the effect on same-sex couples, their children and other family members of being provided civil unions rather than marriage;
- (6) To evaluate the financial impact on the State of New Jersey of same-sex couples being provided civil unions rather than marriage; and
- (7) To review the "Domestic Partnership Act," and make recommendations as to whether this act should be repealed.

The Commission cannot yet issue a final report because it continues to examine all seven areas as required by the Act. For example, at this time we have not evaluated the financial impact of the Act on the State of New Jersey, in comparison to marriage,⁸ nor have we reviewed the

Domestic Partnership Act,⁹ as required by the Act. Other areas need further review as well. These will be studied and reported on in the coming months.

The Commission held its organizational meeting in Trenton on June 18, 2007, and subsequent public business meetings on July 18, 2007, August 15, 2007, November 14, 2007, December 19, 2007 and January 16, 2008.

In order to maximize the opportunity for public participation in the Commission's evaluation process, the body held three nighttime public hearings, on September 26, 2007 in New Brunswick, Middlesex County; October 10, 2007 in Blackwood, Camden County; and October 24, 2007 in Nutley, Essex County. Together, the three hearings lasted nearly eight hours and featured testimony from ninety-six people, including couples affected by the Act and expert witnesses.

Notice of all public business meetings and public hearings were advertised in newspapers throughout the State, on the Commission's website located at www.NJCivilRights.org/curc, and distributed widely by community organizations, website hosts and others. Additionally, a media alert and press release was distributed on September 19, 2007 by the New Jersey Office of Attorney General announcing the public hearings. The Commission website also serves as a repository for Commission reports, transcripts, agendas, commissioner biographies, contact information and other items.

At the public hearing on September 26, 2007, Lynn Fontaine Newsome, President of the New Jersey State Bar Association,¹⁰ testifying on behalf of its nearly 17,000 members, concluded that the New Jersey Civil Union Act is "a failed experiment."¹¹

We believe the civil union law created a burdensome and flawed statutory scheme that fails to afford same-sex couples the same rights and remedies provided to heterosexual married couples as required ... by the New Jersey Supreme Court and its landmark Lewis v. Harris decision.

From the Bar's perspective, civil unions are a failed experiment. They have shown to perpetuate unacceptable second-class legal status. Members of the Bar Association tell me more stories of the countless additional hours of work that must go into representing gays, lesbians, bisexual clients and their families.¹²

At the public hearing on October 24, 2007, Ed Barocas, Legal Director of the American Civil Liberties Union of New Jersey¹³ stated in unequivocal terms that:

By creating a separate system of rights and by injecting language and titles not understood or easily incorporated into existing real life events and transactions, the civil union law has failed to fulfill its promise of equality.¹⁴

Additionally, the Commission heard testimony that New Jersey's Civil Union Act is likely not to provide equality with the passage of time. An expert from Vermont, which in 2000 became the first jurisdiction in the United States to enact a civil union law, testified that civil union couples there still face problems with the law today. In fact, as a result of the inequities, Vermont has established a new commission to study whether to amend its state law to now provide full marriage equality to its same-sex committed couples.

This Commission also heard testimony that the term “marriage,” were it applied to the relationships of same-sex couples, could remedy the shortcomings of the Civil Union Act and make a significant difference in providing equality to same-sex couples in New Jersey, even with the challenges of federal law not recognizing same-sex relationships. An expert from Massachusetts, which in 2004 became the first U.S. state to allow same-sex couples to marry, testified that same-sex married couples there do not face many of the problems that New Jersey and Vermont civil union couples face today, even in the context of federal law.

This Commission also recognizes that the number of complaints filed to date by civil union couples with the state Division on Civil Rights — the agency responsible for investigating non-compliance with the Civil Union Act — cannot by itself be considered an accurate barometer of the Act’s effectiveness. Compared to the number of couples who have filed complaints with the Division on Civil Rights—six as noted by the New Jersey Family Policy Council¹⁵—a significantly higher number of couples testified at the Commission’s public hearings about how employers refuse to recognize their civil unions. In addition, advocacy organizations have received, and newspaper investigations have reported, many more cases of the Act’s ineffectiveness than have been filed with the Division. So, while the Division does investigate all verified complaints of discrimination filed with its offices, it is clear that many more complaints have been filed with third-party advocacy organizations.

Among those who participated in the hearings were representatives of:

- New Jersey State Bar Association
- Garden State Equality¹⁶ (GSE)

- New Jersey Family Policy Council (NJFPC)
- Lambda Legal¹⁷
- American Civil Liberties Union of New Jersey (ACLU-NJ)
- National Black Justice Coalition¹⁸ (NBJC)
- Parents, Families and Friends of Lesbians and Gays¹⁹ (PFLAG)
- Gay, Lesbian and Straight Education Network²⁰ (GLSEN)
- Counsel and plaintiff couples from Lewis v. Harris
- Attorneys who represent same-sex couples
- Leaders of numerous faith communities
- Lawyers and community leaders from Vermont²¹ and from Massachusetts²²
- Same-sex couples, their children and families
- Parents of lesbian, gay, bisexual, transgender, and intersex youth
- Public officials, among others

This report will not recite all the testimony provided at public hearings or submitted in writing to the Commission. Rather, this report will highlight relevant testimony that will assist the Commission in answering its Legislative charge. For anyone interested in reviewing all the public testimony, note that a copy of all transcripts of the public hearings is available at the Commission's website located at www.NJCivilRights.org/curc.

CONSISTENT THEMES

1. **FOR THE OVERWHELMING MAJORITY OF CIVIL UNION COUPLES WHO TESTIFIED, THE FEDERAL EMPLOYMENT RETIREMENT INCOME SECURITY ACT, COMMONLY KNOWN BY ITS ACRONYM ERISA, IS THE REASON EMPLOYERS HAVE GIVEN FOR NOT RECOGNIZING THEIR CIVIL UNIONS.**

Under ERISA,²³ “self-insured” companies – companies which create their own insurance plans but may hire outside agencies to administer them – claim governance by federal law rather than state law. In turn, because of the federal Defense of Marriage Act,²⁴ any federal statute or regulation that provides benefits to spouses, husbands, wives, or married couples applies only to marriages between one man and one woman, thus resulting in covered employers continuing to discriminate against same-sex couples.

Practically speaking, companies covered by ERISA, which comprise an estimated 50 percent of all companies in New Jersey, have an option, rather than a requirement, to offer equal benefits under the state's Civil Union Act. Many companies are not exercising that option, even if State law, as is the case in New Jersey, provides that spouses and civil union partners are entitled to identical treatment.

Additionally, being in a civil union can have a broad negative impact on couples whose civil unions are not recognized by their employers.

A registered nurse from Commercial Township told the Commission she received a letter from her employer, telling her that the hospital where she works would not be providing health insurance for her partner:

It falls under the federal ERISA program, as someone else stated. Our hospital is self-insured. Therefore, there is a loophole and they do not provide her with health insurance.

So I wrote them a letter, a lengthy letter, reminding them of some of the things that I had provided for the hospital through the years and asked them to reconsider their decision. They never answered my letter.

So when I made the decision to come here tonight, I again called my human resources director and I said, 'You know, I'm going to go up and I'm going to testify in front of this Commission.' Well, you can't imagine how fast my phone rang. I don't know where this is going to go, but I know that my partner and I have seriously considered dissolving our civil union, because it has put us in a tremendously precarious financial position. Because now in the event that something happens with her and she has no insurance coverage, our entire estate is in jeopardy, rather than just half.²⁵

2. IN MASSACHUSETTS, A MARRIAGE EQUALITY LAW HAS PROMPTED MANY EMPLOYERS TO PROVIDE EQUAL BENEFITS TO SAME-SEX WIVES OR HUSBANDS.

Tom Barbera, a Massachusetts labor leader who works for the Service Employees International Union and served as Vice President of the Massachusetts AFL-CIO, testified:

From the immediate weeks after May 17, 2004, when marriage equality took effect in Massachusetts, right on through today, ERISA has barely been an issue in Massachusetts. In the first weeks of marriage equality, only a very few companies chose not to provide retirement benefits under ERISA to same-sex married couples. And from the day our marriage equality law took effect through today, civil rights organizations in Massachusetts, as well

as our state government, have received virtually no complaints about companies not providing health care benefits to same-sex married couples.

It's not that ERISA-covered employers in Massachusetts don't understand that federal law allows them to refrain from providing benefits to same-sex married couples. It's that employers also understand that without the term 'civil union' or 'domestic partner' to hide behind, if they don't give equal benefits to employees in same-sex marriages, these employers would have to come forth with the real excuse for discrimination. Employers would have to acknowledge that they are discriminating against their employees because they are lesbian or gay. And employers in Massachusetts are loathe to do that, as they would be in New Jersey were you to enact a marriage equality law.

Therefore, the existence of ERISA makes it all the more important to change the nomenclature of civil unions to marriage. As we've seen time and again in Massachusetts, the word 'marriage' has great persuasive weight in getting companies to offer benefits notwithstanding ERISA.²⁶

An Essex County electrician gave the Commission a preview of the potential effect of a marriage equality statute in New Jersey. She testified that when she first sought benefits for her civil union partner from her union, the union declined, citing ERISA. But when she later revealed she and her partner had gotten married in Massachusetts, the union reversed itself and granted benefits.

The electrician told the Commission:

We can all talk about how the civil union law is supposed to work just like marriage. But in my case and others, it doesn't work that way in the real world. When you tell your employer or union you are married, there's something about that word that makes them recognize your relationship in a way they don't recognize it when you tell them you are civil union. And because of their respect for the word marriage, which is something they understand, they are much less likely to invoke the federal law loophole. That's what happened with us.²⁷

The testimony suggests that numerous employers 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 by statutes establishing government sanctioned, same-sex relationships. In fact, this Commission heard no testimony from civil union couples indicating that employers have refused to comply with the Civil Union Act because of personal objections to the law. Early indications suggest that recognition of marriage for same-sex couples in New Jersey could make a meaningful difference in the area of spousal benefits.

3. **THE TESTIMONY PRESENTED BY MANY CIVIL UNION COUPLES INDICATED THAT THEIR EMPLOYERS CONTINUE TO DISCRIMINATE AGAINST THEM, DESPITE THEIR FAMILIARITY WITH THE LAW.**

Beth Robinson, Chair of Vermont Freedom to Marry and a lawyer who works with same-sex couples in her state, testified to significant problems with the implementation of Vermont's civil union law, more than seven years after its enactment.

I have seen first-hand, both in my law practice and as an advocate, that a civil union law, even when it's been on the books for seven years, too often deprives same-sex couples and their families the protections that married heterosexual couples take for granted. Based on the Vermont experience, I can tell you that it's just not true that if enough time passes, civil unions will achieve parity with marriage. Time does not fully mend the inequality inherent in two separate institutions.

Even now, I field phone calls from individuals whose employers decline to provide spousal health insurance coverage for their civil union partners even though those same employers provide spousal health insurance coverage for heterosexual employees' spouses. As you know, some self-insured employers cite the federal law known as ERISA as a basis for their not recognizing same-sex relationships.

To this day, we still encounter glitches arising from the creation of a new legal status that forces employers and others to try to fit a square peg, civil union, into a round hole, systems relating to marriage. Just this summer, a same-sex couple joined in civil union who owned a Limited Liability Company (LLC) business together had to appeal for intervention by legislators to resolve a

misunderstanding with the tax department regarding their eligibility for a tax exemption provided to LLC owners who are married to one another.

Two weeks ago, I was on a call-in show, and heard from a state employee who had discovered that her employer—the state—had been withholding from her paycheck as if she were liable for a state tax on the health insurance benefit provided to her partner, even though the law clearly prohibits such taxation. When she brought the matter to her employer’s attention, she was told that her department’s software would not allow for the appropriate non-withholding.

Who knows how many glitches like this, in both the public and private sphere, go undetected because people don’t fully understand their rights, or don’t realize what’s happening.

Judging from our having had a civil unions law on the books for seven years in Vermont, and still having problems today, I can tell you that civil unions will likely never provide the equality that marriage does. It would be incorrect for you, as Commissioners, or for the elected officials who appointed you, to assume that if we just give civil unions time, they will work just like marriage.²⁸

4. CIVIL UNION STATUS IS NOT CLEAR TO THE GENERAL PUBLIC, WHICH CREATES A SECOND-CLASS STATUS.

A common theme in the testimony gathered by the Commission was that while marriage is universally recognized by the public, civil union status must be explained repeatedly to employers, doctors, nurses, insurers, teachers, soccer coaches, emergency room personnel and the children of civil union partners.

The testimony suggests that the need to explain the legal significance of civil union status to decision makers and individuals who provide vital services is more than a mere inconvenience. One witness showed the Commissioners a “flash drive” that he and his partner keep on key chains. The flash drives contain living wills, advanced health care directives, and powers of attorney for the couple, as they fear being unable to adequately explain their relationship to emergency room personnel during a medical crisis. The witness testified that mixed-gender, married couples need not live with this uncertainty because a mere declaration that someone is

the “wife,” “husband,” or “spouse” of someone who is ill will provide immediate access and decision-making rights.

This testimony mirrored comments provided by many witnesses regarding medical personnel, school officials and government workers who denied access and decision-making authority to civil union partners, either initially or completely, because of a lack of understanding of the rights that flow from civil unions. Many witnesses said they would not have encountered the same level of resistance, or no resistance at all, had they been able to identify themselves as married.

Witnesses called the two-tier system created by the Civil Union Act “an invitation to discriminate” and a “justification to employers and others” to treat same-sex couples as “less than” married couples. Many witnesses testified that without the governmental endorsement of differential treatment, many employers with ERISA-covered plans would be less inclined to deny benefits to same-sex couples. In addition, several witnesses offered their view that relatives, medical caregivers, and individuals in positions of authority take cues from the government's decision to place same-sex couples outside of the institution of marriage. According to the testimony, the Civil Union Act amounts to a tacit endorsement of discriminatory treatment.

5. THE CIVIL UNION ACT HAS A DELETERIOUS EFFECT ON LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) YOUTH AND CHILDREN BEING RAISED BY SAME-SEX COUPLES.

Several clergy members and parents of LGBTI children testified that the statutory designation of same-sex couples as “other than” and, impliedly, “less than” mixed-gender couples interferes with the ability of LGBTI youth to accept their sexuality.

According to the witnesses, gay and lesbian youth are harmed by the reality that their heterosexual siblings and age mates may expect to enter into marriages, but that the government has declared that LGBTI people cannot have that expectation and must settle for a secondary status as civil union couples.

A Montclair resident, the parent of three sons, one of whom is gay, testified that her gay son told her when he was sixteen: “You know, all I really want is to get married and have children.”

She continued:

‘Well,’ I said, ‘you have several friends whose parents are gay, ... Montclair is a pretty good place to be gay.’ And he looked up at me. He kind of stared at me. He said, ‘But they’re not married.’ And suddenly I got it. In a flash I knew my son is acutely and perpetually aware that he is a second-class citizen and that he cannot attain the status that the rest of us treasure.²⁹

A Bergen County couple, who have adopted five young children, testified:

Our children have asked many questions. One of the questions ... asked of us was, ‘If all men are created equal, why can’t you and Poppy get married?’ I can’t answer that question at this time. One of the most recent questions that came up by one of my children was, ‘I don’t understand how someone on TV who has murdered someone can get married, but you and Poppy cannot.’³⁰

An attorney and partner in a small law firm in Springfield testified about a family discussion in which his partner’s young nephew, to whom he is godfather, asked his mom:

‘If you and daddy are married and Uncle Timmy and Aunt Nancy are married and Aunt Debby and Uncle Bruce are married, why can’t Uncle Bob and Uncle Chris get married?’

Lucas’ mother told him ‘Because it’s against the law.’ Lucas’ reply was, ‘Does that mean they’re criminals, mommy?’³¹

6. MANY WITNESSES TESTIFIED ABOUT THE UNEQUAL TREATMENT AND UNCERTAINTIES THEY FACE DURING A HEALTH CARE CRISIS, PARTICULARLY IN HOSPITAL SETTINGS.

A woman from South Jersey testified about her experiences at two local hospitals:

I was asked, ‘Are you married, single, widowed, divorced?’ I said, ‘I’m partnered.’ Then I was asked, ‘Legally?’ Again, I was shocked. I said, ‘Well, do you ask the married folks that?’ ‘No, I don’t.’ ‘So why are you asking me?’

Another incident was when I was going for a test, when I had to be put under. I was telling the nurse that my partner was in the waiting room. If any decisions had to be made while I was unconscious, she was to make those decisions. Again I was asked, 'Is she your legal partner?' 'Yes, she is.' 'Do you have your certificate with you?'

I wasn't convinced she would go out and grab my partner should something have happened to me.³²

An Episcopal clergy-member from northern New Jersey who is in a civil union testified:

I've had to go through some medical testing and hospitalizations for surgery. In our own UMDNJ right in Newark, when I got there, they asked if I had a spouse. I said 'yes' and I told them. They didn't know where to list him, because there was nothing on the form that said anything about civil unions.

Just about two weeks ago I went to the new doctor I was referred to. There was no place on the form for civil unions. My experience, in general, most people in our communities look at this as a second-class marriage, sort of. I don't even know if we would use the term 'marriage,' it is below marriage. It is another form and they know that is not the same.³³

7. INSTITUTIONAL INTERACTION WITH CIVIL UNION COUPLES HAS BEEN LESS THAN OPTIMAL.

Several witnesses spoke of the lack of a "married/civil unioned" or "civil unioned" option on government agency forms, leaving civil union couples in a quandary as to which box to check, "married" or "single." These couples expressed anger at having to consider checking off "single." In addition, some testimony suggested that civil union partners have experienced some difficulty in obtaining government services which are required by law to be available to civil union partners.

Ed Barocas, Legal Director of the American Civil Liberties Union of New Jersey, and an attorney in the Lewis v. Harris case, testified that:

A quick example, last week I went to a bank to open a line of credit. In so doing, I was asked whether I was single or married. A married man would simply say, 'Well, I'm married.' I asked the employee what I should do if I was in a civil union. The employee responded that he didn't think New Jersey allowed civil unions.

So after explaining the law, I asked again what I was required to put down. He said that civil unions were simply not contemplated in the bank's computer system and he didn't know what the proper answer would be or how he could proceed.³⁴

A woman who purchased real estate in Brick, New Jersey and Florida stated the following:

I had to explain to my own insurance company and send them a copy of our civil union from Vermont to have my name or to even speak to them with regard to purchasing insurance for our home here in New Jersey. I didn't have to do that in Florida.³⁵

A man who entered into a civil union testified:

And also when I went to the DMV to change my name, our names, we both want the same last name. And at first they wouldn't do it. They said either I had to take his last name or we could both hyphenate our names with our married husband's name at the end. But we couldn't both have the same name.

And finally, the manager of the DMV we went and got him. Coincidentally, the same day as our civil union, he was at a civil union. He said his friends are having the same problem. He said, 'Well, no one's told me that I can't do this. So I'll do it until they tell me I can't.' Still I had—we were there like an hour trying to get it done.³⁶

A state employee who lives in Mount Laurel testified about being called to jury duty and having a judge ignore the possibility that some New Jersey residents are in civil unions. She told this Commission:

So I'm sitting there waiting for my turn to be called up and be asked all the questions that the judge was going through. I felt like

I was hit with a ton of bricks, because the judge repeatedly asked every person, 'Are you single, are you married?' I'm thinking, how do I answer that, because I am not. I'm not single, I'm not married. I'm in a court of law and here is a judge qualifying candidates for the jury, and what I am is not represented in any way.³⁷

8. **TESTIMONY INDICATES THAT THE CIVIL UNION ACT HAS A PARTICULARLY DISPARATE IMPACT ON PEOPLE OF COLOR.**

Dr. Sylvia Rhue, Director of Religious Affairs for the National Black Justice Coalition, testified:

Fourteen percent of lesbian, gay, bisexual, transgender and intersex Americans are African-American. Forty-five percent of African-American same-sex couples reported stable relationships of five years or longer on the United States census.

When employers fail to recognize civil unions as equal to marriage, the couples who get hurt the most are poor couples who are often African-American couples, who cannot afford thousands of dollars to hire fancy lawyers to draft documents like wills, health care proxies, and powers of attorney.

And when employers fail to recognize civil unions as equal to marriage and deny health care benefits to civil union partners, there's a profound effect on those families' health care. Who are among the families who can least afford cuts in their health care? African-American families. Approximately one in five African-Americans is currently without health insurance, some of whom are in same-sex relationships.³⁸

Rev. Anahi Galante, an interfaith minister in Jersey City who works with many in the Latino and Latina community, testified:

Latinos now comprise 13.3 percent of the New Jersey population. Same-sex couple households in which both partners are Latino or Latina earn at least \$25,000 less on average per year than white same-sex couple households. Given the income and other disparities between Latino and Latina same-sex couples and

much of the rest of the society, Latino and Latina people in New Jersey are among those being hurt most by our State's continued denial of marriage equality.³⁹

9. **THE REQUIREMENT THAT SAME-SEX COUPLES DECLARE CIVIL UNION STATUS, A SEPARATE CATEGORY RESERVED FOR SAME-SEX COUPLES, EXPOSES MEMBERS OF THE UNITED STATES MILITARY TO THE “DON’T ASK, DON’T TELL” POLICY.**

Leslie Farber, an attorney in Montclair who chairs the GLBT⁴⁰ Rights Section of the New Jersey State Bar Association, spoke of one of her clients, whose partner serves in the United States military. With the couple’s permission, she testified on their behalf, because they feared testifying in person:

The serviceman will be called to duty overseas in the near future. My client wants to protect his committed life-partner, so that his partner leaves stateside with as many protections and benefits as he can. A New Jersey civil union may be able to provide many of those benefits and protections. But a designation of ‘civil union’ is a factual statement this serviceman is a gay man and thus violates the U.S. military’s policy of ‘Don’t Ask, Don’t Tell.’⁴¹

10. **THE CLASSIFICATION OF CIVIL UNION MAY PLACE MARITAL STATUS IN QUESTION WHEN ONE OR BOTH OF THE PARTNERS IS TRANSGENDER.**

Ms. Farber also testified on behalf of couples where one of the partners has had gender reassignment surgery:

[A] client of my own, who wishes to remain anonymous for the same reasons, was a man who legally married a woman about 20 years ago and recently is transsexual. This client went through sexual reassignment surgery and is now legally a woman. However, the entire family remains together and is happy.

However, even though the same two people remain married to each other because of her gender change this client is now married to another woman; in other words, a legally married same-sex couple in New Jersey. However, this client is concerned that she now is at risk of having her once valid marriage downgraded to a civil union. Is this what the legislation intended? Isn’t it truly

cruel to leave this family in legal limbo? And, of course, marriage equality would solve this problem instantly.⁴²

A male-to-female transgender person from New Milford, New Jersey who married a woman 27 years ago testified:

There is not one straight couple in this state who has been harmed because we are in a same-sex marriage. Nobody has been hurt.

When someone has gender reassignment surgery, the State of New Jersey considers that person to be of a new gender. Thus, if that person had been married before, he or she is now part of a same-sex married couple. But because New Jersey does not recognize same-sex married couples as married, are such couples still considered married under state law? The Commission will continue to study the effects of the Civil Union Act on transgender couples.

CONCLUSION

As a result of public hearings and testimony provided to the New Jersey Civil Union Review Commission in 2007, the Commission unanimously issues the herein first interim report, which reveals:

1. For the overwhelming majority of civil union couples who testified, the federal Employment Retirement Income Security Act, commonly known by its acronym ERISA, is the reason employers have given for not recognizing their civil unions.
2. In Massachusetts, a marriage equality law has prompted many employers to provide equal benefits to same-sex wives or husbands.
3. The testimony presented by many civil union couples indicated that their employers continue to discriminate against them, despite their familiarity with the law.
4. Civil union status is not clear to the general public, which creates a second-class status.
5. The Civil Union Act has a deleterious effect on lesbian, gay, bisexual, transgender, and intersex youth and children being raised by same-sex couples.
6. Many witnesses testified about the unequal treatment and uncertainties they face during a health care crisis, particularly in hospital settings.

7. Institutional interaction with civil union couples has been less than optimal.
8. Testimony indicates that the Civil Union Act has a particularly disparate impact on people of color.
9. The requirement that same-sex couples declare civil union status, a separate category reserved for same-sex couples, exposes members of the United States military to the “Don’t Ask, Don’t Tell” policy.
10. The classification of civil union may place marital status in question when one of the partners is transgender.

The Commission further recognizes the need for additional evaluation and review, in accordance with the New Jersey Civil Union Act. As such, it will be scheduling public meetings in 2008 to obtain further information and data from interested parties, including members of the public, State agencies, businesses, and others, in accordance with the Commission’s statutory mission. The Commission will continue to study, evaluate and report its findings and recommendations until the issuance of a final report within three years of the creation of this Commission, in accordance with the Act.

J. Frank Vespa-Papaleo, Esq., *Chairman*
Steven Goldstein, Esq., *Vice Chairman*
Stephen J. Hyland, Esq., *Secretary*
Barbara G. Allen, Esq.
Rev. Charles Blustein Ortman
Robert Bresenhan, Jr.
Barbra Casbar Siperstein
Sheila Kenny, Esq.
Joseph A. Komosinski
Erin O’Leary, Esq.
Melissa H. Raksa, DAG
Elder Kevin E. Taylor

ENDNOTES

¹ N.J.S.A. 37:1-30, et seq.

² N.J.S.A. 37:1-36.

³ N.J.S.A. 37:1-36b.

⁴ On February 5, 2007, Governor Jon S. Corzine nominated a member of the public for membership to the Commission. To date, the position remains vacant.

⁵ The Commission acknowledges the assistance of the following individuals from the Division on Civil Rights staff: Estelle Bronstein, Esq., Benn Meistrich, Esq., Ralph Menendez, Esther Nevarez, Nancy Reinhardt, and former staff member Bear Atwood, Esq.

⁶ The Commission also wishes to acknowledge the invaluable work of its former member, the Honorable Patrick DeAlmeida, who resigned from the Commission upon his appointment to the State Judiciary.

⁷ N.J.S.A. 37:1-36c.

⁸ N.J.S.A. 37:1-36c(6).

⁹ N.J.S.A. 37:1-36c(7).

¹⁰ The New Jersey State Bar Association's mission is "[t]o serve, protect, foster and promote the personal and professional interests of its members; [t]o serve as the voice of New Jersey attorneys to other organizations, governmental entities and the public with regard to the law, legal profession and legal system; [t]o promote access to the justice system, fairness in its administration and encourage participation in voluntary pro bono activities; [t]o foster professionalism and pride in the profession and the NJSBA; [t]o provide educational opportunities to New Jersey attorneys to enhance the quality of legal services and the practice of law.; and [t]o provide education to the New Jersey public to enhance awareness of the legal profession and legal system." See www.njsba.com.

¹¹ Transcript 9/26/07, p. 7.

¹² Transcript 9/26/07, p. 8-9.

¹³ The American Civil Liberties Union of New Jersey (ACLU-NJ) is the 15,000-member state chapter of a national organization which "is the leading organization dedicated to defending and extending civil liberties for all people in this country." See www.aclu-nj.org.

¹⁴ Transcript 10/24/07, p. 8.

¹⁵ The New Jersey Family Policy Council is an organization whose stated mission is "to intervene and respond to the breakdown that the traditional family, the cornerstone of a virtuous society, is experiencing." See www.njfpc.org.

¹⁶ Garden State Equality, consisting of 22,000 members, is New Jersey's statewide organization advocating equality for the lesbian, gay, bisexual, transgender and intersex community. See www.GardenStateEquality.org.

¹⁷ Lambda Legal is a national organization "committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work." See www.lambdalegal.org.

¹⁸ The National Black Justice Coalition is a “civil rights organization dedicated to empowering Black same-gender-loving, lesbian, gay, bisexual, and transgendered people. The Coalition works with our communities and our allies for social justice, equality, and an end to racism and homophobia.” See www.nbjc.org.

¹⁹ Parents, Families and Friends of Lesbians and Gays (PFLAG), with over 200,000 members, “promotes the health and well-being of gay, lesbian, bisexual and transgender persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights.” See www.pflag.org.

²⁰ The Gay, Lesbian & Straight Education Network (GLSEN) “strives to assure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression.” See www.glsen.org.

²¹ The Vermont Civil Union Law went into effect July 1, 2000. See 18 V.S.A. § 42 (2000).

²² Massachusetts same sex marriages were recognized as of May 17, 2004 by the finding of the Supreme Judicial Court of Massachusetts in Goodridge v. Department of Public Health, 798 N.E. 2d 941 (Mass. 2003).

²³ The Employee Retirement Income Security Act, 29 U.S.C. Chapter 18.

²⁴ The Defense of Marriage Act, 28 U.S.C. § 1738C.

²⁵ Transcript 10/10/07, p. 21-24.

²⁶ Transcript 9/26/07, p. 37-40.

²⁷ Transcript 9/26/07, p. 43-45.

²⁸ Transcript 9/26/07, p. 33-36.

²⁹ Transcript 9/26/07, p. 59-60.

³⁰ Transcript 9/26/07, p. 57.

³¹ Transcript 9/26/07, p. 76.

³² Transcript 10/10/07, p. 35.

³³ Transcript 10/10/07, p. 11-14.

³⁴ Transcript 10/24/07, p. 9.

³⁵ Transcript 10/24/07, p. 50-51.

³⁶ Transcript 9/26/07, p. 98-99.

³⁷ Transcript 10/10/07, p. 64-67.

³⁸ Transcript 9/26/07, p. 53-57.

³⁹ Transcript 10/10/07, p. 49-53.

⁴⁰ Gay, Lesbian, Bisexual and Transgender.

⁴¹ Transcript 9/26/07, p. 19-22.

⁴² Transcript 9/26/07, p. 21-22.