Testimony of Maureen M. Murphy, Esq.
before the Judiciary Committee
December 16, 2002

Dear Committee Co-Chairs Sen. Eric Coleman, Rep. Michael Lawlor, and Honorable Committee Members:

Thank you for this opportunity to address you today. My name is Maureen Murphy and I am a partner in the law fine of Murphy, Murphy and Nugent in New Haven, Connecticut where my practice focuses on civil rights and family law. A large part of my practice is devoted to representing gay and lesbian clients and their children in family matters in family and probate court and representing same sex couples in their efforts to protect their relationships to the extent allowed by law. Our firm manages the Special Masters program for Family Court in New Haven and I routinely serve as a Special Master in that program, assisting opposite sex couples and their attorneys in reaching a fair and equitable resolution of their family matter. I am actively involved in the bar associations and am scheduled to present what I believe to be the first continuing legal education program for the New Haven County Bar Association entitled "An Overview of Legal Issues When Representing Gay and Lesbian Clients" on January 16, 2003.

On a day to day basis, I am confronted in my practice with tragic or potentially tragic situations because a large segment of our residents are excluded from the civil right to marry. Many of my clients have been before you to tell their stories and I know you have listened with open minds. Today, rather than reciting the many specific examples of the effects of their exclusion, I would like to focus my testimony on five areas that have been raised in the past as reasons that this

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and unmarried person's right to obtain contraceptives.

Even if procreation was a purpose of marriage, excluding same sex couples does not further that purpose. Same sex unmarried persons are able to, and do, procreate in significant numbers as is obvious from statistics and the cases cited in the next section, and the law does not favor biological relationships over children who are adopted or children bom through reproductive technology. *(See, e.g.,* General Statutes §§ 45a-771 through 45a-779

Second, the state's interest in promoting childrearing cannot be furthered by excluding same sex couples from marrying because the state's discrimination undermines that interest. Gay and lesbian individuals and couples are currently raising children and will continue to do so. Children benefit emotionally and economically when their parents are married because state laws and cultural norms support the commitment of married couples. As you heard at the last two meetings, there is wide-spread recognition by mental health and medical organizations that same sex parents are as loving and appropriate as their heterosexual counterparts. Connecticut courts have repeatedly endorsed and protected the relationship between same sex parents and their children. In 1999, the Connecticut Supreme Court held In re Baby Z., 247 Conn. 474 (1999), that it was clearly in Baby Z's best interests to have both of her same sex caretakers recognized as her legal parent. Nonetheless, the Court found that the archaic statutory adoption scheme in Connecticut prevented the court from allowing Baby Z's mother's lesbian partner to adopt Baby Z. The BabyZ Court left it to the legislature to fix the problem. One year later you responded by

legislature should maintain the discriminatory ban on marriage for same sex couples; namely, that procreation, childrearing, religious considerations, history and tradition, and the slippery slope arguments, all justify the continuing discrimination.

First, procreation is often asserted as the main purpose of marriage that purportedly justifies excluding same sex couples from the right to marry, and that all male - female couples are distinguished from same-sex couples by their capacity to procreate. This assertion, however, has no substance. Neither the ability nor the intention to procreate have ever been a requirement of marriage. For example, Connecticut, like all other states, does not (nor could it) prohibit post menopausal women from marrying. In fact, as the OLR report on the history of marriage in Connecticut makes clear, even when there was a ban on certain individuals marrying ("imbeciles", epileptics, etc), that ban was lifted for a woman once she was beyond child bearing age. Among those who can marry legally are those who will never have children by choice, those past childbearing years, the sterile, those whose fertility is compromised and the long term incarcerated (even incarcerated individuals cannot be deprived of their right to marry, although they may be barred from conjugal relations).

In Griswold v. Connecticut, 381 U.S. 479 (1965), the United States Supreme Court, striking down a ban on contraceptives, severed any purported link between marriage and procreation by clarifying that marriage has fundamental, legally protected purposes without procreation. The Supreme Court further established in Eisenstadt v. Baird, 405 U.S. 438 (1972), that procreation is legally unconnected to marriage by striking a Massachusetts statute that differentiated between a married

passing P.A. 00-228, allowing same sex couples to adopt (codified at C.G.S. §§ 45a-724-727b). Since the effective date of the statute, I have filed or assisted in filing approximately 70 adoptions for same sex couples.

In addition, numerous Connecticut superior court decisions have held that same sex couples and their children constitute a family unit for family law purposes. *(see e.g.* Antonucci v. Cameron I, 24 Conn. L.Reptr. No. 7, 237 (May 31, 1999) (WL 130356), Antonucci v. Cameron II, (1999 WL 793974, Conn. Super. Sept. 24, 1999), LaSpina Williams v. Laspina Williams, 46 Conn. Sup. 165 (1999), D'Imperio v. Nell, (Supr. Ct. J.D. Danbury, December 31, 2001) and Lavoie v. Maclntyre, (Supr. Ct. J.D. Danbury, November 24, 2002). In Lavoie, the Court held that the relationship between the children and the non-biological lesbian co-parent must be protected, even over the objection of the biological mother, stating that the non-biological parent in that case "is a party who has all but given birth to these children, literally, and *has* given birth to them vicariously, as indicated by the unrefuted facts concerning her involvement with the children before, during and after their births. She is held out and perceived by family, friends, professionals and especially the children themselves as being their parent." Id. At 13[emphasis in original]

Third, marriage has always been a civil institution in Connecticut, intended to promote public aims and governed entirely by civil, not religious law. The status of being married is a status that can only be conferred by the state. Many same sex couples have been married in religious ceremonies and their marriage has been recognized as valid within that religious context. Their marriage, however, is not

recognized by this state solely because a valid religious marriage ceremony has been performed. Connecticut has long held that the state must determine the valid requirements constituting a marriage. As pointed out by our Supreme Court in a number of cases, but most succinctly in Carabetta v. Carabetta, 142 Conn. 344 (1980), "a contract of marriage is unique in that it is simply introductory to creation of a status, and what that status is the law determines." The sole intersection of civil and religious marriage is that the state accepts ordained ministers as one of the valid persons who can perform a marriage ceremony. There is nothing in the marriage statutes, however, that forces any minister of any religion to perform a particular marriage and allowing same sex couples to marry would not force any religion to accept that marriage as valid. For example, the Roman Catholic Church does not recognize second marriages subsequent to a civil divorce unless that first marriage has been annulled by the church. As the OLR report on the history of marriage reflects, since 1792, marriages have been validly performed by non-religious persons, such as justices of the peace and magistrates. The Carabetta court also stated that: [i]t has long been clear that, under our laws, all authority to join parties in matrimony is basically secular. In *Hames v. Names,* supra, 594-95, we recently reaffirmed the holding of *Goshen v. Stonington,* 4 Conn. 209,218-19 (1822), that "[a] clergyman in the administration of marriage, is a public civil officer, and in relation to this subject, is not at all distinguished from a judge ... or a justice of the peace, in the performance of the same duty."

To allow some religious groups to interfere with this civil right signifies a preference for one religious group over another in that many religious faiths support the right of

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same sex couples to marry. This state has a long history of maintaining a common respect for religious freedom and separation of church and state. Interests of religious freedom are not in any manner furthered by continuing the state's discriminatory ban on marriage for same sex couples.

Fourth, claims that the history and tradition of marriage justify excluding same sex couples from marriage are similarly invalid. The history of laws governing marriage in Connecticut have been addressed by Susan Price Livingston at the first meeting and in her OLR backgrounder Report. That document reflects the significant changes that have occurred over time in Connecticut regarding restrictions on who could marry (note that Connecticut prohibited marriages of "epileptics, "imbeciles" and "feeble-minded" under the age of 45, if female) and how women were treated in marriage and divorce laws. Although Connecticut did not have a prohibition on interracial marriages, those prohibitions existed in this country until 1967, when the U. S. Supreme Court decided Loving v. Virginia, 388 U. S. 1 (1967). The first state supreme court to invalidate its state's prohibition on interracial marriages was the California Supreme Court in Perez v. Sharp, 198 P.2d 17 (1948). Justice Traynor wrote in that decision that "a member of any of these races may find himself barred by law from marrying the person of his choice and that person to him may be irreplaceable. Human beings are bereft of worth and dignity by a doctrine that would make them as interchangeable as trains." Perez at 25.

Traynor's words take on heightened significance when you consider that at the time of the Perez decision, one public opinion poll reflected that 80% of the population disapproved of interracial marriages, and ten years later, a Gallup Poll

showed that 94% of people disapproved of marriage between "white and colored people". Those opposing interracial marriages pointed to the history and tradition of marriage as a justification for denying interracial couples the right to marry then, just as some point to history and tradition now as a justification for the discrimination.

Fifth, those in favor of maintaining the discriminatory ban on marriage suggest that if same sex couples are allowed to marry, then all types of problems will face society; polygamy being the most common result. That suggestion is pure fear mongering. People wishing to engage in plural marriages can already make such claims. Same sex couples marrying will neither advance nor hinder any such claims. The freedom to marry same sex couples seek is the freedom to marry the person of one's choice, and there simply is no basis for any claim that including same sex couples will lead to polygamy. These same claims that marriage between same sex couples will lead to polygamy were raised in the context of interracial marriages. Opponents of interracial marriages were heard at the time of Perez and at even at oral argument in Loving v. Virginia , 388 U. S. *1 (1967)* by the Attorney General of Virginia who stated that "the state's prohibition of interracial marriage ... stands on the same footing as the prohibition of polygamous marriage, or incestuous marriage, or the prescription of minimum ages at which people may marry, and the prevention of the marriage of people who are mentally incompetent". Despite these claims and the changes in who may marry, the legal claims for polygamy have not advanced in the last fifty-four years since Perez. Allowing interracial marriages did not lead to polygamy, nor will including same sex couples in marriage lead to polygamy or the

other claims that are raised by fear mongers.

In conclusion, the arguments against including same sex couples in the freedom to marry simply fail when scrutinized. Earlier this year, I represented a couple who had been together fifty years. They had cared for each other through serious illness and cared for and supported each other's family members when they became ill. They have lived honorable and productive lives together, more so because of their union than if they were separate. Nonetheless, under our present statutory scheme, a couple that have been married only one day is entitled to literally hundreds of statutory protections that are denied to this couple that have spent their life together. The time has come to end this disparity in the law and recognize the reality of the lives of many of Connecticut citizens. I urge you to correct this injustice and afford these citizens equal protection under our laws. Thank you.