

Judiciary Committee  
Hearing on SB-699  
Testimony of Mark W. Dost  
March 24, 2006

Good afternoon, House Chairman Lawlor, Senate Chairman McDonald, and other members of the Committee. My name is Mark Dost. I am a resident of Waterbury and an attorney in private practice. By way of credentials, I am a member of the executive committees of the Estates and Probate, Elder Law, and Human Rights and Responsibilities Sections of the Connecticut Bar Association. I am also a past chair of the Elder Law Section of the CBA and a fellow of the American College of Trust and Estate Counsel. This afternoon, I am speaking in opposition to SB-699. The views I present are my own.

Senate Bill 699 seeks to dismantle Connecticut's defense-of-marriage legislation.

In enacting the civil union law last year, the legislature and Governor Rell decided as a matter of policy that "marriage" would retain its historic meaning within our law. Had a vote been taken on the question of authorizing same-sex marriage, the legislation would have failed.

On the other hand, the legislature decided to grant same-sex couples who entered into civil unions "all the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage."

The legislature and the Governor spoke clearly: In Connecticut, same-sex couples, by entering into civil unions, could have the legal rights and benefits of marriage, but marriage itself would remain in our law, as in our culture, the union of one man and one woman.

Following the passage of the civil union law, the Attorney General in his opinion of September 20, 2005, confirmed that same-sex couples that had "married" in Massachusetts or a foreign country would not be treated as "married" for purposes of Connecticut law. He also confirmed that the law afforded these couples a solution: they were free to enter into a civil union.

Not satisfied with this solution, proponents of Senate Bill 699 seek to reverse the legislature's policy on marriage, by allowing Connecticut residents to travel to Ontario, marry there, return to Connecticut, and claim "not less than the same benefits, protections, and responsibilities" afforded married couples under Connecticut law. The bill would not explicitly convert their marriage to a civil union, but would leave the couple's status under Connecticut law intentionally ambiguous. By virtue of their marriage in the foreign jurisdiction, the couple would call themselves "married" and would have all the "benefits, protections, and responsibilities" of married individuals under Connecticut law.

Proponents of Senate Bill 699 also seek to cripple the State's defense of its marriage policy in the courts. Connecticut's policy that limits marriage to the union of a man and a woman, confirmed by the legislature in both the 2000 and 2005 sessions, is under attack by a handful of litigants in the Kerrigan case in the New Haven Superior Court. If the legislature grants same-sex couples that marry in another jurisdiction all the rights of marriage in Connecticut, then it may as well throw in the towel. If instead it wishes to preserve the historic understanding of marriage in our law and culture, it cannot attach legal consequences in Connecticut to a same-sex marriage performed in another jurisdiction.

To the married same-sex couple that wants all the rights of marriage in Connecticut, our law offers a simple and effective solution: enter into a civil union. If the couple chooses to reject the solution, because it disagrees with the legislature's policy on marriage, then so be it.

I think we can all agree that the civil union statute is deficient in one respect: it does not offer couples who have married in other jurisdictions the opportunity to terminate that status, if they wish to do so. Unless they have entered into a civil union, they cannot divorce in Connecticut, because the law does not recognize their marriage. And if they enter into a civil union and then divorce, the court's decree will dissolve the civil union, but not by itself eliminate the "marriage" label. Senate Bill 699 does nothing to address this problem.<sup>1</sup>

For that reason, I propose that Senate Bill 699 be amended in three respects: by confirming Connecticut's policy on marriage, by explicitly permitting same-sex couples that have "married" in other jurisdictions to enter into civil unions in Connecticut, and by explicitly permitting individuals who wish to obtain a judicial declaration voiding their marriage the opportunity to do so. The language of the substitute amendment may be found in my remarks.

Respectfully submitted,

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<sup>1</sup> This problem is not merely hypothetical. A front-page article in the March 20, 2006 edition of the *Connecticut Law Tribune* features the divorce of a same-sex couple in Connecticut that had "married" in Massachusetts and had entered into a civil union in Connecticut less than six months before their decree of divorce was obtained. A copy of the article is attached to my remarks. The article notes that the Connecticut dissolution does not constitute a judgment voiding the Massachusetts marriage.