

# Testimony in Support of HB 7395: An Act Concerning Marriage Equality

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Jennifer and I are law professors at Quinnipiac and Yale, respectively. We have been married for almost 14 years and we have two children.

We support marriage for same-sex couples in Connecticut. Like many non-gay people, we seek equality for our gay, lesbian, and bisexual friends and family members as they live their lives and build their families. It troubles us deeply that while we enjoy the power, meaning, and respect of the word marriage (because we are a different-sex couple), our gay, lesbian, and bisexual friends who love members of their own sex are denied these same benefits and protections.

While some people – wrongly -- argue that equal marriage rights would somehow weaken heterosexual marriage, we believe that legalizing same-sex marriage will actually strengthen heterosexual marriage. Today an increasing number of heterosexuals are asking whether it is moral to marry when their gay friends cannot.

Under current law, marriage is like a “whites only” water fountain. And an increasing number of heterosexuals are refusing to drink, preferring to forego marriage until the freedom to marry is given to all couples without regard to sex. Civil union in Connecticut has not solved this problem, because it rests upon a “separate but equal” theory long discredited in our constitutional history. Creating a “blacks only” water fountain does not reduce the embarrassment of drinking from the white fountain.

In Connecticut, sexual classifications – like the exclusion of same-sex couples from marriage -- are judged by the same “strict scrutiny” standard as racial classifications. *Daly v. DelPonte*, 225 Conn. 499 (1993). Even though it’s clearly unconstitutional to set aside separate spaces on a bus for white and black riders, civil union rests on the assumption that it’s unobjectionable for a state to set aside different names for same-sex and different-couples.

To see why this is wrong, let’s go back to 1967 after the U.S. Supreme Court struck down Virginia’s anti-miscegenation statute. Imagine that Virginia responded to the decision by passing a statute saying that mixed-race couples could only enter into something called “Second-Class Marriages,” which would have all the same legal rights of marriage, just a different name. Surely there is not a court in the land that would find this manifest badge of inferiority constitutional. Sometimes separate words are not equal.

Now you might say, this hypothetical is too extreme; there’s nothing inherently inferior about the term “Civil Union.” But honestly: How do think a court would react today if a statute forced interracial couples to enter into “Civil Unions” if they wanted the legal rights of marriage? A court would wonder why the state felt it necessary to establish a separate linguistic category. Under the constitutional standard, the law would be infirm because it would not further a compelling state interest. What compelling state interest justifies the separate linguistic category for same sex couples? There is none.

The injury of linguistic separation is easy to feel when the shoe is on the other foot. If you’ve ever been married, consider how would you feel if you couldn’t say “I’m legally married.”? Saying “I’m part of a registered civil union that has all the legal rights of marriage” somehow doesn’t sound as sweet. You see, Connecticut gave same-sex couples a noun, but the state failed to give them a verb. Without a verb or adjective we lack a way to signal how thoroughly transforming life long commitment can be for same-sex couples, changing their very identity. So when people who are part of civil unions are asked whether they are legally married, they must start off with a “No but” and then awkwardly fumble for a verb phrase that inevitably signals by its linguistic poverty a less solidly established relationship.

When the law insists that marriage can only exist between a man and a woman, the law reinforces the idea that there must be specific roles for marriage partners to play, based on gender. If, instead, the law permitted people to marry without regard to gender, the law would underscore the ideal that we pursue in our marriage: that of a life-long partnership between two people who vow to love, honor, and care for each other, sharing the joy and the work of building a family. If the law permitted people to marry without regard to gender, couples would be free to work out the roles and division of labor that would occur in their marriages, but without the suggestion from the state – currently contained in Connecticut’s marriage law – that the gender of the parties should be relevant to those determinations. We believe that the value of marriage for everyone would be increased if it were made available to all loving couples without regard to sex – this would remove the false values of sex stereotyping and gender discrimination and help to emphasize the true values of marriage: values of love, commitment, work and care that really lie at the heart of the institution.

Finally, our support for equal marriage rights grows out of our perspective as parents. We have two young children, ages 9 and 12. We have tried to instill in them the belief that gender should not determine their aims in life: that whether male or female, they are free to pursue their passions and talents. We also tell them that gender should not determine who they love: as they choose their friends, they should care more about the content of other kids' character than the shape of their bodies. As our children mature, we hope to continue with this message, assuring them that they can grow to be the people they want and are meant to be. And if our children find special people to love and commit to for life, our hope is that they can choose their mates without regard to sex.

How much easier it would be to make such choices if they could receive the same protections, benefits, responsibilities and respect from the state -- whether they commit to someone of their own sex or a different sex! Thus, our support for equal marriage rights grows out of hope that the state might one day treat our children more fairly and more respectfully than it now treats our friends and family members.

We thank you, our representatives, for considering this issue with care and honest deliberation. We urge you to listen carefully to the stories of the same-sex couples who share with you the joys and difficulties they've experienced in their lives together. Our sincere hope is that you will end the sex discrimination inherent in our marriage laws, and extend full and equal marriage rights to same-sex couples.

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