

Judiciary Committee  
Hearing on SB-699  
Testimony of Mark W. Dost  
March 26, 2007

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 RB-7395 and RB-1449. The views I present are my own.

Like most other Connecticut residents, I oppose same-sex marriage, and I see the issue not as a matter of civil rights, but rather as a matter of preserving our most important cultural institution. However, because of the limited time that I have, I will focus my remarks this afternoon on RB-1449. For my statement of policy reasons in opposition to same-sex marriage, I respectfully direct the committee to my 2004 article in the *Connecticut Lawyer*, produced by the Connecticut Bar Association, a copy of which I have provided to the committee. My article may also be viewed on the web site of the Connecticut Catholic Conference.

Raised Bill 1449 seeks to convert same-sex marriages from other jurisdictions into Connecticut civil unions. This bill is an improvement over the bills introduced in 2005 and 2006, which would have given same-sex couples willing to travel to Ontario for their marriage ceremony an easy method of circumventing Connecticut's policy limiting marriage to the union of one man and one woman.

Although RB 1449 does not contain that obvious vice found in the earlier bills, it nonetheless has one fundamental flaw and a number of technical flaws:

The fundamental flaw is that by permitting a foreign same-sex marriage to trigger legal incidents in Connecticut, the bill would impair the policy of this state limiting marriage to the union of a man and a woman. Same-sex marriages from other jurisdictions should continue to be treated as void under Connecticut law. I have attached to my remarks a proposed substitute to RB 1449 that would preserve that policy, but at the same time deal with the problem of Connecticut same-sex couples who have married in Canada or other jurisdictions and who now wish to obtain a judicial declaration voiding or annulling their marriage.

If, however, the legislature and the governor wish to convert same-sex marriages to civil unions and follow the path of RB 1449, the legislature will need to address a number of technical defects found in RB 1449:

First, the bill should contain an opt-out provision for Connecticut residents who were "married" in other jurisdictions. People should not be forced into a civil union if they do not want to be forced into a civil union. My suggestion: allow either party to file an opt-out declaration with the clerk of the town in which the party resides or, for nonresidents, with the Secretary of State. Better yet: do not create an automatic presumption in favor

have his or marriage declared void in an action for declaratory judgment under section 52-29. In the case of a same-sex marriage recognized as a civil union by reasons of paragraphs (a) and (b), such annulment or declaratory judgment shall not constitute a dissolution of the civil union unless and until the union of the parties has been dissolved by a court of competent jurisdiction.

(d) For purposes of this section, a dissolution of a union shall include a legal separation.

PROPOSED SUBSTITUTE TO SENATE BILL 1449 (with annotations)

*Purpose: This substitute amendment preserves the policy limiting marriage to one man and one woman and permits Conn. residents to void or annul their same-sex marriage entered into in another jurisdiction.*

AN ACT CONCERNING CIVIL UNIONS AND MARRIAGE

(NEW) (*Effective from passage.*) A marriage of two persons of the same sex shall not be recognized as valid in this State and shall not be considered a marriage for purposes of Section 46b-38bb.<sup>1</sup> A resident of this state who has married another person of the same sex, whether or not pursuant to the law of a state or other jurisdiction recognizing same-sex marriage and regardless of whether a resident of this state when he or she entered into said marriage, may petition the Superior Court to have his or her marriage annulled pursuant to section 46b-40<sup>2</sup> and 46b-42<sup>3</sup> or to have his or marriage declared void in an action for declaratory judgment under section 52-29.<sup>4</sup>

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<sup>1</sup> **Sec. 46b-38bb. Eligibility.** A person is eligible to enter into a civil union if such person is:

- (1) Not a party to another civil union or a marriage;
- (2) Of the same sex as the other party to the civil union;
- (3) At least eighteen years of age; and
- (4) Not prohibited from entering into a civil union pursuant to section 46b-38cc.

<sup>2</sup> **Sec. 46b-40. (Formerly Sec. 46-32). Grounds for dissolution of marriage; legal separation; annulment.**

(a) A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction.

(b) An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed.

(c) A decree of dissolution of a marriage or a decree of legal separation shall be granted upon a finding that one of the following causes has occurred: (1) The marriage has broken down irretrievably; (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled; (3) adultery; (4) fraudulent contract; (5) wilful desertion for one year with total neglect of duty; (6) seven years' absence, during all of which period the absent party has not been heard from; (7) habitual intemperance; (8) intolerable cruelty; (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year; (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint.

(d) In an action for dissolution of a marriage or a legal separation on the ground of habitual intemperance, it shall be sufficient if the cause of action is proved to have existed until the time of the separation of the parties.

(e) In an action for dissolution of a marriage or a legal separation on the ground of wilful desertion for one year, with total neglect of duty, the furnishing of financial support shall not disprove total neglect of duty, in the absence of other evidence.

(f) For purposes of this section, "adultery" means voluntary sexual intercourse between a married person and a person other than such person's spouse.

<sup>3</sup> **Sec. 46b-42. (Formerly Sec. 46-33). Jurisdiction.**

The Superior Court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation.

<sup>4</sup> **Sec. 52-29. Superior Court may declare rights and legal relations.** (a) The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether

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Connecticut same-sex couples who marry in other jurisdictions need a vehicle (annulment or declaratory judgment) that can terminate their "marriage." The legislature should grant these remedies by statute. To do so, of course, it cannot abandon or dilute its strong public policy that marriage is the union of a man and a woman.

The following Connecticut legal authority deals with void and voidable marriages, annulments, and declaratory judgments:

1. CGS Section 46b-40, subsections (a) and (b), state:
  - (a) A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction.
  - (b) An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed.
2. CGS Section 46b-42 states:

The Superior Court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation.
3. CGS Section 52-29 states:
  - (a) The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment.
  - (b) The judges of the Superior Court may make such orders and rules as they may deem necessary or advisable to carry into effect the provisions of this section.
4. The court in *Fattibene v. Fattibene* 183 Conn. 433, 437 (1981) stated: "The Superior Court has authority to annul a marriage performed in another state if the marriage would have been invalid in that state or violates a strong public policy of this state."

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or not further relief is or could be claimed. The declaration shall have the force of a final judgment.

(b) The judges of the Superior Court may make such orders and rules as they may deem necessary or advisable to carry into effect the provisions of this section.

5. The court in *Catalano v. Catalano*, 148 Conn. 288 (1961) held that an incestuous marriage (uncle/niece), valid in Italy because of special dispensation that had been given, was void in Connecticut. The court declared that the probate court was not authorized to award a widow's allowance.
6. In *Manndorff v. Dax*, 13 Conn. App. 282 (1990), the Connecticut Appellate Court declared that a nonresident seeking a declaratory judgment that her marriage was invalid could do so under the declaratory judgment statute, even though that individual would not have been able to sue for an annulment. Note that the action for declaratory judgment can be brought by a nonresident (or resident) and it can even follow the death of one of the parties (or during their lifetimes).