

Civil Unions Are Not Enough

Six Key Reasons Why

1. ASSIGNING SAME-SEX COUPLES TO A STATUS OTHER THAN MARRIAGE BREAKS THE PROMISE OF EQUALITY

The highest courts in three states — California, Connecticut, and Massachusetts — have said that maintaining a separate legal status like civil unions for a minority, rather than treating everyone the same, is a violation of the constitutional promise of equality. Civil unions were created as a political compromise because some people were not ready to provide same-sex couples with the same right to marry that different-sex couples have. In order to reserve the right to marry for those in the majority, same-sex couples were relegated to a separate, unfamiliar and unequal legal status. Our constitutional democracy depends on honoring the promises made in our government's charter, yet civil unions break the Constitution's promise of equality. Courts carry out the duties entrusted to them to enforce the Constitution in order to help ensure its promises are kept. Likewise, legislatures have a solemn obligation to uphold the Constitution's promise of equality for all.

Additional online resources:

[Protecting Same-Sex Relationships](#)

2. MARRIAGE MATTERS: WHY ELSE WOULD IT BE DENIED?

In its decision declaring the denial of the right to marry unconstitutional, Connecticut's highest court said: "We agree with the following point made by the Lambda Legal Defense and Education Fund, Inc., in its amicus brief: 'Any married couple [reasonably] would feel that they had lost something precious and irreplaceable if the government were to tell them that they no longer were 'married' and instead were in a 'civil union.' The sense of being 'married' — what this conveys to a couple and their community, and the security of having others clearly understand the fact of their marriage and all it signifies — would be taken from them. These losses are part of what same-sex couples are denied when government assigns them a 'civil union' status. If the

tables were turned, very few heterosexuals would countenance being told that they could enter only civil unions and that marriage is reserved for lesbian and gay couples. Surely there is [a] constitutional injury when the majority imposes on the minority that which it would not accept for itself.'" Restricting couples to civil unions rather than allowing them to marry is a big deal. Indeed, if access to marriage weren't a big deal, there would be no effort to restrict it in the first place.

Additional online resources:

[Lambda Legal's friend-of-the-court brief The Connecticut Decision](#)

3. A CIVIL UNION HAS TO BE EXPLAINED AND DOES NOT GET THE SAME RESPECT AS A MARRIAGE

Only the word *married* conveys the universally understood meaning applicable to the lifetime commitment many couples make. *Marriage* has a meaning unmatched by any other word. Regardless of whether civil unions and marriage offer the same benefits and obligations on paper, when the government relegates same-sex couples to civil unions rather than marriage, it forces them to explain the difference at work, at school, in hospitals and elsewhere. Those couples lose the respect and dignity that they deserve for their commitment to be responsible for each other. Chief Justice Poritz of the New Jersey Supreme Court understood this. In her opinion in Lambda Legal's successful *Lewis v. Harris* case, which required the state legislature to pass at least a civil union law, she quoted from our plaintiffs' testimony about how important it is to be able to use words that match their lives, and how, without the word *marriage*, other people "have to wonder what kind of relationship it is or how to refer to it or how much to respect it." The court created a minimum standard, and so far New Jersey's legislature has left same-sex couples with only the minimum.

Additional online resources:

[The New Jersey Decision](#)

4. A SEPARATE AND UNEQUAL STATUS INVITES OTHERS TO DISCRIMINATE

When the government decides one group cannot have the same choice as others, it marks them as inferior and invites others to discriminate against them as well, including employers, businesses, police, emergency room workers and others. Lambda Legal has testimony and numerous phone calls to our Help Desks to prove it. Take one example: Two lesbians had a civil union protected by law. One with kidney failure was hospitalized and unconscious, and the other could not get hospital staff to respect their relationship. The staff even took the patient's commitment ring off her finger for safekeeping and refused to give the ring to her partner. Instead, they asked her to identify the patient's blood relatives. Lambda Legal located the hospital's attorney and got him to make the calls necessary to ensure respect for the couple's relationship — but only after the couple underwent emotional trauma. This happens even with the well-intentioned. The otherwise LGBT-friendly employer, UPS, initially denied spousal health insurance to our civil-unionized clients in New Jersey. They said that "[b]ased on an initial legal review when New Jersey's civil union law was enacted, it did not appear that a 'civil union' and 'marriage' were equivalent," even though the specific text of the law defined civil union partners as spouses. UPS's initial position underscored the U.S. Supreme Court's words in Lambda Legal's successful *Lawrence v. Texas* case: the government's label of inferiority for gay people is a blanket invitation for others to discriminate against them in all areas of their lives.

Additional online resources:

[The UPS case](#)

5. ALLOWING MARRIAGE DOESN'T HURT OTHERS, BUT IMPOSING CIVIL UNIONS HURTS CHILDREN

In its decision that a civil union law in California (there called a domestic partnership law) did not provide equality under the constitution, that state's highest court listed these top two reasons why civil unions are not enough: "First, the exclusion of same-sex couples from the designation of marriage clearly is not *necessary* in order to afford full protection to all of the rights and benefits that currently are enjoyed by married opposite-sex couples; permitting same-sex couples access to

the designation of marriage will not deprive opposite-sex couples of any rights and will not alter the legal framework of the institution of marriage, because same-sex couples who choose to marry will be subject to the same obligations and duties that currently are imposed on married opposite-sex couples. Second, retaining the traditional definition of marriage and affording same-sex couples only a separate and differently named family relationship will, as a realistic matter, impose appreciable harm on same-sex couples and their children, because denying such couples access to the familiar and highly favored designation of marriage is likely to cast doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of opposite-sex couples."

Additional online resources:

[The California Decision](#)

6. IMPOSING CIVIL UNIONS CREATES MORE HARMS OUTSIDE THE STATE

The federal government and some other states disrespect same-sex married couples when they cross state lines or deal with federal taxes or social security. When a couple's own state creates a separate status for them, it makes them even more vulnerable. As a result, same-sex couples are increasingly avoiding tourist destinations in states that bar them from legal protections, and national membership organizations and multi-state employers have begun to consider policies that avoid planning conventions, conferences or meetings in states where some members or employees may not feel that they are adequately safe as a legal matter (see the Safety Scale below). The more vulnerable couples are, the more time, trouble and expense for them to get protective legal documents (see the life-planning toolkit below).

Additional online resources:

[Lambda Legal's Safety Scale: Respect for Same-Sex Couples' Relationships](#)

[Lambda Legal's life planning toolkit, Take the Power: Tools for Life and Financial Planning](#)

Visit www.lambdalegal.org/relationship-information for additional resources.