S. HRG. 111–560

# THE UNITING AMERICAN FAMILIES ACT: ADDRESSING INEQUALITY IN FEDERAL IMMIGRATION LAW

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JUNE 3, 2009

**Serial No. J–111–27**

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

57–633 PDF WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

HERB KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
BENJAMIN L. CARDIN, Maryland
SHELDON WHITEHOUSE, Rhode Island
RON WYDEN, Oregon
AMY KLOBUCHAR, Minnesota
EDWARD E. KAUFMAN, Delaware
ARLEN SPECTER, Pennsylvania

JEFF SESSIONS, Alabama
ORRIN G. HATCH, Utah
CHARLES E. GRASSLEY, Iowa
JON KYL, Arizona
LINDSEY O. GRAHAM, South Carolina
JOHN CORNYN, Texas
TOM COBURN, Oklahoma

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MATT MINER, *Republican Chief Counsel*

# CONTENTS

## STATEMENTS OF COMMITTEE MEMBERS



## WITNESSES



## SUBMISSIONS FOR THE RECORD

# THE UNITING AMERICAN FAMILIES ACT: ADDRESSING INEQUALITY IN FEDERAL IMMIGRATION LAW

**TUESDAY, JUNE 3, 2009**

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:08 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Schumer, Specter, and Sessions.

## OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. We have a number of things going on in the Judiciary Committee, so I apologize for the delay. But I am delighted to see Congressman Nadler and Congresswoman Speier here, and I apologize to them and the other witnesses that we have been delayed.

You know, for too long, gay and lesbian American citizens whose partners are foreign nationals have been denied the ability to sponsor their loved ones for lawful permanent residency. Under current immigration law, many citizens have been forced to choose between their country and their loved ones. No American should face that kind of a choice. The preservation of family unity is at the core of our immigration legal system, and this American value has to apply to all families.

During the past several years, Americans have increasingly come to reject the notion that their fellow Americans who are gay or lesbian should not have loving relationships. My own State of Vermont has been at the forefront of this. Federal policy should encourage—let me emphasize that—Federal policy should encourage rather than restrict our opportunity as Americans to sustain the relationships that fulfill our lives.

Today, we will hear testimony on the Uniting American Families Act, a bill I introduced last Congress. Our bill will allow the committed partners of Americans the opportunity to immigrate. What we consider today with this legislation is an issue of fairness under Federal law. It is time for the United States to join 19 other nations, many of which are our closest allies, in providing our gay and lesbian citizens this benefit under our immigration laws.

There is no place for discrimination in our Federal law. I note that traditional civil rights leaders like Congressman John Lewis

and Julian Bond, the Chairman of the National Association for the Advancement of Colored People, have said unequivocally that the issue of gay rights is an issue of civil rights. To quote Chairman Bond: "Gay and lesbian rights are not special rights in any way. It isn't 'special' to be free from discrimination. It is an ordinary, universal entitlement of citizenship."

Some have expressed concern that if Federal immigration law were to recognize committed same-sex partnerships for purposes of immigration benefits, opportunities for fraud would increase. That has always been an issue, and I am confident that the U.S. Citizenship and Immigration Services will have no more difficulty discovering fraudulent arrangements between same-sex couples than heterosexual couples. They have to make that decision all the time. Our immigration agencies are well trained and highly experienced in this regard. I have little doubt that when this legislation is enacted, the immigration agency will safeguard against fraud and abuse in same-sex partnerships just as it does for heterosexual couples.

The benefits this legislation seeks to provide are not contingent upon the definition of marriage. I believe that is an issue best left to the States. Former Vice President Cheney and I are often thought about because of our brief conversation a couple years ago on the floor of the Senate, which I will not put into the record.

[Laughter.]

Chairman LEAHY. But this week, he said much the same thing I have about States being able to decide whether their law would recognize gay marriages.

Again, in Vermont—if I might just digress for a moment and just tell you one story. When we were considering our civil union law in Vermont, the then-retired Senator, no longer alive, Senator Bob Stafford—and I think, Congressman, you remember Senator Stafford. A wonderful man, almost the stereotype of a New England Republican, very tall, straight, had been a Governor, had been a Congressman, a World War II hero. He came to a public hearing to talk about it, and he said that 57 years before then, he had met a young woman in Bellows Falls, Vermont, and they got married. He said, "Everything I have ever done in life—Attorney General, Congressman, Governor, Senator, the times I was at war—I was able to do better because of her love and her support." And we were all wondering just where this was going. And he said, "If we have two people who love each other, what difference does it make if they are the same sex or not? What difference does it make? If they love each other and support each other and make each other better, isn't that what we should want?"

There were several other people who were going to speak at the meeting. We all just stood up and said, "Me, too. Go ahead."

You know, I know what a wonderful marriage the Staffords had. My wife and I have been married 47 years, trying to emulate the same.

Now, just last month, President Obama and Secretary of State Clinton announced a new policy to provide domestic benefits to the men and women in our foreign service who are in same-sex domestic partnerships. President Obama and Secretary Clinton acknowledged what many American corporations already recognize, many

of our largest corporations: The happiness and the stability of their employees in their personal lives is essential to success and productivity in their professional lives. And I applaud that.

There is more work to be done. You know, it was not long ago that homosexuality barred an immigrant from entry into the United States. It is time to take that constraint off the committed same-sex partners of American citizens.

I hope we are going to be returning to the question of comprehensive immigration reform. This is just one of the issues to be faced. Senator Schumer, who chairs our Immigration Subcommittee, has begun a series of hearings to prepare us for that, and I hope today's hearing will help. And, again, I welcome our new Ranking Member—not that new anymore. He has had a baptism of fire in the last few days. Senator Sessions.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Mr. Chairman, and thank you for your courtesy on so many things, actually. You have been very helpful to me as I have tried to get my feet on the ground, and you have the experience on this Committee that is almost unprecedented, and I value your counsel and your courtesy very much.

Mr. Chairman, I have looked at this legislation and have given it some review, and I have a number of concerns that would prevent me from supporting it. I think it does amount to a redefinition of marriage, contrary to what the Congress has explicitly stated. I do think, as you made reference, that establishing a lawful system of immigration for this country that respects and affirms our great heritage of the rule of law is important, and we must do it in a way that actually works. I believe this bill would make that more difficult.

It seems that we would be creating a special preference and benefit for a category of immigrants based on a relationship that is not recognized by Federal law and overwhelmingly by most States. By creating a new and a legally tenuous, I suggest, definition of "permanent partnership," we would be expanding the avenue for fraud and abuse for an unlimited number, perhaps, of people who may not even fit into the idea that the drafters have in mind with this legislation.

I think for the first time ever, this legislation would create a Federal recognition of same-sex marriage which is not the current law. It would reverse current law. In 1996, Congress overwhelmingly passed the Defense of Marriage Act 85–14. President Clinton signed it into law. It included a provision which expressly defined the word "marriage" as "only a legal union between one man and one woman as husband and wife."

So 29 States, as this debate has continued, have now enacted constitutional amendments that bar the formal recognition of gay marriage, and others have passed statutory bars to that effect.

I would just say that, of course, individuals can carry themselves out publicly as a partnership as they desire. The question is: Do you get the same legal benefits that you might get in certain circumstances, such as the immigration benefit to bring your spouse to the country? I think that would be a policy that we should not

adopt and would be against the settled will of the American people and the settled will to date of the U.S. Congress.

There is a real potential for fraud with this legislation. I remember many years ago prosecuting cases as a United States Attorney involving marriage fraud. Recently, Senator Specter and I—well, 2 or 3 years ago now—took a trip to South America, and the consulate official there who approves immigration visas talked about how difficult marriage fraud cases are, how many they see, and it is a major loophole, he told us, in our system. Many cases of spousal immigration fraud arise when a citizen or a legal permanent resident brings their spouse to the United States, and so the permanent partner standard that would not be a recognized union in the country perhaps from which that person comes now could provide an additional avenue for abuse of the marriage preference for immigration into our country.

So, Mr. Chairman, there are a number of things that concern me about the legislation. I think it is not something that Congress would be inclined to pass. But I value the hearing. I look forward to the testimony of our Congressman and Congresswoman and discussion of the issue as we go forward.

Thank you very much.

Chairman LEAHY. Thank you. As you may gather, there is somewhat of a split on the panel. But I am glad we are having the hearing, and, again, I appreciate Senator Sessions' being willing to be here for the hearing, too.

Representative Jerrold Nadler is Chairman of the House Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties. He represent New York's 8th Congressional District, first elected to the House of Representatives in 1992, after serving for 16 years in the New York State Assembly. He is the lead cosponsor of H.R. 1024, the House version of this.

Congressman, it is always good to see you.

## STATEMENT OF HON. JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Representative NADLER. Good to see you, Senator.

Good morning, Chairman Leahy, Ranking Member Sessions. Thank you very much for holding this important hearing on the Uniting American Families Act and for inviting me to testify.

As the sponsor of this legislation in the House, I appreciate the opportunity to testify today and to offer my thanks to Chairman Leahy for sponsoring the Uniting American Families Act in the Senate and for being such a tremendous champion of the issue. I know the Committee is on a tight time schedule so I will be brief.

I have always found that among the worst kinds of injustice are those in which the law acts, perhaps unintentionally, in a gratuitously cruel manner; that is to say, it harms individuals for no purpose at all. Sometimes the law must harm people unavoidably. But to harm people for no purpose at all is out of bounds. It is this kind of injustice, this kind of gratuitous cruelty that the Uniting American Families Act would correct.

I first introduced the Uniting American Families Act 9 years ago after hearing from constituents and others about the pain that immigration laws are inflicting on their lives. Just because they were

gay or lesbian, these Americans were not allowed to sponsor their partners for immigration purposes. What this unequal policy means is that tens of thousands of gay and lesbian Americans face a terrible choice between leaving the country to be with the person they love or remaining here in the United States and separating from their partner. Or given the law in the other country, it is entirely possible that the two partners may find it impossible to be together in either country. This runs directly counter not only to the goal of family unity, which is supposed to be the bedrock of American immigration policy; it runs directly counter to any consideration of plain humanity and to any consideration of not being purposelessly and gratuitously cruel to the people involved.

We can right this wrong by passing the Uniting American Families Act. It is very simple. It would give same-sex couples the same immigration benefits as opposite-sex couples. And I must differ here with Senator Sessions. This is not part properly of the debate over same-sex couples marriage. That is a separate debate. I happen to support same-sex marriage, but it is a completely separate debate. This simply says that for immigration purposes we are not going to single out these couples and say, "You cannot sponsor your partner. You cannot get married because you are the same sex, and you cannot sponsor your partner. And, therefore, you must remain separate and apart, perhaps a continent apart."

That is cruel. This legislation is not intended to legalize gay marriage. It is not intended to deal with that issue at all. It is intended to alleviate a gratuitous and purposeless cruelty in the law for about 36,000 people.

Same-sex couples would have to prove the bona fide nature of their relationships just as opposite-sex couples do, or face the same harsh penalties for fraud. So the argument that this would increase the odds of fraud—the odds of fraud would be exactly the same as under the current law. It would not be decreased. That is a question of enforcement. It would not be increased.

Our unequal immigration laws presently wreak havoc on the lives of thousands of bi-national couples and families across the country. It does not have to be that say, and in a just country, it should not be that way. We can end this injustice and stop this gratuitous cruelty by passing the Uniting American Families Act.

When Congress considers, I hope later this session, a comprehensive immigration bill, this bill certainly should be made part of it. I will do my best to ensure that this is the case on the House side.

Thank you again, Senator Leahy, for your leadership on this basic issue of fairness, for holding this hearing, and for providing me with the opportunity to testify.

[The prepared statement of Mr. Nadler appears as a submission for the record.]

Chairman LEAHY. Thank you, Congressman, and I know you have got a million things going on over in the other body, and I appreciate your being here.

Representative NADLER. Thank you.

Chairman LEAHY. Congresswoman Speier, Jackie Speier, represents California's 12th Congressional District. Representative Speier worked with Senator Feinstein to introduce a private bill in the Senate to enable Ms. Shirley Tan, one of today's witnesses, to

obtain lawful permanent residency. And I understand, Congresswoman, you are going to be introducing Ms. Tan. Is that correct?

Representative SPEIER. That is correct.

Chairman LEAHY. Thank you. Please go ahead.

**STATEMENT OF HON. JACKIE SPEIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Representative SPEIER. Thank you, Mr. Chairman and Ranking Member Sessions. Thank you for holding this hearing on the Uniting American Families Act, which seeks to fix a fundamental injustice that rips children from the arms of their parents and, sadly, suggests that our constitutional guarantee of equal protection under the law is often quite unequal. I commend Congressman Nadler and Chairman Leahy for introducing twin bills on this issue.

I thank you also for allowing me to introduce my constituent, Shirley Tan from the scenic and hard-working city of Pacifica, California, where, when God and sunshine conspire to lift the fog, you can see the beautiful Pacific Ocean that Shirley and so many of my constituents crossed from her native Philippines to enjoy.

I only recently met Shirley and her family. That is because they are not political people. They are a family. They go to church. They have involvement in their local school. Shirley and her partner of 23 years, Jay Mercado, are not activists trying to change the world by marching and shouting from the rooftops. They are parents, like most of us, who hope to change the world by quietly raising confident, studious, and generous children.

I did a home visit a couple of months ago, spent an hour and a half with the family, flipped through family albums, 23 years of family albums, talked to their sons, who were cheerful, and fearing of losing their Mom. They are just an all-American family.

Shirley and Jay both sing in their church choir, and their twin boys got straight A's and are active at school, both playing on the junior high school basketball teams. This family would be no different than the thousands of other families in my district with one or more foreign-born parents were it not for the fact that, through no fault of their own, they are victims of an anomaly in U.S. law that tears families apart based solely on the gender of the person that a citizen or legal resident happens to fall in love with.

I want to thank my good friend Senator Dianne Feinstein, who introduced a private bill for Shirley. She has a 2-year reprieve. That is not good enough in our America that offers equal protection under the laws.

Shirley Tan and her family are exemplary members of our community who, after being thrust these few months into the public spotlight, have handled themselves with grace and dignity.

Thank you, Mr. Chairman, for allowing me now to introduce Ms. Tan to tell her compelling story.

Chairman LEAHY. Thank you, Congresswoman, and thank you, Congressman Nadler. I am sure we will be talking a lot as the summer goes on.

Chairman LEAHY. I would ask you to please come and sit down, Ms. Tan, and Gordon Stewart, and my friend Julian Bond, who is

here; Christopher Nugent, Roy Beck, and Jessica Vaughan. I do not know if those things have the names on the back of them or not.

Congresswoman, did you want to say anything more about Ms. Tan? I think you covered it pretty well, especially the—I am thinking of those family photos, the albums and all. Thank you.

Shirley Tan, as has already been said, is from Pacifica, California. I have been there a number of times. It is a beautiful area. She lives with her partner, Jay Mercado. She has been there for 23 years. Together they have 12- year-old twin sons, Joriene and Jashley. Are these your sons here? Okay. Hi, guys. In the family archives someday, they will go back and they will see that you were at this hearing. That is why I wanted to make sure your names were mentioned.

Ms. Tan came to the United States—and I am sorry I have to bring this up—from the Philippines after she had been brutally attacked by an assailant who also murdered her mother and sister. She is the primary caretaker for her elderly mother-in-law. She is a volunteer in her children's school and a eucharistic minister at her local Catholic Church. Ms. Tan, please go ahead.

**STATEMENT OF SHIRLEY TAN, PACIFICA, CALIFORNIA**

Ms. TAN. Chairman Leahy, members of the Committee, thank you for your invitation to appear before you this morning. My name is Shirley Tan, and I am a 43-year-old mother and housewife from Pacifica, California. I am grateful for the opportunity to share my story with you and grateful, too, for Chairman Leahy's leadership on an issue that is so critically important to my family and the tens of thousands of others across the country.

I am honored to be here today with my 12-year-old twins, Jashley and Joriene, and my partner of 23 years, Jay Mercado. I met Jay when, as a graduation present, my father brought me to the United States. Our relationship continued even after I returned to the Philippines following the expiration of my 6-month visa.

When I returned to the Philippines, I learned that the man who had, 10 years before, brutally murdered my mother and sister, and almost killed me as well, was released from prison. Without anywhere else to go, I decided to go to Jay where I would be safe.

In 1995, I hired an attorney to apply for asylum and legalize my stay in the United States. When my application was denied, my attorney appealed the decision.

I did not know it, but my appeal had also been denied. All the while, Jay and I went about building our life together. I gave birth to Jashley and Joriene, the biggest joy in our lives and became a full-time Mom.

Our family has always been like every American family, and I am so proud of Jay and the twins. The boys attended Catholic school through sixth grade and are now in Cabrillo School. I am a Eucharistic minister at Good Shepherd Church, where Jay and I both sing in the Sunday Mass choir.

We have never felt discriminated against in our community. Our friends, mostly heterosexual couples, call us the "model family" and even said we are their role models. We try to mirror the best family values, and we attribute the fact that our children are so well adjusted to the love, security, and consistency that we, as parents,

have been able to provide. Jashley and Joriene's classmates at school know they have two Moms, and it has never been an issue.

Our lives, I can say without any doubt, were almost perfect until the morning of January 28, 2009. That morning, at 6:30 a.m., Immigration and Customs Enforcement agents showed up at my door.

The agents showed me a piece of paper, which——

Chairman LEAHY. Ms. Tan, if we can hold a moment. I think your son, understandably, is upset. If he would like to go in this back room—if you would like to go in the back room, please—if you would like to go with your mother in the back room, you can. Please. It is all right.

I have a grandson the same age.

All right. I just wanted you to know, young man, your mother is a very brave woman. You should be very proud of her.

Go ahead. Go ahead, Ms. Tan.

Ms. TAN. The agent showed me a piece of paper which was a 2002 deportation letter, which I informed them I had never seen. Before I knew it, I was handcuffed and taken away, like a criminal, as Jay's frail mother watched in hysterics. I was put into a van with two men in yellow jumpsuits and chains and searched like a criminal, in a way I have only seen on television and in the movies.

All the while my family was first and foremost the center of everything on my mind.

How would Jay work and take care of the kids if I was not there?

Who would continue to take care of Jay's ailing mother, the mother I had come to love, if I was not there?

Who would be there for my family if I was not there?

In an instant, my family, my American family, was being ripped away from me.

And when I did return home, I had an ankle monitoring bracelet. I went to great lengths to hide it from my children.

I have a partner who is a U.S. citizen, and two beautiful children who are also U.S. citizens, but none of them can petition for me to remain in the United States with them.

Passage of the Uniting American Families Act, UAFA, will not only benefit me, but the thousands of people who are also in the same situation as I am.

After 23 years building our life together, Jay and I know that our family is still at great risk of separation. We have a home together. Jay has a great job. We have a mortgage, a pension, friends and a community. We have everything together, and it would be impossible to re-establish elsewhere. We have followed the law, respected the judicial system, and simply want to keep our family together.

For my children, and couples and families like ours, it is critically important that we end discrimination in U.S. immigration law.

Chairman Leahy and members of the Committee, it is a great privilege to be here with you today. I was honored to receive your invitation.

I humbly ask for your support of the Uniting American Families Act which would allow me to remain with my family and to strive for citizenship in this wonderful country that has been so good to me and my partner and such a blessed home to our children.

Thank you.

[The prepared statement of Ms. Tan appears as a submission for the record.]

Chairman LEAHY. Thank you, Ms. Tan.

Our next witness is Gordon Stewart. He is a director and team leader with Pfizer Pharmaceutical. He has been with the company for 14 years, I believe. Originally from my home State of Vermont, Mr. Stewart now lives in London—I will mention as a result of our current immigration law and the inability of his partner of 9 years to obtain a U.S. visa. Mr. Stewart was forced to sell his home in the United States and relocate to London to keep his family intact. Is that correct?

Mr. STEWART. Yes.

Chairman LEAHY. Please go ahead, and make sure your microphone is on. Please go ahead.

**STATEMENT OF GORDON STEWART, LONDON, ENGLAND**

Mr. STEWART. Chairman Leahy and Ranking Member Sessions, I am grateful for the opportunity to appear before you today. I am an American citizen living abroad simply due to the fact that our country's immigration laws have forced me to leave the United States in order to be with my partner, Renato, the person I love.

I am here today because, like so many other Americans in similar situations, I believe it is imperative that we fix our broken immigration system, and specifically that it is long past time we treat lesbian and gay Americans and our families equally under the law. I traveled to be with you today from London where I work for Pfizer.

I am fortunate to have worked for Pfizer more than 14 years. Pfizer is a company that recognizes domestic partnership. Unfortunately, the U.S. Government does not recognize Renato, my partner of more than 9 years. Renato lived with me in the U.S. as a full-time student, studying English and pre-Law. He was corporate counsel for a multinational in Sao Paolo before coming to New York. In June 2003, while enrolled as a student, he returned to Brazil for what we thought would be a routine second renewal of his student visa. The renewal was rejected, and he has never been able to return to our home in the U.S. For weeks, I left his things exactly as they were the day he left, hoping that soon he would be able to come home.

Renato wanted to live and study in the United States. He was a volunteer in our community. Yet, because the immigration laws did not recognize him as my family member, nothing I could do would bring him back to our home.

So to be with Renato, I commuted to Brazil from New York every other weekend for more than a year and a half. This commuting took a huge toll on me emotionally, physically, and financially. Eventually, I was fortunate to find a position with Pfizer in the United Kingdom. The U.K. Government has recognized us as dependent partners, not a married couple, and we both have the right to live and work in the U.K. While we are grateful for this solution, it means separation from our family and friends and puts significant limitations on our career.

The United States' discriminatory immigration laws have also affected my extended family of five siblings and nine nieces and

nephews, and I am happy that my nephew from Vermont is with us today in the audience. If I want to be with my family——

Chairman LEAHY. Do you want to mention him just so that it can be part of the record?

Mr. STEWART. Yes. His name is Chester Martin, and he is seated here.

Chairman LEAHY. Thank you.

Mr. STEWART. Thank you.

If I want to be with my family for important family occasions, I have to travel alone and leave Renato in London. In August, I will attend my niece's wedding in California. It will be a big family reunion, but my partner will not be able to join us. Renato cannot even get a tourist visa to the U.S. Imagine what that means.

Recently, when my sister was diagnosed with cancer, Renato could not travel with me to visit her, and I could not spend as much time with her as I wanted because I live and work in London. That is the reality of our life together.

Last year, I reluctantly and very sadly sold our family farm in Goshen, Vermont, because I cannot travel there with Renato. Our family had the farm from when I was 6 years old, and our parents both died and are buried on the property. Imagine what it is like to own a property that you cannot visit with your partner. It is impossible to maintain a 19th-century farmhouse from the other side of the Atlantic. That is the reality of American immigration law for couples like us.

I am deeply disappointed that my country has treated Renato this way, and I am furious that we cannot live together in the U.S. Despite the fact that I am a citizen, a tax-paying, law-abiding, and voting citizen, I feel discrimination from my Government.

The U.K. has allowed both Renato and me to move there based on my temporary transfer from Pfizer. The U.K. recognizes permanent partners for immigration purposes as do 18 other countries. The U.S. should do the same.

The decision to move to the U.K. was the best decision I could have made at that time. But I would like to be able to come home to my country, the country that I love. I should have the right to come with my partner to visit or to live, but we cannot. That is the reality of U.S. immigration law.

Thousands of other lesbian and gay families are separated like we are. Unlike us, however, they have not had the support of a wonderful company like Pfizer to help find a solution to this impossible situation. The Uniting American Families Act needs to be passed now. I hope today's hearing will be a step in that direction.

I would like to extend my sincere thanks to Senator Leahy for the strong stand he has taken on supporting families like mine. Let me also thank the Committee for taking the time to listen to my story. I am the voice of many wonderful Americans who have been forced to make the difficult choice between family and partner and country and partner.

Allow me to add that my company, Pfizer, has earned, the top rating of 100 percent for five consecutive years in the Corporate Equality Index, an annual ranking published by the Human Rights Campaign Foundation that evaluates businesses on their treatment of LGBT employees, investors, and customers. Pfizer Chairman and

CEO Jeff Kindler has said Pfizer supports its LGBT colleagues because "doing better in recruitment and retention, in understanding diverse markets, and in making Pfizer a better place to work does ultimately drive up our value." However, he said we mainly "support our LGBT colleagues because it is the right thing to do."

America should also support its LGBT citizens and families because it is indeed the right thing to do.

Again, thank you, Chairman Leahy.

[The prepared statement of Mr. Stewart appears as a submission for the record.]

Chairman LEAHY. Well, thank you very much. I know the area where your farm is in Goshen, one of the prettiest parts of a very pretty State.

I would also note for the record, we have talked several times about other countries that have already done what my legislation would propose doing. The countries are Canada, Australia, the United Kingdom, Israel, Brazil, Belgium, Denmark, Finland, France, Germany, Iceland, the Netherlands, New Zealand, Norway, South Africa, and Sweden.

Our next witness is Julian——

Senator SESSIONS. Mr. Chairman, I would note, I think in almost every one of those countries they have far more controls than this legislation would propose. But we can talk about that later.

Thank you.

Chairman LEAHY. Yes. Julian Bond, our next witness, has been Chairman of the National Board of Directors of the NAACP since 1998. He was first elected to public office in 1965. He served four terms in the Georgia House of Representatives, which was a cataclysmic change—I might add parenthetically, I think Mr. Bond knows even more how cataclysmic it was—for Georgia and six terms in the State Senate, which was ultimately very much to the value of his State.

In addition to his role as Chairman of the NAACP, he is a member of the board for People for the American Way, the Southern Poverty Law Center, the Council for a Livable World, serves on the Advisory Board of the Harvard Business School Initiative on Social Enterprise, among others. He holds 25 honorary degrees, is a distinguished professor at American University, a professor of history at the University of Virginia, and a graduate of Morehouse College.

Mr. Bond, I am delighted you are here. Please go ahead.

**STATEMENT OF JULIAN BOND, CHAIRMAN, NATIONAL BOARD OF DIRECTORS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP), WASHINGTON, D.C.**

Mr. BOND. Thank you, sir. I would like to begin by thanking Chairman Leahy and Ranking Member Sessions for holding this hearing and for your strong and steadfast support of families of all types.

The preservation and strengthening of the family unit has long been a rallying point for the NAACP, and I am happy to say my middle son, Michael, joins me here.

Chairman LEAHY. Now you are in the family archives, too.

Mr. BOND. Family sponsorship accounts for more than 85 percent of legal immigration to the United States. But a backlog of visas—experienced in many immigration categories, but especially for family members—currently separates immigrants from spouses and their young children for over 5 years and separates elderly parents, adult children, and siblings for as many as 23 years. The current family-based immigration system has not been updated in 20 years. There are currently 5.8 million people in the family immigration backlog waiting unconscionable periods of time to reunite with their loved ones.

It is for this reason that the NAACP strongly supports legislation in the Senate that would fix our Nation's immigration laws to again make family reunification a highly functioning element of our national immigration policy. Specifically, the NAACP supports the Reuniting Families Act, Senate bill 1085, introduced by Senator Menendez of New Jersey, and the Uniting American Families Act, Senate 424, which has been introduced by the Chairman of this Committee, Mr. Leahy.

In the House of Representatives, the NAACP supports legislation to be introduced tomorrow by Congressman Mike Honda, also to be called the "Reuniting American Families Act," which incorporates both S. 1085 and S. 424. I would hasten to add that we support the provisions in the Uniting American Families Act because the NAACP strongly believes that the definition of "family" is not restrictive and can and should include non-traditional family units. We do not believe that immigration law, or any laws or policies for that matter, should discriminate against gay and lesbian families or family members.

Too much of our national debate over immigration has focused on enforcement and undocumented workers. The NAACP feels strongly that genuine reform must include provisions to fix an antiquated system with the result being the reinvigoration of one of the most compelling goals of the American immigration laws: the reunification of American families.

Given all the benefits socially, economically, and morally of ensuring that effective family reunification is an integral part of our Nation's policy, there can be no question that the NAACP supports an overhaul of current law to ensure that the family preferences policies are functioning well and without discrimination.

The NAACP would also like to stress that the definition of "family" should not be interpreted so stringently as to omit people who are in a loving, committed relationship but happen to be of the same gender.

It was, in fact, the Immigration Act of 1965 that put family unification at the core of our Nation's policy, replacing the old "Quota Acts" of the 1920s. The 1965 Act made huge strides in eradicating the old, racist policies that put a premium on people from Northern and Western Europe and made it next to impossible for people of color to immigrate to the United States.

We clearly need to update our immigration policies to more efficiently promote family unification, and in the spirit of promoting civil rights that was the guiding force behind the 1965 law, we should include families of all different races and ethnicities, including families with gay and lesbian members. It is because we sup-

port the civil rights protections of all people and because we are opposed to discrimination based on any criteria that we support inclusion of the Uniting American Families Act in any comprehensive immigration reform. This legislation will ensure that gay and lesbian couples and families are treated just like other families who are bi-national. The inclusion of the Uniting American Families Act in comprehensive reform would ensure the continuation of an expansion of civil rights to people who have historically been left out and mistreated by American immigration policies.

In closing, let me reiterate the NAACP's strong belief in the benefits of strong, united families. As such, we support the inclusion of modifications to the existing family reunification policies in our Nation's immigration laws to facilitate more families being brought together faster and with less hassle.

Again, I would like to thank the Chairman for holding this important hearing and for your support of all kinds of families. Thank you.

[The prepared statement of Mr. Bond appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Bond.

Our next witness is Christopher Nugent, who is Co-Chair of the Committee on the Rights of Immigrants of the Section of Individual Rights and Responsibilities of the American Bar Association. He currently is senior pro bono counsel with the Community Services Team of Holland and Knight. He works there specifically on immigration and public policy-related cases. Mr. Nugent has over 20 years of experience in the field of immigration policy. He is the recipient of numerous awards for his work. He is a graduate of Sarah Lawrence University, holds a law degree from the City University of New York.

Mr. Nugent, please go ahead, sir.

**STATEMENT OF CHRISTOPHER NUGENT, CO-CHAIR, COMMITTEE ON THE RIGHTS OF IMMIGRANTS, SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES, AMERICAN BAR ASSOCIATION, WASHINGTON, D.C.**

Mr. NUGENT. Thank you, Chairman Leahy, and thank you, Ranking Member Senator Sessions. It is a privilege and an honor for me to appear before you. I am appearing today at the request of Tommy Wells Jr., the President of the American Bar Association, who was unable to attend the hearing. On behalf of the American Bar Association and its over 400,000 members, I would like to thank you for this exceptional opportunity to express the ABA's strong support for the Uniting American Families Act, which we hope will be integrated into any comprehensive immigration reform legislation.

As the national voice of the legal profession, the ABA has a strong interest in ensuring that our immigration laws are both fair and effective, as well as supporting efforts to combat legal discrimination on the basis of race, gender, ethnicity, religion, nationality, and sexual orientation.

In the particular area of immigration, the ABA has adopted numerous policy recommendations concerning the administration of our system of legal immigration. Central among these rec-

ommendations is the core principle that the basis upon which foreign nationals should be able to seek permanent resident status should be both humane and equitable and should reflect the historic emphasis on both family reunification and the economic and cultural interests of the United States.

The ABA has also adopted numerous policy recommendations that oppose discrimination based on sexual orientation. We recognize the importance of providing committed gay and lesbian couples and their families with basic legal protections to help those families stay together.

Family unification is an express and central goal of immigration policy in the United States and has been for more than 50 years. Currently, however, this principle fails the families of U.S. citizens and permanent residents whose same-sex partners are foreign nationals. U.S. policy allows foreign spouses and fiancé(e)s to immigrate and live with their U.S. partners, but it discriminates against gay and lesbian U.S. citizens and permanent residents by prohibiting them from sponsoring their partners for permanent residence in the U.S. As a result, as we have heard today, thousands of lesbian and gay bi-national couples and their children are being kept apart, driven abroad into virtual exile, or forced to live in fear of being separated, detained, or deported.

This policy damages not only those families, but the United States society generally. According to the 2000 U.S. Census, there are 35,820 same-sex bi-national couples that live together in the United States. But due to current law and policy, they are prevented from immigrating to the United States, and many bi-national couples are forced to leave this country, depriving our Nation of the economic, cultural, social, and other contributions that these individuals could have made here.

Gay and lesbian partners are ineligible to access immigration opportunities, regardless of the depth of their love and the permanency of their commitment to one another.

The Uniting American Families Act would not repeal or affect the Defense of Marriage Act in any material way. Rather, the Act simply seeks to provide a viable mechanism by which permanent partners of gay and lesbian U.S. citizens and permanent residents have access to valid immigration status on an equivalent basis to married straight couples.

Moreover, gay and lesbian couples would be subject to exactly the same rigorous documentation criteria that are imposed upon heterosexual spouses, including productions of documents like joint leases, mortgages, joint bank accounts, family photos, and the like. The petitioning American partner also would be required to sign a bind Affidavit of Support, which is a contract that would obligate him or her to financially support the beneficiary for 10 years in the United States.

In addition, the current penalties, which are 5 years imprisonment or a $250,000 fine—for marriage fraud under the Immigration Nationality Act and the U.S. Code would apply with equal force and vigor to gay and lesbian couples. Accordingly, for these reasons, the Act would not increase the opportunity for marriage fraud.

In maintaining the current immigration restrictions that discriminate against same-sex couples, the United States' policy is in direct contradiction with many of our closest allies, including the United Kingdom, Australia, and Israel, which facilitate and embrace immigration benefits for same-sex partners.

In conclusion, central to this Nation's long history of immigration law and policy is to ensure that Americans and their loved ones are able to stay together in the United States. The current failure to recognize gay and lesbian permanent partnerships for immigration purposes is gratuitously cruel and unnecessary. Critical protections, as provided in the Uniting American Families Act, should be afforded and enacted to help gay and lesbian partners maintain their commitment to one another on an equal basis with different-sex spouses.

I thank you for your consideration of my testimony, and I look forward to your questions. Thank you, Chairman Leahy.

[The prepared statement of Mr. Nugent appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Nugent, and thank you for the emphasis on the kind of scrutiny that would be given to anybody making this kind of an application. As I understand, it is the same scrutiny as somebody who is a heterosexual couple, married couple, that would face the same kind of scrutiny. Is that correct?

Mr. NUGENT. Exactly. It would be the same exacting scrutiny and very vigorous documentation requirements and the threat of civil and criminal penalties. And as your bill, Chairman Leahy, states, it states that part of the bill is to penalize immigration fraud in connection with permanent partnerships. So that is integrated and central to your bill.

Chairman LEAHY. Thank you very much.

Roy Beck is the founder and CEO of NumbersUSA, a grassroots organization dedicated to immigration reduction. Prior to joining the organization, Mr. Beck worked as a journalist for over 30 years. He is the recipient of numerous awards for reporting on religion and politics and is a graduate of the University of Missouri School of Journalism.

Mr. Beck, glad to have you here, sir.

**STATEMENT OF ROY BECK, FOUNDER AND CHIEF EXECUTIVE OFFICER, NUMBERSUSA EDUCATION & RESEARCH FOUNDATION, ARLINGTON, VIRGINIA**

Mr. BECK. Thank you very much. I thank the Committee for the opportunity for NumbersUSA to testify about S. 424.

The key issue for us is that S. 424 creates a new, unlimited category of immigration, but it does not include any offsets of reducing green cards in other categories.

NumbersUSA was founded as a nonprofit, nonpartisan organization in 1996 to carry out the immigration recommendations of two Clinton-era national commissions. We now have 900,000 on-line activist members who support that mission. We believe that all immigration bills should be reviewed in light of the principles of those two commissions.

First, President Clinton's Council on Sustainable Development recommended that annual green card numbers be cut low enough to allow for U.S. population stabilization. Environmental sustainability in this country was seen by the Commission as impossible if Congress continued to force massive U.S. population growth through immigration.

The second was the bipartisan U.S. Commission on Immigration Reform that was chaired by the late Barbara Jordan. It recommended deep cuts in immigration to remove the economic injustice that current immigration causes and imposes on the most vulnerable members of our community. NumbersUSA examines every immigration proposal on the basis of how it would advance or impede the numerical recommendations of the two Clinton-era commissions. These commissions recognized that immigration policy has been assembled piecemeal without thought to how the total number of green cards affects the overall national community.

These Commissions recognized that our immigration policy has been assembled piecemeal, without thought about how the total number of green cards affects the overall national community. Thus, a bill like S. 424 will tend to be examined entirely outside its environmental consequences, even though we are in a time of grave environmental concerns. It will tend to be examined outside its economic impact despite our 9-percent unemployment rate. But nearly every adult who is permanently added to the U.S. population through immigration legislation would be a potential competitor to unemployed and underemployed American workers. Every new immigrant increases the total U.S. carbon footprint and ecological footprint.

Every piece of our complex policy caters to a particular special interest. Now, special does not mean illegitimate. It just means it is special. It is not the national interest overall. But the combined effect of all of these pieces on our Nation's immigration policy has a profound consequence on the entire national community in terms of the public infrastructure deficit, economic disparities, and stewardship over our natural resources.

I hope the Judiciary Committee will consider all those implications every time it looks at immigration legislation in the Congress. I noted in my written testimony that in many ways immigration ought to come up before the Environment, Energy, Health Services because it is the primary driver of population growth in this country, which has profound effects on all of those committees' work.

All of the long-term population growth in the United States since 1972 has been due to Federal immigration policies.

In 1972, Americans chose to reduce the U.S. fertility rate to below the replacement level of 2.1. It has been just below that ever since. Yet the 1990s saw the biggest population boom in our history—larger even than the 1950s baby boom. This decade is very similar.

There is only one reason for this gigantic population boom that defies all of the environmental hopes and dreams that were back in the 1960s and 1970s when I first began reporting on the environmental movement, and they are opposite the trends recommended by President Clinton's Sustainability Commission. That reason is that Congress has repeatedly overridden the American

people's choice of a stabilizing future and instead forced massive population growth through increases in green cards.

I am not aware that Congress has ever stated that it wanted to increase the population. I am not aware that Congress has ever said that the American people prefer to have an extra 130 million people the Census Bureau says that immigration will cause over the next 50 years or 40 years. But this is the result of making decisions on green cards piecemeal instead of looking at the overall consequences and the overall numbers.

Until the first Earth Day in 1970, immigration averaged about 250,000 a year, and that was about what it was in the 1950s and 1960s. But a succession of immigration decisions by Congress have raised the 250,000 green cards to a million-a-year level by 1990, and it has been there ever since.

In order to meet the Sustainability Commission's recommendations of moving toward a stabilized U.S. population, green card numbers would have to be cut back at least 75 percent. Like nearly all sustainability issues, the setting of green card numbers is not primarily for those of us who are living in the next decade. They are for our children and grandchildren later this century, and they are for the generations to come that will be in this country.

I want to just finish then by saying that, in a nutshell, our concern about S. 424 is that it represents another piecemeal congressional act that would increase the numbers of green cards each year with no regard for the resulting increase in population pressures.

Without a reduction in immigration and population growth, it will be close to impossible to meet carbon goals, energy goals, infrastructure goals without a fundamental slashing of the American standard of living.

If Congress would take a bill like S. 424 and create offsets at the same time, our organization does not have a position on how these green cards are passed out. But we do believe that the direction of green cards must be moving toward the quarter million level from the million level. Thus, a bill such as S. 424 that adds green cards should cut, we think, at least three green cards in other categories in order to move in the right direction. By adding green cards without reducing others, passing S. 424 would be irresponsible to the environment, to future generations, and to the most economically vulnerable members of our national community.

Thank you.

[The prepared statement of Mr. Beck appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Beck.

Incidentally, you talk about doing this in a comprehensive fashion. Did you support President Bush's comprehensive immigration plan?

Mr. BECK. No. No, because it added lots of green cards.

Chairman LEAHY. Okay. I did support President Bush on that one.

Mr. BECK. I know.

Chairman LEAHY. But it did not go anywhere.

The next witness is Jessica Vaughan. She is the Director of Policy Studies at the Center for Immigration Studies. Ms. Vaughan is

a former State Department consular officer, has extensive experience with visas, immigration benefits, and immigration law enforcement. She holds a bachelor's degree in international studies from Washington College, a master's degree in government from Georgetown University. Again, your whole statement will be placed in the record, but please go ahead, Ms. Vaughan.

**STATEMENT OF JESSICA M. VAUGHAN, DIRECTOR, POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES, FRANKLIN, MASSACHUSETTS**

Ms. VAUGHAN. Thank you all very much for the opportunity to be here today to discuss this bill. And just for the record, I am a former Vermonter, also, another one on the panel.

Chairman LEAHY. Whereabouts?

Ms. VAUGHAN. Randolph.

Chairman LEAHY. Randolph. That is very pretty. Not that far from Montpelier, where I was born. Thank you.

Ms. VAUGHAN. Thank you.

First off, I want to say that I fully understand the goal of this legislation and the difficulties that some aspects of current law present, particularly for same-sex couples. But looking at this from the perspective of the administration of the law, and as somebody who has adjudicated some of these cases, and after discussing it with others who know the current process very well, I do see a number of problems with the bill.

It is addressing the issue from the wrong direction, I believe, and as a result would create major new problems for officials who adjudicate immigration benefits applications and for the many individuals who are involved in those applications.

Immigration law specifies exactly which types of relationships can qualify for visas, green cards, and other benefits, and in most cases they do refer to marriage or employment or another close family tie that can be established through official documentation that is verifiable. Right now, Federal law defines "marriage" as between a man and a woman, and immigration law and all other areas of Federal law are subject to that definition.

If the goal is to give same-sex long-term partners equal access to immigration benefits, then the target really should be the Defense Of Marriage Act, not the Immigration and Nationality Act. If that law were changed, then this bill would not be necessary, and the change would apply to all other areas of Federal law, whether it is Social Security benefits or veterans benefits or what have you. I do not see a good reason to single out immigration law for that kind of a change.

Then also from a practical standpoint, this bill is really just unworkable and would create havoc in our legal immigration system. First of all, there is the problem of official documentation. In most places, there is no mechanism to recognize or document permanent partnerships. And our whole immigration system is dependent on documents that can be verified.

Eligibility is established by presenting documents that prove that the sponsor and applicant have a qualifying relationship, whether it is marriage, parent-child, employer-employee, or sibling. And adjudicators review these documents to determine the eligibility of

the people before them. For marriage-based applications, that is a marriage certificate. There is no investigation at that point, at the point of reviewing the petition. That may happen later if they are applying overseas, but usually it does not occur because about half of applications occur from within the United States. So usually there is no interview.

It is already hard enough with all the different kinds of marriage certificates here and the prevalence of fraudulent documents in so many countries overseas to verify even the legitimate marriages. So what happens when consular officers and USCIS adjudicators have to try to evaluate a permanent partnership, which is a relationship that does not officially exist in most places? I found about 10 States, plus the District of Columbia, that allow same-sex marriage or civil unions or domestic partnerships, and those presumably would be able to provide some kind of documentation. But I only found about 21 foreign countries that have these kinds of partnerships, mostly in Europe——

Chairman LEAHY. How many?

Ms. VAUGHAN. Twenty-one that I could find.

Chairman LEAHY. And Israel and South Africa.

Ms. VAUGHAN. Israel recognizes other countries'. It does not have it itself, apparently, according to the sources I saw.

Chairman LEAHY. South Africa, too.

Ms. VAUGHAN. South Africa, yes. Most of them are in Europe. But people from these countries only make up about 6 percent of legal immigration to the United States. So there is really a very small number of people who would be able to provide some kind of official documentation of their partnership. And I do think it is unreasonable to try to expect consular officers or USCIS adjudicators to try to do additional investigations to verify the authenticity of most of the rest of the other applications they would be getting under this legislation. It just is not feasible with the resources that they have today.

So this bill, by creating a relationship that is difficult to document is going to introduce new opportunities for fraud in a program that is already a magnet for misrepresentation and abuse of the system.

It is important to remember that this is going to create—it is going to help a lot of people. It has the potential to help a lot of people. But it will also create thousands of new victims of marriage fraud as well. Marriage is by far the most common route for foreign nationals now. I counted that last year more than 400,000 people obtained green cards as a result of marriage to either a U.S. citizen or a permanent resident, or someone else who qualified for a green card. And that is about 40 percent of total legal immigration to the United States. So it is a lot of people who come in through this route. And while most of these marriages are legitimate, still marriage fraud is one of the most common ways for otherwise unqualified people—many of whom are illegal aliens—to obtain green cards.

We published a report last year on marriage fraud and documented all the different types of it, whether it is mail-order brides or cash for vows or exploitative relationships or what we call "heart

breakers," and all of these methods are sure to be used in the context of permanent partnerships.

Chairman LEAHY. Ms. Vaughan, we will put your full statement in the record. I want others to have time. I have to be at another thing. I know Senator Sessions will have questions and Senator Specter will. I will turn the gavel over to either Senator Specter or Senator Schumer if he comes. I do apologize. You make a very good point on the question of fraud, and as Mr. Nugent pointed out, we are trying to put the same law in, and we do not want to put extra work on overworked consular officers, but we all have to work hard. And we will put in the same fraud protections in there for this as we do for other married couples, because the point you make is a very good one. We should try to be able to root out fraud.

[The prepared statement of Ms. Vaughan appears as a submission for the record.]

Chairman LEAHY. I am also going to put in the record 34 statements in support of this from organizations across the country. Mr. Stewart, it includes Pfizer.

Ms. Tan, thank you for coming today. I know part of this has been difficult for Jashley and Joriene, but you can be very proud of them.

Ms. TAN. Thank you.

Chairman LEAHY. They look like very nice young men, and they should be proud of both their parents, and they should know that there are people who want to help them.

I could not help but think that the family you have and the contribution to your community are things the Federal Government should protect. You work actively in your community, in your local Catholic Church, and other areas. And both your story and Mr. Stewart's story remind us that when we discuss this policy, there are real people involved. I just slipped Mr. Stewart a note saying that our family has had the same farmhouse for 50 years in Middlesex, and I know how—Middlesex is not that much different than Goshen.

So we know that what you want to do is provide your family with a good education, provide them with their welfare. How about others in your community? How do they feel? Do you receive support within the community from people on this?

Ms. TAN. Yes, I——

Chairman LEAHY. Press the button so your microphone will be on. If the little red light comes on, it is on. Go ahead.

Ms. TAN. My whole community in Pacifica gave me their utmost support. The congregation, the Church of Good Shepherd, my parish priest, the pastor, he wrote a very nice letter to Senator Dianne Feinstein in support of my plight. And all of the community leaders, they are extending their sympathy, and my friends, the school community where my sons attend the Cabrillo School, they were extending their support and sympathy in this time of our life.

Chairman LEAHY. Thank you.

Mr. Stewart, you are now working for Pfizer in England. You are paying your taxes in England. If this would work, you would be in the United States. You would be a taxpayer not only in my State but wherever Pfizer had you. Is that correct?

Mr. STEWART. I am actually under the earned income exclusion. I also pay taxes in the U.S. as a U.S. citizen living abroad. So I, in fact, pay a heavy tax burden in the U.S. as well.

Yes, if I were able to——

Chairman LEAHY. But your skills would be used here in the United States.

Mr. STEWART. Yes. The headquarters of Pfizer are in New York, and the policy of Pfizer to send people abroad or move them around the global organization is so that they can add the most value to the company. And, obviously, at a certain point, my skills could be best used back in headquarters, I believe. And I believe that is why we have the support of our CEO and chairman.

Chairman LEAHY. Thank you.

Mr. Bond, you—and I do not mean to embarrass you; it becomes almost a cliche. You are an icon in the civil rights movement and are recognized by all of us in that regard. I listened to your statement, the benefits of family unity and all. Would you say your statement could apply very well to Mr. Stewart and Ms. Tan.

Mr. BOND. Absolutely. We think we are all united in wanting the same thing, and the arguments you have heard from personal stories are so compelling, it is hard to see how someone could turn away.

Chairman LEAHY. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you.

You know, Mr. Nadler used the words "gratuitous harm." I do not think that is the fair definition of where we are. It seems that the U.S. Government and most governments in the world have defined marriage as between a man and a woman. They give preferences in several different areas—joint tax returns or other advantages of being in that relationship that has been approved by the State. The State does not order that people cannot live together if they are same-sex couples and cannot share all kinds of responsibilities and activities together. It does not prohibit that. But it does not give that special status. And you think about maybe brothers and sisters live together a long time and are close, just roommates or partners or friends in business or other activities. They are not given preferences either. So at some point, the law has to draw lines. Our Congress has voted not long ago overwhelmingly that marriage should be defined as between a man and a woman. So that is kind of where we are, and most nations, I think, in the world would agree with that.

I do note that this legislation has caused some concern among the pro-immigration forces. The U.S. Conference of Catholic Bishops, who support immigration and family unification issues in a pretty strong way, recently wrote that the reunification bill would "erode the institution of marriage and family by according marriage-like immigration benefits to same-sex relationships, a position that is contrary to the very nature of marriage, which predates the church and the State."

Also, Mr. Samuel Rodriguez, head of the National Hispanic Christian Leadership Conference, called it "a slap in the face to those of us who fought for years for immigration reforms," adding

that it would divide the very broad and strong coalition we have built on behalf of comprehensive reform.

Well, I just say that to say that there are some differences here of a significant nature on this question.

Mr. Nugent, just briefly, our research tells us that the countries that have this kind of immigration policy, at least in some form, all have more restrictions and requirements of proof than this bill would have. If you know that answer I would like your response. If not, perhaps the ABA would take a moment to check and see how well other countries have written their law to eliminate as much fraud as possible.

Mr. NUGENT. Yes, I would prefer that the ABA submit their response in writing, but I——

Senator SESSIONS. You think the ABA had all that information when they passed the resolution adopting this?

Mr. NUGENT. To my knowledge, they surveyed all the other countries in terms of their requirements.

Senator SESSIONS. Who votes for the ABA to make such a resolution? I am a member. I do not recall knowing that you were voting on it.

Mr. NUGENT. It was at last year's meeting.

Senator SESSIONS. So just the delegates who showed up at the national meeting voted.

Mr. NUGENT. People can vote.

Senator SESSIONS. Every delegate that showed—was it the entire ABA Conference or some committee?

Mr. NUGENT. No, it is through the House of Delegates, so the delegates votes.

Senator SESSIONS. The delegates, not the ABA members and——

Mr. NUGENT. The delegates represent their constituents.

Senator SESSIONS. How many is that?

Mr. NUGENT. I do not have the exact number of the ABA delegates. I think it is around 500.

Senator SESSIONS. All right. Ms. Vaughan, with regard to this fraud issue, you have done a good bit of work on that, and I saw in your statement already that it is a big problem. As I indicated, when Senator Specter and I were in the Caribbean, we were talking to a consulate official, and I am not sure if Senator Specter was in that conference, but we got into a long discussion about this. He said this was the No. 1 fraud issue he faced. When they caught people flatly committing fraudulent documents, nobody prosecuted it. There was no ability to do anything about it. And it was just a constant abuse of the system. And he thought it was the most abused part of the system.

How would you respond to that?

Ms. VAUGHAN. Oh, I would agree, absolutely, that marriage fraud is the single most difficult problem in immigrant visas because there are so many applications that depend on marriage and documenting marriage. It is just ripe for it. There are so many different kinds of it. And so that is why it is critically important to be able to verify that the relationships are valid, and that is why we have a provision in the law that makes the green card conditional for 2 years. And then the couple has to come back to establish that they are still married.

But even so, you know, the motivation——

Senator SESSIONS. They have to come back and show—does this bill require that?

Ms. VAUGHAN. My understanding is that it imposes the same standards on permanent partners as it does on marriage cases. But the problem is that—well, for one thing, marriage itself is an institution that brings with it legal entanglements, and we think that having—that the prospect of marriage is something that actually does deter some people who might be tempted to engage in marriage fraud for cash or for whatever reason, because they think it is kind of a benign crime, because of the legal entanglements—in other words, the spouse has access to your bank account, to your home, and so on, and you have to demonstrate the bona fides of the relationship. And so permanent partnerships have no such legal standing.

Senator SESSIONS. In the United States in particular.

Ms. VAUGHAN. In the United States in particular, and in many other countries in the world. So what is to stop—you know, I can imagine somebody who would be tempted to perpetrate this kind of fraud would just say, well, what do I have to lose by establishing a permanent partnership? Nothing. If we are to end the partnership, I lose nothing. I gain from, you know, however many thousands of dollars I make for establishing this fraudulent partnership, and there is no risk to me as an individual.

Senator SESSIONS. How about the situation—isn't it true that if you have a spouse in Colombia, let us say, that spouse would go to the U.S. consulate on Colombia and would present a marriage certificate or some document that virtually every nation in the world provides for people who are actually in a heterosexual marriage relationship, right? But that kind of documentation is not available in most countries in the world where 94 percent of the people who used the marriage relationship to come to the United States as a preference, that would not be available. And so the consulate official has now got a real complex decisionmaking requirement before they can determine whether or not that is—what kind of relationship it is. Wouldn't that complicate their lives significantly?

Ms. VAUGHAN. Oh, absolutely. It is hard enough with marriage certificates, but at least those you can verify by calling the country's Department of Vital Statistics or, you know, there are lots of other ways to discover that the government of that country has recognized this relationship.

With permanent partnerships, they do not exist in most other countries of the world, so there would be no way that the adjudicating officer could have any confidence that this was a legitimate, officially recognized relationship. That is very problematic.

Senator SESSIONS. There are other possible partnership relationships that could be implicated by this statute that would require even further and more complex analysis. I think the clarity of the preference, the benefit—the clarity of the benefit provided to a traditional marriage relationship provides some help in keeping integrity in the system and its being abused. To go beyond that I think would really open up the system to very grave consequences.

Chairman Specter, I would just offer for the record a number of letters and comments. John Sampson, a 27-year veteran of immigration enforcement with INS and its successor, U.S. Customs Enforcement, ICE, the Family Research Council, Focus on the Family, Concerned Women of American Eagle Forum have submitted the letters that they would like to be made a part of the record. We would offer that.

Senator SPECTER [presiding]. Without objection, they will be made a part of the record.

[The information referred to appears as a submission for the record.]

Senator SPECTER. Thank you, Senator Sessions.

Senator Schumer.

## STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and I apologize to you and to the witnesses for being here late. We had a discussion on the health care bill in the Finance Committee. That is coming up. I had to be there. I am just going to read an opening statement, because I am supportive of Senator Leahy's bill, and then you get on with other questions.

Now, about a month ago, I chaired a hearing of the Immigration Subcommittee regarding the prospects for comprehensive immigration reform. It was a great hearing. As you know, Mr. Chairman, I am Chairman of the Immigration Subcommittee, and we are going to make a very strong attempt to try to get comprehensive immigration reform this year that I think can unite rather than divide people, because most Americans are both pro-legal immigration and anti-illegal immigration. And this bill will be very tough on each.

At the hearing, Pastor Joel Hunter—he is one of America's most knowledgeable and influential conservative religious leaders. He is pastor of a huge church and has an amazing following and is a wonderful person. His testimony on immigration, you know, brought tears to the eyes of many people, and he reminded us that "Our broken immigration system produces both broken and crooked people and tempts many to predatory practices"—something I know that all the witnesses, including Ms. Vaughan just talking about it, are worried about.

Well, I urge my colleagues to read his testimony from last month, both in testimony as it applies to this bill, but as it applies to comprehensive immigration reform. And Pastor Hunter counseled us that, in order to fix this broken system, we must adopt an immigration system that deems each person is valuable, prioritizes the family, and provides compassion for those most in need. And that is why I am a sponsor of the Uniting American Families Act.

For those who oppose this act, citing concerns of fraud, I counter with what our immigration officials themselves tell me. They say that what truly engenders fraud is the current broken system which lamentably places bi-national same-sex couples in the dilemma of either being torn apart from their loved ones or breaking the law. Ms. Tan has testified about that.

For those who question the morality of permitting same-sex partners to obtain immigration benefits, I believe we should value the sanctity of preserving the family structure in whatever form it may take and in providing compassion for all Americans who yearn to live with their family.

This Act incorporates the same principles that I believe should govern comprehensive immigration reform. It is tough on fraud and law breakers. It encourages people to abide by the law, requires people to prove they are really in a permanent partnership prior to receiving an immigration benefit. And, best of all, it fixes an aspect of our broken immigration system in order to discourage illegal immigration and encourage legal immigration.

The time has come for us to help people like Ms. Tan and to make the promise of America real for this sympathetic segment to the American population who is adversely and irrationally affected by our current immigration law.

The division I guess I would have with Jeff, my colleague Senator Sessions, is this: Do not let the perfect be the enemy of the good. No law is going to be perfect. But this law will encourage people to abide by the law rather than break it, because we know that love is one of the most strong forces that God has created, and people are going to figure out ways to keep that love intact, and sometimes it leads them to break the law, which is wrong. Why not have the law understand that and make a process that is more law-abiding rather than less?

That is, I guess, what I would say, and I thank you, Mr. Chairman, for both calling on me and chairing the hearing. I thank all of the witnesses for their patience. And I thank Senator Leahy for introducing this bill.

Senator SPECTER. Thank you, Senator Schumer.

The trend nationally has been to recognize relationships between people of the same sex. There have been five States now which have given full marriage equality to members of the same sex. Other States have sanctioned civil unions. Still other States have sanctioned domestic partnerships. Some States have recognized same-sex marriage performed in other States. And some States have limited relationship recognition laws.

Where there has been such a significant trend to giving at least recognition to civil unions, I believe it is entirely consistent to accord people that opportunity on immigration so that if you have a same-sex union to give equal standing as really a civil rights issue. Not necessary to get into the issue as to whether it would be constitutionally protected with the different status of an undocumented immigrant, for example. But I think Senator Leahy's legislation goes in the right direction, and I support it.

The issue of same-sex marriage has changed very materially since the Defense of Marriage Act was passed in 1997. At that time, there was a very substantial vote, 86–14, and I was among the 86. Former President Clinton has made an interesting comment about same-sex marriage when asked about his own judgment on it. I think it is accurate to say that he remarked that his views were evolving, which may be a fair statement. As to what is happening nationally remains to be seen. But it is my hope that

an issue like this will not prove to be so controversial that it derails our efforts to have comprehensive immigration reform.

In 2006, this Committee passed out a comprehensive immigration reform bill. It passed the Senate. There was a bill which passed the House, and the House would not go to conference, really largely along political lines. Their bill was not comprehensive. It only dealt with the law and employer verification. The political calculation boomeranged, and the House went down to substantial defeat, and the Senate, by one vote, changed control.

In 2007, the Committee did not take up the issue, and there was an ad hoc committee, and a bill was taken to the floor and was not successful. The issue of citizenship was a major concern, which I think led to the bill's defeat. But on the chronology, the comprehensive bill provided that the undocumented immigrants, estimated at 12 million—nobody knows for sure how many; it could be as many as 20 million—would come at the end of the line, which had a process of about 13 years. So the citizenship was very far distant.

I introduced a discussion bill in July of 2007 which made a couple of changes. One was on the family reunification issue which was considered in the ad hoc deliberations, and I think not wisely decided, without hearings and without the customary markup. And my bill provided that the fugitive status would be changed to try to bring people out of the so-called shadows to be in a position to be identified so that we could deport the criminal element. That is doable. You cannot deport 12 million people. Get the people out of the so-called shadows so they pay taxes and have standing in society.

The hearing has run late, and I do not propose to ask very many questions. We do not often have a person of the stature of Mr. Julian Bond. Mr. Bond, would you care to give a reaction to a proposal which would seek to remove a major impediment to political success by leaving immigration to another date? It is going to be delayed 13 years in any event. A lot can happen in 13 years. But if we did not have in immigration citizenship as an immediate consequence, I think it might alter a lot of attitudes and remove a major impediment to comprehensive reform. What do you think?

Mr. BOND. Thank you, Senator. It may well allow for some time for consideration of other issues. But as you said about the question of same-sex marriage, the trend in this country is changing, as witnessed by the several States that have legalized and other States that have provided some kind of domestic partnership or something.

I think the likelihood is also true about immigration as a general topic and what we ought to do about it. And although we put it off for 13 years, I would hate to think we would put it off for another 13, or even one 1 or 2.

I think we have a President who wants to do a lot of things as quickly as he can, and I am glad that he is, because I think for too long we have put things aside and waited for a more proper moment.

Senator SPECTER. I did not quite follow your view as to my suggestion that we make the immediate change on eliminating the fugitive status.

Mr. BOND. Oh, I am sorry. I thought you were talking about delaying the prospects of immigration discussion of the general larger question. I misunderstood you.

Senator SPECTER. Oh, no. I am not proposing delaying it. I am proposing since citizenship is not realistic for the undocumented 12 million for a long period of time, because even under the legislation which the Senate passed, comprehensive, people were satisfied they would put them at the end of the line, I do not think you can put them at the beginning of the line. But if you made a change and just removed the fugitive status, I think there would be a tremendous difference in the way we treat the undocumented immigrants.

Mr. BOND. I think so, Senator. I am sorry. I completely misunderstood the question you were asking. But I think so.

Senator SPECTER. Would you be willing to go along with deferring the citizenship question and try to move ahead with comprehensive reform by just removing the fugitive status?

Mr. BOND. Senator, I am speaking here today on behalf of a small "d" democratic organization which makes decisions slowly, and I am not in a position to say, yes, we would, or we would not.

Senator SPECTER. Well, would you care to give a personal opinion, having disclaimed your representative status?

Mr. BOND. No, probably not.

[Laughter.]

Senator SPECTER. Okay. Fair enough. You have the right to remain silent.

Mr. BOND. Thank you.

Senator SPECTER. Nothing you say will be used against you.

Thank you all very much for coming, and that concludes our hearing.

One additional item. Senator Sessions requested that the record be kept open for a week, and we will honor that request.

[Whereupon, at 11:38 a.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

*EMBARGO: June 3, 2009

## Written Statement of Charles H. Kuck
## President, American Immigration Lawyers Association

*Wednesday, June 3, 2009*

**Submitted to U.S. Senate Committee on the Judiciary for the hearing on "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"**

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing and teaching in the field of immigration and nationality law. Our mission includes the advancement of law pertaining to immigration and naturalization, and the facilitation of justice in the field. Our members represent countless foreign nationals and employers in applications for non-immigrant visas, lawful permanent residence, naturalization, and asylum.

AILA has long supported the Uniting American Families Act and thanks Senator Leahy for convening this hearing and for his leadership on this issue.

One of the fundamental tenets of our immigration system is that legal permanent residents and U.S. citizens can sponsor their family members, defined as spouses and other immediate family members, for immigration status. This principle of family unification is an unassailable characteristic of our immigration system. However, same sex partners of U.S. citizens and legal permanent residents are not recognized as family members under current immigration law, no matter how long-term or committed the relationship. This outdated and biased definition forces U.S. citizens and legal permanent residents to make unconscionable, life-altering decisions to either relocate to a foreign country or permanently separate from their loved ones.

The Uniting American Families Act (S. 424, H.R. 1024) would rectify this injustice by amending our immigrations laws to permit U.S. citizens and legal permanent residents to sponsor their permanent partners for legal permanent residence. AILA strongly supports this legislation.

This bill was first introduced as the Permanent Partners Immigration Act by Representative Jerrold Nadler (D-NY) in 2000. The Senate companion bill was first introduced by Senator Patrick Leahy (D-VT) in 2003. The bill has been reintroduced in each subsequent Congress and has steadily gained support.

If passed, this bill would amend the Immigration and Nationality Act to provide same sex partners of U.S. citizens and lawful permanent residents access to immigration status by adding the term "permanent partner" to the statutory definition of family. The bill defines "permanent partner" as any person 18 or older who is:

1. in a committed, intimate relationship with an adult U.S. citizen or legal permanent resident 18 years or older in which both parties intend a lifelong commitment;
2. financially interdependent with that other person;

3. not married to, or in a permanent partnership with, anyone other than that other person;
4. unable to contract with that person a marriage cognizable under the Immigration and Nationality Act; and
5. is not a first, second, or third degree blood relation of that other individual.

The UAFA is imminently fair in that same sex relationships would be treated no differently from opposite sex relationships. Just like marriage-based petitions, the permanent partners would have to prove that they have a bona fide relationship through documentary and testimonial evidence. The couple would be required to attend an interview before the granting of a green card, and couples would be subject to severe criminal penalties for fraud or other abuse. The only difference between permanent partners and opposite sex married couples would be the lack of a marriage license recognized by the federal government, though, certainly many same sex couples would present marriage licenses or civil unions as proof of their commitment. As with any marriage-based petition, the American sponsor would have to submit a binding affidavit of support on behalf of the foreign national.

Our members report heart-breaking consultations with prospective clients who have no legal option to remain in the U.S. No matter how long the couple has been together or how committed their relationship is, whether they are raising children together, or even if they have married in a country or state which allows same sex marriage, there is no avenue to immigration benefits for the foreign partner. This is an injustice which must be rectified. Businesses are losing valuable employees when couples go into exile; the U.S. is losing tax revenue; and, most importantly, the human toll on families who live in daily fear of deportation or who are uprooted from their extended families in the U.S. is immeasurable.

The UAFA would bring U.S. immigration law in line with the 19 other countries that already recognize same sex partnerships for immigration purposes: Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom. Belgium, the Netherlands, Spain, and Canada now offer full marriage rights for same sex couples.

AILA urges Congress to pass the Uniting American Families Act. Whether UAFA moves forward as a stand-alone bill, or whether it is included in Comprehensive Immigration Reform, this legislation is crucial to insure equal rights for same sex couples. Passing UAFA will continue our country's heritage of granting legal status to the loved ones of U.S. citizens and legal permanent residents.

###

*The American Immigration Lawyers Association is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. For more information contact George Tzamaras, Director of Communications, AILA at 202-507-7649 or gtzamaras@aila.org*

***In support of the Uniting American Families Act (UAFA)***

- Testimony Submitted to the United States Senate Committee on the Judiciary
- Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"
- June 3, 2009
- Statement of the American-Arab Anti-Discrimination Committee (ADC).

Founded in 1980 by a former United States Senator in response to stereotyping, defamation and discrimination directed against Americans of Arab origin, the American-Arab Anti-Discrimination Committee (ADC) has grown to become the largest Arab-American grassroots civil rights organization in the country. As an Executive Member of the Leadership Conference on Civil Rights (LCCR), ADC stands for justice and equality for all Americans.

ADC applauds Senator Leahy for holding a hearing on UAFA, and for advocating for the unification of families as part of the comprehensive immigration reform package. ADC hopes that the inclusion of gay and lesbian bi-national families in comprehensive immigration reform is only the first step in the development of a system that will stress the importance of family unification.

At the moment, gay and lesbian Americans cannot sponsor their long-term, committed and permanent partners for immigration. This has affected nearly 36,000 same-sex bi-national couples in the US, with many gay and lesbian American being forced to live abroad, and forced to choose between managing their aging parents' health or staying with their permanent committed partner. With the adoption of UAFA, same-sex bi-national couples will be granted the same recognition as opposite-sex bi-national couples. Same-sex couples would need to prove that they have a bona fide relationship through documentary and testimonial evidence. Additionally, the American partner would be required to sign an affidavit committing to support the foreign national partner for ten years even if the partnership ends.

As a civil rights organization, ADC supports equal rights for all Americans and strongly believes that UAFA is necessary to end discrimination against gay and lesbian Americans by allowing them to sponsor their permanent partners for immigration. Again, ADC hopes that UAFA is only the first step in the development of an immigration system that stresses the importance of family unification.

Once again, ADC thanks and applauds Senator Leahy for holding the hearing. Finally, ADC urges Congress to pass the Uniting American Family Act.

WASHINGTON
LEGISLATIVE OFFICE


**The American Civil Liberties Union**

Written Statement
For a Hearing on

**"The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"**

**Submitted to the Senate Judiciary Committee**

**Wednesday, June 3, 2009**

**Caroline Fredrickson, Director**
ACLU Washington Legislative Office

**Joanne Lin, Legislative Counsel**
ACLU Washington Legislative Office
jlin@dcaclu.org

**Introduction**

On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals, and its hundreds of thousands of members, activists, and 53 affiliates nationwide, we would like to thank Chairman Leahy, Ranking Member Sessions, and the Judiciary Committee for the opportunity to submit a statement for the record for this hearing on "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law."

The ACLU was born during the "Red Scare" in 1920, a time when then U.S. Attorney General A. Mitchell Palmer ordered immigrants summarily detained and deported because of their political views. Since its founding, the ACLU has consistently defended immigrants' rights. The ACLU has the largest litigation program in the country dedicated to defending the civil and constitutional rights of immigrants. Through a comprehensive advocacy program including litigation, public education, and legislative and administrative advocacy, the ACLU is at the forefront of major struggles securing immigrants' rights.

At the same time, the ACLU has been defending lesbian, gay, bisexual, and transgender (LGBT) people from discrimination since the 1950s, both through litigation and advocacy for civil rights laws. Chief among ACLU's litigation priorities has been defending the rights of LGBT parents. And, since the first marriage lawsuit for same-sex couples in 1972, the ACLU has been at the forefront of both legal and public education efforts to secure legal recognition for LGBT relationships.

The Uniting American Families Act (UAFA), S. 424, would amend the Immigration and Nationality Act to allow U.S. citizens and permanent residents to sponsor their same-sex permanent partners for permanent residency. S. 424 would also permit foreign nationals who are refugees, who obtain immigrant investor visas, or who are granted relief from removal, to include their same-sex permanent partners in their immigration cases. S. 424 defines a permanent partner as any individual 18 or older who is:

- In an intimate relationship in which both parties intend a lifelong commitment
- Financially interdependent with the other party in that relationship
- Not in a permanent partnership with anyone other than that second party
- Unable to be married to that other party under the Immigration and Nationality Act

**UAFA Modifies the Immigration and Nationality Statute to Apply Equal Standards to the Permanent Partners of all U.S. Citizens and Permanent Residents**

Under the Immigration and Nationality Act, U.S. citizens and permanent residents are entitled, as a matter of right, to sponsor their spouses for permanent residency. However, because same-sex permanent partners are not considered "spouses," gay U.S. citizens and permanent residents are barred from sponsoring their life partners. As a result, American

families, including many with U.S. citizen children, are split apart due to our discriminatory and outdated immigration laws.

S.424 does not extend special immigration relief to same-sex permanent partners of U.S. citizens and permanent residents; it simply works to provide equal protections to U.S. citizens and permanent residents seeking to sponsor their family members, as well as to refugees, immigrant investors, and people seeking cancellation of removal. If enacted, UAFA would require bi-national same-sex couples to meet the same immigration adjudication standards that apply to opposite-sex couples. For example, same-sex couples would be required to produce evidence of their bona fide relationship, such as documentation of cohabitation, commingled finances, family, and other evidence indicating a shared permanent life together. As with opposite-sex couples, same-sex couples would be subject to the same immigration fraud process in use by DHS Citizenship Immigration Services ("CIS"), which includes in-person interviews by CIS adjustment of status officers; requests for additional evidence and/or further interviews; referral to the CIS marriage fraud unit, which then rigorously interviews the partners separately, under videotape; and referral of a denied case to DHS Immigration Customs Enforcement to commence removal proceedings. Furthermore, foreign nationals in same-sex couples would be subject to harsh immigration penalties if there is a finding of marriage fraud; these penalties include imprisonment for up to five years in federal prison, up to $250,000 in fines, and a permanent bar on ever obtaining a visa in the U.S.

**UAFA Bolsters the Principle of Family Unification That Is Central to U.S. Immigration Law**

Around 75 percent of the one million permanent resident cards and visas issued each year go to the families of U.S. citizens and permanent residents. However, families with same-sex couples are excluded from the family immigration system. As a result, bi-national couples are often forced to divide their families across country borders and oceans. This can be especially devastating for families with U.S. citizen children who have spent their entire lives living and growing up in the U.S.

**The U.S. Lags Behind Many Other Democracies in Extending Equal Treatment to Gay Couples**

A growing list of countries allow their gay and lesbian citizens to sponsor their permanent partners to become permanent residents including Australia, Belgium, Brazil, Canada, Denmark, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, and the United Kingdom. It is time for the U.S. to join these countries by extending equal immigration benefits to foreign nationals in same-sex permanent relationships.

**Conclusion**

The ACLU applauds the Sen. Judiciary Committee's attention to S. 424, The Uniting American Families Act, and urges continued action to pass this critical legislation providing equal immigration protection to members of same-sex bi-national couples.



VerDate Nov 24 2008 12:21 Aug 12, 2010 Jkt 057633 PO 00000 Frm 00038 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\57633.TXT SJUD1 PsN: CMORC

57633.007

American Council on International Personnel Advancing Global Mobility

February 19, 2009

Honorable Patrick Leahy
United States Senator
433 Russell Senate Office Building
Washington, D.C. 20510-4502

Submitted via Electronic Mail

Dear Senator Leahy:

On behalf of the American Council on International Personnel (ACIP), I am writing to thank you for introducing the Uniting American Families Act of 2009 (S. 424). ACIP is a membership driven trade association dedicated to issues of global mobility. We represent 220 multi-national employer members who have presence in America and at least 500 employees worldwide. Our multi-national members employ millions of American citizens and foreign nationals in industries as widespread as U.S. high-tech, energy, manufacturing, healthcare, financial services and biotechnology to private and public research and academic institutions. ACIP has been an expert in the immigration debate since 1972 and we annually sponsor seminars and produce publications aimed at educating human resource and legal professionals on compliance with immigration laws, while working with Congress and the Executive Branch to facilitate the movement of key international personnel.

Allowing a citizen or lawful permanent resident to sponsor his or her "permanent partner" for legal permanent residence is a top priority for many of ACIP's member organizations. During this recession, it is even more important that America remain a global leader in technology and innovation and that we are able to attract and retain the best talent from around the world. Our immigration policy and business practices must reflect America's desire to welcome executives and highly educated professionals who can help us innovate and recover in the current economy.

Many of ACIP's member organizations presently extend the same employee benefits to permanent partners that spouses have enjoyed over the years. ACIP members have found this to be an important factor in their ability to bring in and retain some of their most valued professionals. However, our current immigration laws continue to be a deterrent, pushing away these valued workers, as our laws do not recognize long-term, committed relationships. Under current law permanent partners of foreign national executives and highly educated professionals are only able to come as temporary visitors, without the right to work or reside with their partners. The provisions of S. 424, if passed into law, would allow committed partners, who are unable to wed because of impediments in the laws of their respective countries, to unite, making America a more desired destination for these highly educated and sought after professionals.

1101 15th Street, NW, Suite 750, Washington, DC 20005
p 202.371.6789 | f 202.371.5524 | www.acip.com

Finally, ACIP fully supports the provisions of S. 424, which makes permanent partnership fraud a deportable offense. As with any immigration benefit, integrity is key to the success of the program.

For all the above listed reasons, ACIP supports the Uniting American Families Act of 2009 (S 424).

We are pleased to see the list of cosponsors already supporting the bill and we will work to help you add more cosponsors as this Congress progresses.

Sincerely,

Rebecca K. Peters
Director and Counsel for Legislative Affairs

1101 15th Street, NW, Suite 750, Washington, DC 20005
p 202.371.6789 | f 202.371.5524 | www.aciq.com

Letterhead

# Hearing on S. 424
# U.S. Senate Judiciary Committee
# June 3, 2009

## No New Categories of Immigration Should Be Considered Until Overall Green Card Numbers Are Dramatically Reduced

(To Meet Goals of the U.S. Commission on Immigration Reform and of President Clinton's Council on Sustainable Development)

**Testimony by Roy Beck, Founder & CEO**
**NumbersUSA Education & Research Foundation**

I thank the Committee for the opportunity for NumbersUSA to testify about S. 424 and its proposal to create a new – numerically unlimited – category of immigration.

### Principles for Considering Immigration Legislation

First, a word about how NumbersUSA analyzes immigration policy.

I am an author and former newspaper reporter who founded NumbersUSA as a non-profit, non-partisan organization in 1996 to carry out the immigration recommendations of two national commissions. We now have 900,000 on-line activist members who support that mission.

The two commissions were:

- President Clinton's Council on Sustainable Development. It recommended that annual green card numbers be cut low enough to allow the U.S. population to stabilize. Environmental sustainability in this country was seen as impossible if Congress continued to force massive U.S. population growth through immigration.[1]

- The bi-partisan U.S. Commission on Immigration Reform (chaired by Barbara Jordan). It recommended deep cuts in immigration to remove the economic injustice that current immigration numbers impose on the most vulnerable members of our national community.[2]

NumbersUSA examines every immigration proposal on the basis of how it would advance or impede the numerical recommendations of the two Clinton-era commissions.

These commissions recognized that immigration policy has been assembled piecemeal without thought to how the total number of green cards affects the overall national community.

Thus, a bill like S. 424 will tend to be examined entirely outside its environmental impact in a time of grave environmental concerns – and outside its economic impact despite our 9% unemployment rate.

But nearly every new adult permanently added to the U.S. population through immigration legislation would be a potential competitor to unemployed and underemployed American workers. And every new immigrant increases the total U.S. carbon footprint and ecological footprint (and, because of increased consumption once they arrive here, increases the global footprints, as well).

Every piece of our complex immigration policy caters to a particular special interest. But the combined effect of all those pieces on our nation's population growth has profound consequences for the entire national community in terms of the public infrastructure deficit, economic disparities and stewardship over our natural resources.

In many ways, it would make more sense for S. 424 to be reviewed by the Senate committees on Energy and Natural Resources, or on Environment and Public Works, or on Health, Education and Labor. The giant population increases caused by immigration policies have enormous implications for the ability of those committees to reach their goals.

I hope the Judiciary Committee will consider all those implications every time it looks at immigration legislation in this Congress.

**Getting From One Million To 250,000**

All of the long-term population growth in the United States since 1972 has been due to federal immigration policies. So when we talk about the challenges of

population growth in this country, we are almost always talking about the challenges of federal immigration policy.

In 1972, Americans chose to reduce the U.S. fertility rate to below the replacement level of 2.1.[3] It has been just below that level ever since. Yet, U.S. population growth doesn't reflect that at all:

- The 1990s saw the largest U.S. population boom in our nation's history – much higher than the famous baby boom of the 1950s.[4]
- The fevered U.S. population growth remains similar in this first decade of the 21st century.[5]
- Even the annual number of births is setting all-time records.[6]

There is only one reason why U.S. population trends are the opposite of those recommended by President Clinton's sustainability commission. And that reason is that Congress has repeatedly overridden the American people's choice of a stabilizing future and forced massive population growth through a quadrupling of annual green cards since 1965.

Every time U.S. citizens deal with extra costs, congestion, sprawl or other deterioration in quality of life due to explosive population growth, they can thank one Congress after another that has either raised immigration numbers or maintained the new higher levels.

Yet, I'm not aware of a single Congress that stated a goal of increasing U.S. population growth, let alone stated why individual Americans' lives would be improved by such forced growth. For the most part, the explosive increases are the result of carelessness and unintended consequences while Congress does the bidding of one special interest group after another.

The most recent official numerical results of Congress' piecemeal approach to immigration policies are these:

- 1,107,126 green cards issued to immigrants (2008)[7]
- 725,000 illegal foreign workers and dependents (as an annual average 2000-2007)[8]
- 1,015,000 annual births to legal and illegal immigrants (2005)[9]

Let's do a comparison on the number over which you have the most control: annual green cards.

Until the first Earth Day in 1970, legal immigration had run about 250,000 a year on average. The most recent average during the 1950s and 1960s was just above that number.[10]

But a succession of congressional actions raised the 250,000 green cards to a million-a-year level by 1990, and it has been there ever since.[11]

In order to meet the sustainability commission's recommendations of moving toward a stabilized U.S. population, green card numbers would have to be cut back to that traditional level – between 250,000 and 300,000.

Even with that kind of cut, the Census Bureau projects that our population will still increase by around 50 million more people by 2050 (instead of the 130 million if we maintain current immigration levels).[12]

One example of the impact of 130 million more people is our efforts to increase electricity generation from wind. The Department of Energy has announced $93 million in Stimulus money for wind-power development. DOE has a very ambitious goal of wind producing 20% of electricity demand by 2030, after a lot more investment than this initial $93 million. Unfortunately, immigration-driven population growth will add more new electricity demand during that time than all the new wind power added.[13]

**A Matter of Profound Environmental Importance for Posterity**

Like nearly all of the sustainability issues this Congress will address, the setting of green card numbers is not primarily for those of us living in the next decade. Rather, it is for our children and grandchildren later this century – and for the generations of Americans who will inherit our country long after we are gone.

This was clear in the instructions to President Clinton's Council on Sustainable Development, which was established to find ways "*to bring people together to meet the needs of the present without jeopardizing the future.*"

It determined that however immigration policy might be serving some narrow interests of the present, the resulting population growth was severely endangering the future.

Addressing this specific issue, the Population and Consumption Task Force of the sustainability council concluded:

*"As a matter of public debate, immigration is a sensitive and explosive issue, and both legal and illegal immigration must be addressed with great sensitivity and care in order to advance the debate.*

*"We acknowledge these impediments to easy and informal dialogue, and we urge that participants take appropriate care so that a reasoned discussion of immigration and the American future can begin.*

*"We believe that reducing current immigration levels is a necessary part of working toward sustainability in the United States."*[14]

**New Categories Require Multiple Off-Sets**

In a nutshell, our concern about S. 424 is that it represents another piecemeal congressional act that would increase the numbers of green cards each year with no regard for the resulting increase in population pressures and costs throughout our society.

That is exactly opposite the direction that Congress should be moving in immigration policy.

Immigration-driven U.S. population growth is making the really difficult tasks of meeting carbon goals, energy goals, infrastructure goals and economic goals close to impossible without fundamentally slashing the American standard of living.

If Congress were in the midst of moving annual immigration toward the 250,000 goal, there might be room for considering bills like S. 424 if each of the new green cards created in a bill was accompanied by a "multiple off-set" that not only would make up for the new green cards but would advance the overall reduction goal.

That is, a bill should provide for cutting three green cards from other categories for each new one issued under the bill.

Unfortunately, though, I have seen no sign that Congress is considering reductions in green cards this year – despite there being 14 million Americans looking for jobs and unable to find one. Rather, news stories are full of quotes from Members of Congress and others talking of giant increases in the number of green cards to be issued over the next few years – quite apart from S. 424.

NumbersUSA and the 900,000 Americans we represent urge you to view S. 424 the way that two national commissions have recommended all immigration legislation be viewed: as a piece of the larger fabric of our national community.

By adding green cards without reducing others, S. 424 directly contradicts the recommendations of President Clinton's sustainability commission and of the late Barbara Jordan's immigration commission.

Given the larger context of current immigration levels, passing S. 424 would be irresponsible to the environment, to future generations and to the most economically vulnerable members of our national community.

###

[1] The President's Council on Sustainable Development. http://clinton4.nara.gov/PCSD/Publications/index.html
[2] The United States Commission on Immigration Reform. http://www.utexas.edu/lbj/uscir/
[3] 1972 Data from National Center of Health Statistics. According to the United Nations Department of Economic and Social Affairs, the United States' Total Fertility Rate is expected to be 2.05 by 2010.
[4] Perry, Marc and Paul Mackun. "Population Change and Distribution: 1990 to 2000." United States Census Bureau. April, 2001. http://www.census.gov/prod/2001pubs/c2kbr01-2.pdf. The United States' population grew by 32.7 million people during the 1990s, far surpassing the population increase (28 million) of the "Baby Boom" era (1950-1960).
[5] United States Census Bureau. National Population Projections (Released 14 August 2008). http://www.census.gov/population/www/projections/2008projections.html. According to the Census Bureau, the United States' population will reach 310.2 million by the year 2010, an increase of 28.8 million.
[6] Hamilton, Brady, Joyce Martin, and Stephanie Ventura. "National Vital Statistics Report: Births: Preliminary Data for 2007." National Center for Health Statistics. Vol. 57, No. 12. 18 March 2009. http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_12.pdf. The number of births recorded in the United States rose to 4,317,119 (2007) – a 1% increase over 2006. The figure for 2007 represents the highest number of births ever registered in the United States.
[7] Department of Homeland Security. "Yearbook of Immigration Statistics: 2008." http://www.dhs.gov/ximgtn/statistics/publications/LPR08.shtm.
[8] Camarota, Steven. "Immigrants in the United States, 2007: A profile of America's Foreign-Born Population." Center for Immigration Studies Backgrounder. November, 2007.
[9] Data from the National Center for Health Statistics and the United States Census Bureau.
[10] Department of Homeland Security. "Yearbook of Immigration Statistics: 2008." http://www.dhs.gov/ximgtn/statistics/publications/LPR08.shtm.
[11] Ibid.
[12] United States Census Bureau. National Population Projections (Released 14 August 2008). http://www.census.gov/population/www/projections/2008projections.html.
[13] Department of Energy. "Secretary Chu Announces $93 Million from Recovery Act to Support Wind Energy Projects." Press Release. 29 April 2009. http://www.energy.gov/news2009/7358.htm.
[14] President's Council on Sustainable Development. Introduction to Task Force Report on Population and Consumption. http://clinton4.nara.gov/PCSD/Publications/TF_Reports/pop-intr.html.

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

**STATEMENT OF MR. JULIAN BOND**

**CHAIRMAN**

**NATIONAL BOARD OF DIRECTORS of the**

**NATIONAL ASSOCIATION FOR THE ADVANCEMENT**

**OF COLORED PEOPLE (NAACP)**

**on**

**FAMILY REUNIFICATION AND IMMIGRATION REFORM**

**BEFORE THE SENATE JUDICIARY COMMITTEE**

***June 3, 2009***

Good morning. My name is Julian Bond and I am the Chairman of the National Board of Directors of the National Association for the Advancement of Colored People, the NAACP. We are our Nation's oldest, largest and most widely-recognized grassroots civil rights organization. As we celebrate and commemorate out 100th anniversary this year, we currently have more than 2,200 membership units actively engaged in every state across the country.

I would like to begin by thanking Chairman Leahy and the other members of this committee for holding this important hearing and for your strong and steadfast support of families of all types.

The preservation and strengthening of the family unit has long been a rallying point for the NAACP, and as such we have strongly and consistently supported policies, including immigration laws and proposals, that promote and encourage family unification and stability. The principle of family unity has long been an important moral value and part of our country's immigration tradition, and even during the most restrictive years, U.S. immigration laws have allowed immigrants to unite with their loved ones and bring their family members into our country.

For the most part, our nation's current immigration laws promote family unity by awarding the majority of U.S. immigrant visas to the husbands and wives, children and parents, and brothers and sisters of current U.S. residents so that families are not split apart; this, of course, is crucial. Today, family sponsorship accounts for more than 85 percent of legal immigration to the United States. However, our efforts to keep families together have been seriously undermined by extremely long waits for family-based visas that force families apart for years, and in some cases even jeopardize the safety and security of the family members.

A backlog of visas – experienced in many immigration categories, but especially for family members – currently separates immigrants from spouses and their young children for over five years and separates elderly parents, adult children, and siblings, in too many cases, for as many as 23 years. The current family-based immigration system has not been updated in 20 years – keeping spouses, children and their parents separated for years and often decades, despite the fact that the family has played by the rules. As outrageous as it may seem to many of us here today, and as contrary to the spirit of family reunification that has guided our immigration laws for more than forty years, there are currently 5.8 million people in the family immigration backlog waiting unconscionable periods of time to reunite with their loved ones.

One of the goals of the 1965 *Immigration Act* was to expand access to our nation to immigrants of color, the NAACP is especially troubled by the long waits that are endemic among African and Caribbean immigrants.
Immigrants from Africa rely on the family-based system to sponsor the immigration of their close family members. In the past two decades, immigration from Africa has dramatically increased[i]. As of 2007, there were 1.4 million immigrants from Africa in the United States, as compared to less than 400,000 in 1990. While Africans comprise a small portion of all family visa recipients, family sponsorship is the top source of African immigration. African-descent immigrants also come to the United States from Caribbean countries. Family sponsorship is overwhelmingly the means of immigration among this population.

The U.S. State Department issued more than 400,000 family immigration visas in 2008. Fifty-two percent of legal immigration from Africa and 99 percent from the Caribbean was family-based. Nigeria and Ethiopia together accounted for 40 percent of all family visas issued to African countries, and Nigeria received 1 percent of worldwide family visas[ii]. Clearly, along with fixing family reunification we need to ensure that all areas of the globe are treated equally when it comes to allowing immigrants into our Nation.

It is for this reason that the NAACP strongly supports legislation in the Senate that would fix our Nation's immigration laws to again make family reunification a highly functioning element of our national immigration policy. Specifically, the NAACP supports the *Reuniting Families Act*, S. 1085, introduced by Senator Menendez of New Jersey, and the *Uniting American Families Act*, S. 424, which has been introduced by the Chairman of this committee, Mr. Leahy.

In the House, of Representatives, the NAACP supports legislation to be introduced tomorrow by Congressman Mike Honda, also to be called the *Reuniting Families Act*, which incorporates both S. 1085 and S. 424. I would hasten to add that we support the Leahy bill / Honda provision (which has also been introduced as a stand-alone bill in the House, H.R. 1024 by Congressman Jerrold Nadler of New York) because the NAACP strongly believes that the definition of "family" is not restrictive and can and should also include non-

traditional family units. The NAACP does not believe that immigration law, or any laws or policies for that matter, should discriminate against gay and lesbian families or family members.

Mr. Chairman, members of the committee, so much of our national debate over immigration reform, in fact ***too*** much of the debate, has focused on enforcement and undocumented workers. That is one of the main reasons I am here today: the NAACP feels strongly that genuine immigration reform will include provisions to fix an antiquated system with the result being the reinvigoration of one of the most compelling goals of the American immigration laws: the reunification of families.

Historically, immigration laws that promote family unity have benefited the United States, providing social stability and economic prosperity in numerous ways. Immigrant family members, as well as native-born families, support and sustain each other and provide security and shelter in times of need while sharing similar visions of life in a nation that guarantees life, liberty and the pursuit of happiness.

As was documented so well in the 2008 report by the Asian Pacific American Legal Center, "*A Devastating Wait: Family Unity and the Immigration Backlogs*[iii]," unified immigrant families bolster the success and integration of their U.S.-born family members, as well as the immigrant family members, by taking care of young children, buying homes together and even strengthening the economy by stating and operating small businesses together. Such support is particularly important for any individual who is learning the language, systems and processes of a new country – a period that is difficult and stressful for most immigrants.

Indeed, immigrant families have proven to be vital emotional, psychological, and cultural resources for entire communities, not only immediate family members. Public health and psychological research demonstrate that family networks help prevent a wide range of health and social problems in communities, from substance abuse and teen pregnancy to suicide and gang violence[iv].

Economically, family-based immigration has had a real positive impact, especially for long-term economic growth. Again, research has shown that because family-based immigrants tend to invest highly in additional schooling and training, they are more adaptable to changing market and labor conditions and are less likely to compete with the native-born for jobs. In fact, family-based immigrants have a statistically positive effect on the earnings and employment of U.S.-born Caucasian- and African-Americans.[v]

Family unity is economically sound policy for the U.S. because it keeps important dollars in the country. With family unity, immigrants – many of whom are the bread winners of their families – no longer need to send money home to support their spouse, children, siblings, and parents. Each year billions of dollars are sent overseas in remittances to family members in an immigrant's home country.

Family unity keeps those dollars in the U.S. where U.S. residents and immigrants use them to purchase homes and consumer goods which helps to grow and strengthen our economy.

Given all the benefits, socially, economically, and morally, of ensuring that effective family reunification is an integral part of our nation's immigration policy there can be no question that the NAACP supports an overhaul of current law to ensure that the family preferences policies are functioning well and without discrimination. As I said earlier, the NAACP would also like to stress that the definition of "family" should not be interpreted so stringently as to omit people who are in a loving, committed relationship but happen to be of the same gender.

Our nation's current immigration laws were established in the mid-1960's, at the height of the modern-day civil rights movement. It was, in fact, the *Immigration Act of 1965* that put family unification at the core of our nation's immigration policy, replacing the old "Quota Acts" of the 1920's. The *Immigration Act of 1965* made huge strides in eradicating the old, racist policies that put a premium on people from Northern and Western Europe and made it next to impossible for people of color to immigrate to the United States.

As I have said throughout this testimony, we need to update our immigration policies to more efficiently promote family unification, and in the spirit of promoting civil rights that was the guiding force behind the 1965 law, we should include families of all different races and ethnicities, including families with gay and lesbian members. It is because the NAACP supports the civil rights protections of all people, and is opposed to discrimination based on any criteria, that we support inclusion of the principles inherent in *Uniting American Families Act* in any comprehensive immigration reform. This important legislation will ensure that gay and lesbian couples and families are treated just like other families who are bi-national. The inclusion of the *Uniting American Families Act* in comprehensive immigration reform would ensure the continuation of an expansion of civil rights to people who have historically been left out and mistreated by American immigration policies.

Under this proposal, a "permanent partnership" is defined as a "committed, intimate relationship" with another adult "in which both parties intend a lifelong commitment." The couple must be financially interdependent and not married to or in a permanent partnership with anyone else. And the partners can't be related. The benefit comes with the same immigration restrictions and enforcement standards that apply to heterosexual couples and families. Fraudulent permanent partnerships face the same penalties as fake marriages: up to five years in prison and up to a $250,000 fine.

In closing, let me reiterate the NAACP's strongly belief in the benefits of strong, unified families. As such, we support the inclusion of modifications to the existing family reunification policies in our nation's immigration laws to facilitate more

families being brought together faster and with less hassle. We also support family reunification policies that place a premium on the family, regardless of its shape or form.

I would again like to thank the Chairman for holding this important hearing, for your support of all types of families, and I would welcome any questions you may have.

---

[i] Tuyet Dong. 2009. The Asian Pacific American Legal Center. Africans and Caribbeans and Family-Sponsored Immigration. Can be found at:http://www.naacpnet.org/exchweb/bin/redir.asp?URL=http://www.advancingequality.org/attachments/wysiwyg/1/Africans_Caribbeans_Fact_Sheet.pdf

[ii] Ibid.

[iii] Huang, Daniel. 2008. *A Devastating Wait: Family Unity and the Immigration Backlogs.* Washington, D.C. The Asian Pacific American Legal Center.

[iv] Lawrence, Stewart J. 2007. *Divided Families: New Legislative Proposals Would Needlessly Restrict Family-Based Immigration.* Washington, D.C.: Immigration Policy Center.

[v] Duleep, Harriet. May 8, 2007. "Is Family-Based Immigration Good for the U.S. Economy?" *Testimony of Harriet Duleep, Professor, Thomas Jefferson Program in Public Policy, The College of William and Mary, before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.* Professor Duleep refers to Sorenson, Elaine. 1996. "Measuring the Employment Effects of Immigrants with Different Legal Statuses on Native Workers," *Immigrants and Immigration Policy: Individual Skills, Family Ties, and Group Identities*, Greenwich, CT: JAI Press.

**The Pain of Exile**

Testimony submitted to:
United States Senate Committee on the Judiciary

Personal Statement of
Robert Bragar

**Hearing:**
"The Uniting American Families Act:
Addressing Inequality in Federal Immigration Law"
June 3, 2009

First of all, I would like to thank Senator Leahy for holding a hearing on the unequal immigration rights of partners of gay and lesbian Americans under US law. I never thought we would see this day.

Although I am a native-born US citizen, I am a love exile. My permanent partner is Dutch, so we cannot live in America if we want to be together. For this reason, I have lived in Amsterdam, the Netherlands since 1994 with Rik Kruisdijk, who is a judge in a court of appeals in Utrecht. Rik and I married in Holland in 2001.

Fortunately, the Netherlands has been a pioneer in the fair treatment of its gay and lesbian citizens. Same-sex partner immigration rights have existed here since the 1970s, civil unions since the 1990s, and marriage since 2001. Countless gay and lesbian Americans have flocked to these shores to gain freedoms they could not find in America,

In spite of our long-standing committed relationship, US law bars me from sponsoring Rik for residence in the US. He can only enter the US for brief visits. As a practical matter, I must choose between living in America or living with the person I love.

I chose love. I'm glad I did.

Because of US law, I and many others have been forced to sell our property, cut short satisfying careers, leave our homes and rebuild their lives in distant countries - with different languages, different customs, and fewer career options. I left my law practice in New York, sold my apartment there, and had to make a new life in Holland.

The stark reality is that gay and lesbian Americans are second class citizens under current law. My freedom of movement has been curtailed because I am gay.

This affects my family in America, as well. When they need me, I am far away. When my mother was ill at the end of her life in Boston, I could not be at her side.

And now, as I approach retirement age, I wonder: Can Rik and I enjoy our retirement together in my country? I dearly hope so.

Nineteen other countries – including almost all of America's western allies – have given immigration rights to same-sex partners. America should join them. This is a matter of our fundamental human rights.

Please remedy this injustice. Please show America's gay and lesbian citizens that we are equal to our heterosexual compatriots. Please end the unjust discrimination against gay and lesbian US citizens with foreign partners. Please pass the Uniting American Families Act as quickly as possible.

ARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

March 20, 2009

The Honorable Senator Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

On March 3, 2009, the San Francisco Board of Supervisors passed an official resolution #72-09, which is attached, urging Congress to pass the Uniting American Families Act and supporting the removal of legal barriers to immigration by permanent same-sex partners.

Should your office decide to respond to this resolution, correspondence can be directed to San Francisco Board of Supervisors, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102. Thank you.

Sincerely,

Angela Calvillo
Clerk of the Board
San Francisco Board of Supervisors

FILE NO. 090243 RESOLUTION NO. 72-09

[Resolution urging Congress to pass the Uniting American Families Act.]

**Resolution urging Congress to pass the Uniting American Families Act and supporting the removal of legal barriers to immigration by permanent same-sex partners.**

WHEREAS, Every American is entitled to equal protection under the law; and

WHEREAS, The U.S. immigration system is largely based upon the principle of family unification; and

WHEREAS, Federal law does not currently recognize permanent same-sex partners for immigration purposes; and

WHEREAS, This results in thousands of US citizens being forced into exile to be with foreign-born partners, causing unnecessary hardship, separation from family members and careers, and loss of valuable skills and resources for our country; and

WHEREAS, It is estimated some 36,000 gay and lesbian American citizens are in same-sex binational relationships and are affected by lack of rights and protections of their relationships at the federal level; and

WHEREAS, The Uniting American Families Act (UAFA) was introduced in Congress on February 12, 2009 by Senator Patrick Leahy (D-VT) and Representative Jerrold Nadler (D-NY) to amend the Immigration and Nationality Act and allow U.S. citizens and legal permanent residents to sponsor same-sex partners for immigration; and

WHEREAS, The bills call for simply amending existing US immigration law by adding three words – "or permanent partner" – wherever the word spouse appears; now, therefore, be it

RESOLVED, That the San Francisco Board of Supervisors urges Congress to pass the Uniting American Families Act and supports the removal of legal barriers to immigration by permanent same-sex partners, and be it

FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby directs the Clerk of the Board to send a copy of this resolution to the San Francisco Congressional delegation, and to bill sponsors Representative Jerrold Nadler (D-NY) and Senator Patrick Leahy (D-VT).

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**File Number:** 090243 **Date Passed:**

Resolution urging Congress to pass the Uniting American Families Act and supporting the removal of legal barriers to immigration by permanent same-sex partners.

March 3, 2009 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090243

**I hereby certify that the foregoing Resolution was ADOPTED on March 3, 2009 by the Board of Supervisors of the City and County of San Francisco.**

Angela Calvillo
Clerk of the Board

3/11/09
**Date Approved**

Mayor Gavin Newsom

**In Support of the Uniting American Families Act (S. 424):**
**Addressing Inequality in Federal Immigration Law**

Testimony Submitted to the United States Senate Committee on the Judiciary
Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"

June 3, 2009

**Statement of Rea Carey, Executive Director**
**National Gay and Lesbian Task Force Action Fund**

Chairman and Members of the Committee,

We thank Chairman Leahy and the committee for holding a hearing on the Uniting American Families Act (UAFA). On behalf of the National Gay and Lesbian Task Force Action Fund — the oldest national advocacy organization for the civil rights of lesbian, gay, bisexual and transgender (LGBT) people — we urge you to support this important legislation. Keeping families intact and ensuring the well-being of children are core values of our nation's immigration policies. They are values that arise from our nation's immigrant history and heritage. UAFA is consistent with those values.

For years, there has been debate about how to repair our nation's flawed immigration policies. As Congress considers comprehensive immigration reform, it is vital that the needs of LGBT people are addressed. There can be no comprehensive immigration policy without the inclusion of UAFA. Currently there are approximately 36,000 binational same-sex couples in long-term, committed relationships. Forty-six percent of those couples are raising children. All of these couples and families are adversely affected by the non-recognition of their relationship in immigration law. Consequently, American citizens are at risk of being forced to uproot their lives and families, abandon aging parents, leave brothers and sisters, and leave their jobs in order to stay with their partners. As a nation of immigrants, the United States should not require its citizens to choose between family and country. A simple alternative exists: recognize those partnerships and families within existing immigration law.

UAFA is consistent with current immigration policy and creates no radical changes in immigration law or its administration. Nor will UAFA affect other areas of law. UAFA simply amends the Immigration and Nationality Act to treat same-sex couples and opposite-sex couples in essentially the same way. UAFA creates a new category of relationships recognized in immigration law: "permanent partnership." A permanent partnership is defined by five criteria. A permanent partnership exists when two people are in a committed, intimate relationship in which both parties intend a lifelong commitment. They should be financially interdependent and they cannot be married or in a permanent partnership with anyone else. They must also be unable to marry each other in a manner recognized already under the Immigration and Nationality Act. In addition, they cannot be blood relatives.

Opponents claim that UAFA will lead to an increase in immigration fraud. This is baseless. Same-sex partners will be subject to the same stringent scrutiny as heterosexual couples. To show a genuine partnership, same-sex couples will have to be interviewed and provide evidence of a substantial emotional and financial commitment to each other. The sponsoring partner will have to submit an affidavit of support. Such an affidavit will permit the U.S. to sue the sponsoring partner if his or her partner accesses means-based government benefits before

working for 40 quarters. Immigration fraud, generally, is subject to severe fines and up to five years imprisonment. In essence, the strong deterrents already present in the immigration system against fraud by heterosexual couples will apply equally to same-sex couples.

In addition, UAFA is sound economic policy. UAFA makes it unnecessary for citizens to leave jobs and communities behind in order to be with loved ones and to maintain their families. On average, same-sex binational couples are in their late thirties. Binational gay male households earn an average of over $40,000. Binational lesbian households earn an average of over $30,000. UAFA will protect working couples who contribute to the U.S. economy, their employers and their communities. As previously mentioned, many of these couples are raising children. Forcing binational same-sex couples to leave their homes and jobs results in a substantial loss of economic and human capital for employers, communities and the country. UAFA would make such a loss avoidable and create a net benefit to the economy.

At a time when the United States cannot afford to waste hard work and talent, simply because of prejudice against same-sex couples or because of outdated legal impediments. We certainly cannot afford to put families and children at economic risk. To do so would go against the United States' own proud heritage of immigration and family unification. We respectfully ask that this committee support UAFA.

***In Support of the Uniting American Families Act***

Testimony submitted to:
United States Senate Committee on the Judiciary

Hearing:
"The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"
June 3, 2009

Statement of:
Robert Checkoway, International Vice Chair, Democrats Abroad

Democrats Abroad is the official arm of the Democratic Party of the United States for the more than 7 million Americans living overseas. With organized committees working in 48 countries, and individual members in nearly every country in the world, Democrats Abroad registers U.S. voters for absentee ballots and represents the interests of Americans abroad to lawmakers in Washington.

We applaud Senator Leahy for holding this hearing and advocating for fair treatment of gay and lesbian Americans in our immigration system.

Democrats Abroad first adopted a resolution calling on Congress to pass the Uniting American Families Act in 2006 (see below). Now more than ever, we urge Congress to take action.

UAFA must be part of any comprehensive immigration reform in order to ensure lesbian, gay, bisexual and transgender (LGBT) Americans a fundamental right: the right to live in our country with their permanent partners.

On this painful subject, I speak on behalf of the members of Democrats Abroad. And I speak from personal experience.

I am a gay American. In 1994, I took a job in the United Kingdom and moved to London. In 1997, my work permit ended and I was due to return to the United States. In the meantime, I had met my partner, a British citizen, and we had built a life together. Barred from living together in the United States or the UK, we sought the only relief possible at that time. We immigrated to the Netherlands, he as a citizen of the European Union and I as his recognized common-law spouse.

Today, British immigration policy has changed and we are once again living in the UK. But, my own country continues deny my family the right to return to my own country.

My situation is not unique. Untold numbers of GLBT U.S. citizens, many of them members of Democrats Abroad, share my plight and yearn for this basic right freely granted to opposite-sex couples.

Personally and on behalf of Democrats Abroad, I urge Congress to end the forced exile of U.S. citizens like myself by urgently passing the Uniting American Families Act.

**Resolution supporting the Uniting American Families Act**
*Adopted by the Democratic Party Committee Abroad, Washington, D.C., March 4, 2006*

WHEREAS, every American is entitled to equal protection under the law;
WHEREAS, the U.S. immigration system is largely based upon the principle of family unification;
WHEREAS, federal law does not currently recognize permanent same-sex partners for immigration purposes;
WHEREAS, this results in thousands of US citizens being forced into exile to be with foreign-born partners, causing unnecessary hardship, separation from family members and careers, and loss of valuable skills and resources for our country;
WHEREAS, the Uniting American Families Act (UAFA) has been introduced in Congress by Sen. Leahy (D-VT) and Rep. Nadler (D-NY) to amend the Immigration and Nationality Act and allow U.S. citizens and legal permanent residents to sponsor same-sex partners for immigration;
NOW THEREFORE BE IT RESOLVED that Democrats Abroad urges Congress to pass the Uniting American Families Act at the earliest possible date and supports the removal of legal barriers to immigration by permanent same-sex partners.

June 2, 2009

The Honorable Patrick Leahy
Chairman
Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senators Leahy and Sessions:

On behalf of Concerned Women for America's (CWA) 500,000 members nationwide, I am writing you today to oppose the Uniting American Families Act of 2009. This legislation would provide special privileges to "same-sex partners."

The Uniting American Families Act allows any foreigner "in a committed relationship" with an American to immigrate to the United States on the same basis as foreign spouses.

Under Federal law, legal marriage is the union between a man and a woman. This bill would contradict existing law by elevating relationships outside of marriage to that of a binding legal marriage. Marriage between one man and one woman provides unique benefits to individuals, children and society that cannot be replicated by any other living arrangement. The Uniting American Families Act demeans the importance of marriage and is wholly inappropriate because it undermines Federal law.

CWA urges you to oppose legislation that undermines longstanding federal law and to preserve the family values that are the backbone of this country.

Sincerely,

Wendy Wright
President

cc: The Senate Judiciary Committee

*CSI Consulting & Investigations*
***950 South Cimarron Way, Unit I-203***
***Aurora, CO 80012***
***Office: 303-990-9837 / Cell: 303-332-1020***
***jnsampson51@comcast.net***
***www.CSIInvestigations.vpweb.com***

June 1, 2009

The Honorable Jeff Sessions
Senator of the United States
335 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions,

Please accept my sincere thanks for inviting me to give written testimony to the Judiciary Committee of the United States Senate regarding Senate Bill S 424.

As you know, I am a 27 year veteran of immigration enforcement, having recently retired from The Department of Homeland Security, Immigration and Customs Enforcement in August of 2008.

Due to the pervasive amount of fraud that currently exists in the immigration visa system, especially as it relates to marriage based immigrant visas, I formed CIS Consulting and Investigations on January 2, 2009 in an effort to provide investigative and consulting support to attorneys who represented defrauded United States citizens in criminal and domestic relations litigation.

The current version of marriage fraud involves the Violence Against Women Act (VAWA) provisions of the Immigration and Nationality Act (INA) in which foreign nationals routinely and callously falsely allege that their US citizen spouses have committed domestic violence upon them in order to obtain the fast and easy track to permanent residence without the necessity of remaining in what they have always considered a sham marriage.

The provisions of Senate Bill S 424, I believe, will further encourage sham and fraudulent immigrant visa filings by expanding the group of people who can apply for these kinds of immigration benefits by allowing so-called "permanent partners" to petition the United States government for their foreign born "significant others" to become permanent residents.

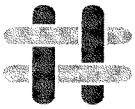
I have attached my written testimony to this letter which outlines my concerns for the likelihood that a significant amount of fraud will ensue should S 424, and its companion bill in the House, HR 1024, become law.

I have also taken the liberty of attaching two additional documents. They are the written Congressional testimony of Michael J. Maxwell, the former head of the Office of Security and Integrity (OSI) of US Citizenship and Immigration Services (USCIS). Mr. Maxwell, in great detail, outlines how corrupt USCIS is and how fraud prone the entire immigration system currently is.

Again, Senator Sessions, please accept my heartfelt appreciation for this opportunity to provide written testimony to the United States Senate Judiciary Committee. Should you wish to have me appear in person to give oral testimony and answer questions put to me by the Committee, I would be more than willing to do so.

Sincerely,

John N. Sampson
enc.



The Council for
**Global Equality**

Advancing an American Foreign Policy
Inclusive of Sexual Orientation and Gender Identity

## Addressing Inequality in Federal Immigration Law

Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "**The Uniting American Families Act: Addressing Inequality in Federal Immigration Law**"

June 3, 2009

Statement of Mark Bromley, Chair, Council for Global Equality; Julie Dorf, Senior Advisor, Council for Global Equality; and Ambassador Michael Guest (ret.), Senior Advisor, Council for Global Equality

The Council for Global Equality is a coalition effort that encourages a clearer and stronger American voice on international lesbian, gay, bisexual and transgender (LGBT) human rights concerns. The organizational members of the Council have all been recognized for their leadership in promoting human rights and equality in the United States and abroad. As a coalition, the Council has fourteen organizational members including all the major mainstream human rights organizations and major LGBT national organizations, collectively representing hundreds of thousands of American citizens.

The Council greatly appreciates Senator Leahy's leadership in holding this hearing on the Uniting American Families Act and demonstrating genuine concern about the issues faced by gay and lesbian bi-national couples and their families. Lack of equal civil rights for gay and lesbian Americans is damaging to all Americans and to America's founding values. This particular area of inequality is particularly harmful to our families, and damages personal relationships that are critical to our society. We are grateful to Senator Leahy for advocating that the families of gay and lesbian citizens be included in comprehensive immigration reform this year.

We similarly acknowledge and thank the other members of Congress who have co-signed the Uniting American Families Act, and urge Congress move without delay to pass this legislation – as either a stand-alone law, or as part of any comprehensive immigration reform effort.

Gay and lesbian Americans who have non-U.S. partners represent approximately 36,000 households in the United States according to the 2000 census. Of these, nearly 45% have children. The lack of family recognition of these families in immigration law denies them full ability to participate and contribute to American society, and literally pulls families apart when current law makes it impossible for a family member to remain in the United States legally. This is harmful

not only to those families, but also to American employers, communities, and extended families. Gay and lesbian Americans should be able to bring to this country the people they love, in the same manner that other Americans can. In like manner, gay and lesbian American citizens shouldn't be forced to leave their own country in order to live with those they love.

Nineteen other countries provide equal immigration benefits to gay and lesbian couples and their children. Just as the United States has recently joined sixty-eight other nations in the world that support the decriminalization of homosexuality by supporting the "UN Statement on Human Rights, Sexual Orientation and Gender Identity," it is time for the United States to rid itself of immigration discrimination based on sexual orientation.

The Council for Global Equality firmly believes that our nation's ability to regain our role as a world champion for equality, fairness, and justice is predicated on our creating equal justice at home. Eliminating or amending laws that result in discriminatory treatment of citizens based on their sexual orientation is important to this goal. We urge that the Uniting American Families Act be passed promptly as a critical component to America's ability to speak credibly on civil and human rights issues as they impact LGBT citizens at home and abroad.

Thank you.

**Council for Global Equality**
**1220 L Street, NW**
**Suite 100-450**
**Washington, DC 20005-4018**
**www.GlobalEquality.org**
**Phone/Fax: (202) 719-0511**

END DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER FAMILIES IN IMMIGRATION LAW

Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"

June 3, 2009

Statement of Jennifer Chrisler, Executive Director, Family Equality Council

On behalf of the thousands of families that support Family Equality Council, the national organization working to ensure equality for lesbian, gay, bisexual, and transgender (LGBT) families by building community, changing hearts and minds, and advancing social justice for all families, I would like to thank Senator Leahy for holding this important hearing on the Uniting American Families Act (H.R. 1025/S. 424) and same-sex binational families, and for advocating for inclusion of LGBT families in comprehensive immigration reform this year.

The mission of Family Equality Council is to create and protect happy, healthy families. Central to that is the basic ability of parents and their children to live together without fear of forced separation or having to choose between the family they've built and the country they love.

Guiding U.S. immigration policy is this same principle – "family unification." U.S. citizens and permanent residents are allowed to sponsor a spouse for immigration purposes so they may live together in the U.S. However, this option for unification is currently denied to same-sex partners, regardless of how long the couple has been together.

Family Equality Council witnesses the devastating consequences this has for same-sex partners raising children. Families are torn apart, relegated to living underground, or forced out of the U.S. altogether. Children live in fear that one of their parents will be forced to leave the country.

Consider the case of Barbara and Susan. They have been together for over six years and are raising two children in Massachusetts, where Family Equality Council is based. Susan is from the United Kingdom and in the U.S. on a non-immigrant visa. Although Massachusetts has ended discrimination in marriage against same-sex couples, Susan and Barbara cannot marry and offer their children the protections afforded by having married parents. They fear that declaring their intent to live together permanently would jeopardize Susan's visa status and the ability of their family to stay together in the U.S.

Walter and Santo have been partners for over 15 years. In 1999, the couple moved to Michigan where Walter joined the Ford Motor Company and Santo enrolled as a student at Wayne State University. After four years, they could no longer keep Santo on a valid student visa. The couple moved again, this time to New York, where Santo had received a job offer from a company that would sponsor him for a work visa. While in New York, they adopted Ethan, fulfilling their

dream of starting a family. After only one year in New York, however, Santo's job became untenable and they were forced again to consider how they could remain on valid visa status. Ultimately, they decided they could not put Ethan through move after move after move. They left the U.S. to live permanently in Sydney, Australia. Walter, Santo and Ethan are together, but they are separated from their extended family members who remain in the U.S., including Ethan's grandmother, aunt and uncle.

These are just two of thousands of similar stories that tell of the unfair and unhealthy strain current U.S. immigration law places on same-sex families. Accordingly to the 2000 U.S. Census, nearly 47% of same-sex binational couples – 16,000 couples – reported raising children in their home.

As a parent, I appreciate what a struggle it would be to navigate such legal and social vulnerabilities and still raise my twin boys to be the happy, healthy, thriving pre-adolescents they currently are. Family Equality Council serves parents all over the U.S. who do face this very struggle. On their behalf, I appeal to Congress to pass the Uniting American Families Act and to ensure that immigration reform is truly comprehensive by including LGBT families. Let not one more day go by in the U.S. without protecting families like Susan's and Barbara's, preventing families like Walter's, Santo's and Ethan's from leaving the U.S., and keeping thousands of parents and their children from living in daily fear of losing the most central, yet basic piece of family life – being together.

Eagle Forum of Alabama
4200 Stone River Circle • Birmingham, Alabama 35213
(205) 879-7096 • FAX (205) 871-2859 • Email: alaeag.e@charter.net
www.alabamaeagle.org

May 28, 2009

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Ranking Member Sessions:

We write to express our opposition to S. 424, the Uniting American Families Act of 2009 (UAFA), and to ask you to oppose this legislation to the full extent of your ability.

UAFA allows legal residents and U.S. citizens to sponsor their same-sex "permanent partner" for legal immigration to the United States. This is a clear violation of the Defense of Marriage Act (DOMA), which prohibits the federal government from recognizing homosexual pairs in any way, shape or form. S. 424 is simply another attempt by the left to chip away at DOMA.

DOMA defines marriage at the federal level, and advocates of same-sex spousal immigration benefits are trying to get around it. If President Obama and congressional Democrats want to repeal DOMA, they should do so through the proper legislative channels.

We believe S. 424 is another attempt by the left to write gay marriage into federal law, and it must be opposed. Not only is this bill bad public policy, but it will be yet another cost borne by the American taxpayer who will foot the bill for the federal benefits these couples receive.

For the above reasons we ask you to do everything within your power as the Ranking Member on the Senate Judiciary Committee to stop this legislation.

Sincerely,

Eunie Smith
President

Brooklyn Burgess
Executive Director


June 3, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy, Ranking Member Sessions, and Committee Members:

On behalf of the thousands of American families Eagle Forum represents nationwide, **I am writing to urge you to oppose S. 424, the Uniting American Families Act of 2009 (UAFA).**

Eagle Forum opposes UAFA because it is a violation of longstanding federal law, the Defense of Marriage Act (DOMA), which was overwhelmingly passed by bipartisan majorities in Congress and signed by President Bill Clinton in 1996. Eagle Forum objects to UAFA's fundamental purpose and its proponents' overarching goal which is to gradually chip away at DOMA to the point where it is rendered meaningless. Under DOMA, the federal government cannot recognize homosexual pairs in any way, shape, or form. The repeal of DOMA is on President Obama's agenda, but disguising federal-recognition of gay marriage in an immigration bill is a dishonest way to engage the marriage debate.

Not only is S. 424 an attack on the federally recognized definition of traditional marriage, but it will inevitably increase the incidence of immigration through marriage fraud. People of the same sex can abuse the system and pretend to be in a "permanent partnership" for the purposes of sponsoring a foreigner for legal status. Today, marriage to an American citizen remains the most common path to U.S. residency and citizenship for foreign nationals, with more than 2.3 million foreign nationals gaining lawful permanent resident status in this manner between 1998 and 2007.

Marriage to an American is also the clearest pathway to citizenship for an illegal alien. Even a substantial number of illegal aliens ordered to be deported later resurface as marriage-based green card applicants. One such example is Shirley Tan, whose deportation order has been stayed through 2010 and a private bill on her behalf has been issued by Senator Feinstein (D-CA).

Despite these realities, marriage fraud for the purpose of immigration gets very little notice or debate in the public arena. The State Department and the Department of Homeland Security have limited resources to

combat the problem, but certainly loosening immigration law through UAFA will no doubt encourage and exacerbate the immigration through marriage fraud problem.

Eagle Forum also opposes UAFA because it is bad immigration policy. This bill will further backlog our immigration system. More than 2.7 million people are awaiting interviews overseas for their immigration visa. In addition, there are another 2.2 million people waiting in the U.S. for USCIS to process their family visa application. There is also some evidence that maintaining such a large waiting list of "pending" applications creates an incentive or rationalization for illegal immigration and pressure to provide taxpayer-funded benefits to this population. Congress should instead work to pass legislation that would remedy this problem, rather than consider legislation that will further contribute to it.

Proponents of this bill, those pushing for same-sex partner immigration benefits, are marketing it as a quick-fix solution for a privileged minority. S. 424 seeks to give new "rights" to a small minority while leaving the rest—those wishing to come here legally and get in line—to do the heavy lifting. Make no mistake, UAFA's goal is not equality, but preferential treatment and an elevated status for homosexuals above the rest of those foreigners who wish to follow the rules, immigrate legally, and wait their turn in line.

I urge you to join Eagle Forum in opposing S. 424.

Sincerely,

FAIR

FEDERATION FOR AMERICAN IMMIGRATION REFORM

# Statement on the Uniting American Families Act (UAFA) and its Potential for Fraud

JUNE 3, 2009

# Statement on the Uniting American Families Act (UAFA) and its Potential for Fraud

## Introduction

The Uniting American Families Act of 2009 (UAFA), which is currently before both the U.S. House of Representatives (H.R. 1024) and the U.S. Senate (S. 424), represents a revival of previous legislation that would bestow legal recognition upon individuals involved in so-called "permanent partnerships." While the legislation does not explicitly define "permanent partners" as individuals in same-sex relationships, the practical effect of UAFA would be that same-sex couples would be able to avail themselves of the full array of immigration-related benefits in much the same way that married heterosexual couples currently can under federal law. Among these proposed benefits would be the ability of an individual in a same-sex relationship to apply for and receive a temporary visa and, eventually, permanent residency in the United States.

As currently written, UAFA is deeply flawed because it opens the door to the all but certain abuse of these proposed immigration benefits, and might even actively shield visa fraud. Advocates for UAFA have spent considerable energy emphasizing other foreign governments' policies with respect to permanent partner visa issuance, but UAFA's current language fails to incorporate most of the safeguards that these same foreign governments have used to prevent fraud. Absent inclusion of these safeguards, the permanent partner visa would simply become another vehicle for fraud, and would further burden an already broken immigration system.

In addition to expanding the potential for fraud, granting "permanent partner" visas would expand chain migration by expanding the group of people eligible for family-based immigration. When granting immigration benefits, FAIR has always supported providing a preference to a sponsor's nuclear family — i.e. spouse and minor children. However, because of the tremendous impact chain migration has on U.S. population growth[1] and, in turn, our natural resources, responsibly expanding any immigration benefits requires, at minimum, a numerical offset from other visa categories, or ideally, the elimination of the extended family preference categories under Section 203 of the Immigration and Nationality Act (INA).[2]

[1] See U.S. Census Bureau, 2008 National Population Projections, Table 1. Projections of the Population and Components of Change for the United States: 2010 to 2050. FAIR, and we believe the majority of the American people, would like to see major reductions in overall immigration.
[2] To read more about FAIR's position on chain migration, see FAIR's Issue Brief entitled "Chain Migration" at www.fairus.org.

**The Legislative Language of the Uniting American Families Act**[3]

In large part, UAFA simply updates specific portions of the INA[4] by adding the phrases "permanent partner" or "permanent partnership," where appropriate, to statutory language covering married individuals and their eligibility for immigration benefits. UAFA would define "permanent partner" as an individual 18 years of age or older who —

> (A) is in a committed, intimate relationship with another individual 18 years of age or older in which both individuals intend a lifelong commitment;
> (B) is financially interdependent with that other individual;
> (C) is not married to, or in a permanent partnership with, any individual other than that other individual;
> (D) is unable to contract with that other individual a marriage cognizable under this Act; and
> (E) is not a first, second, or third degree blood relation of that other individual.[5]

UAFA would also define "permanent partnership" as the "relationship that exists between [two] permanent partners."[6] While UAFA is technically gender-neutral — neither the words "sex" nor "gender" appear anywhere in the bill's text — the above definition would effectively eliminate the vast majority of heterosexual couples from consideration under its provisions.

While most of these changes would not have a substantive impact beyond expanding the group of people eligible for immigration benefits, adding "permanent partner" in at least one place may have problematic consequences. For example, 8 U.S.C. § 1182(i), which gives the U.S. Attorney General the discretion to admit immigrants despite the commission of fraud or willful misrepresentation in their visa applications, would be extended under UAFA, to permanent partnerships.[7] This statutory change would essentially provide the executive branch with the unfettered[8] ability to permit permanent partners' visa applications to go forward even in a situation where fraud or misrepresentation is demonstrable on the face of the visa application itself.

---

[3] All references to legislative language are to the most recent version of S. 424, available on *Thomas* (http://thomas.loc.gov/, last viewed June 1, 2009). Citations will be to the bill's section numbers (*e.g.* "UAFA, § 1").
[4] *See generally* 8 U.S.C. § 1101 *et seq.* (2009).
[5] UAFA, § 2.
[6] UAFA, § 2.
[7] *See* UAFA, § 10.
[8] Judicial review of such Attorney General waivers is forbidden under current federal law. *See* 8 U.S.C. § 1182(i)(2).

Although UAFA would extend existing criminal penalties to permanent partners who enter into permanent partnerships solely for the purpose of gaining admission to the United States,[9] the penalties may be an inadequate deterrent in light of both the expected increase in the volume of fraud associated with permanent partner visa applications and the challenge involved in exposing such fraudulent relationships.

### The Challenge of Immigration-Related Marriage Fraud

Before examining the potential fraud-related challenges of UAFA, it is worth briefly examining some of the difficulties surrounding immigration-related marriage fraud. The existing safeguards under federal law that protect against immigration-related marriage fraud are inadequate, as well as inadequately enforced. Even within the context of legally recognizable marriages — where voluminous legal and other documentation is required both to formalize the marriage itself and to seek adjustment of immigration status based upon marital status — immigration fraud remains substantial.

Numerous federal investigations have clearly demonstrated that the so-called "sham marriage" problem is pervasive, results in untold numbers of illegal entrants each year, and costs U.S. taxpayers substantial sums, not only for investigations and prosecutions of marriage fraud rings, but also for the federally funded benefits received directly by individuals who have entered the United States illegally. The problem of marriage fraud is significant despite the federal reorganization of most immigration enforcement resources under the U.S. Department of Homeland Security (DHS).[10]

While procedural, document-based marriage fraud is pervasive, expensive, and difficult to track, *substantive* marriage fraud — whereby a foreign individual determined to access the United States is able to recruit a willing U.S. citizen for the purposes of a sham marriage — is equally pervasive and expensive but virtually impossible to detect.[11] Traditional vehicles for connecting fraudulent entrants with willing U.S. citizens (such as familial arrangements) have joined new ones (such as "mail-order brides"), and are facilitated by the rapid expansion of modern

[9] *See* UAFA, § 18, which would amend 8 U.S.C. § 1325(c).
[10] For a more in-depth look at recent federal analyses of immigration-related benefit fraud at the federal level, *see generally* No. GAO-06-259, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud* (March 2006); No. GAO-05-81, *Homeland Security: Management Challenges Remain in Transforming Immigration Programs* (October 2004); No. GAO-02-66, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems* (January 2002). *See also* Ruth Ellen Wassem, CRS Report No. RL34007, *Immigration Fraud: Policies, Investigations, and Issues* (April 3, 2008).
[11] *See generally* David Seminara, Center for Immigration Studies Backgrounder, *Hello, I Love You, Won't You Tell Me Your Name: Inside the Green Card Marriage Phenomenon* (November 2008) [hereinafter SEMINARA].

communications, particularly the Internet.[12] In light of the fact status as a spouse remains the primary means by which foreign nationals gain entry to the United States,[13] it is likely to carry with it a proportionately, or even disproportionately, high amount of immigration fraud.

### The Approach to Permanent Partner Visas in Other Countries

The following nations currently provide permanent partner visas (and other immigration benefits) to same-sex partners:

Australia
Belgium
Brazil
Canada
Denmark
European Union
Finland
France
Germany
Iceland
Israel
Namibia
The Netherlands
New Zealand
Norway
Portugal
South Africa
Spain
Sweden
United Kingdom[14]

---

[12] *See* SEMINARA, *supra* note 9, at 5-9.

[13] Statistics maintained by DHS show that legal marriage to a U.S. citizen represents the most common path to residency and citizenship for foreign nationals. Between 1998 and 2007, approximately 2.3 million foreign nationals achieved permanent residency via marriage to U.S. citizens. This figure does not include the number of foreign nationals who achieved permanent residency via marriage to non-citizen legal permanent residents. *See* SEMINARA, *supra* note 9, at 2-3. This trend appears to be continuing: 27 percent of foreign citizens who achieved legal permanent resident (LPR) status between 2006-2007 did so via marriage to U.S. citizens, compared to 14 percent who achieved LPR status via "employment-based preferences," 10 percent who achieved LPR status as parents of U.S. citizens, and 10 percent who achieved LPR status as children of U.S. citizens. *See* SEMINARA, *supra* note 9, at 4.

[14] Lena Ayoub & Shin-Ming Wong, *Foreign and International Law in Gay Rights Litigation: Separated and Unequal*, 32 WM. MITCHELL L. REV. 559, 575-580 (2006) [hereinafter AYOUB & WONG]; Victor C. Romero, *The Selective Deportation of Same-Gender Partners: In Search of "Rara Avis,"* 56 U. MIAMI L. REV. 537, 598 n.250 (2002); Christopher S. Hargis, *Queer Reasoning: Immigration Policy, Baker v. State of Vermont, and the (Non)Recognition of Same-Gender Relationships*, 10 LAW & SEX. 211, 213-214 (2001); and Sara A. Shubert, *Immigration Rights for Same-Sex Partners Under the Permanent Partners Immigration Act*, 74 TEMP. L. REV. 541, 542, 555-556 (2001) [hereinafter SHUBERT].

Of the above nations that offer visas for same-sex partners, several have established rules and restrictions on their respective visa application processes in order to prevent misleading or fraudulent use of the permanent partner visa option.

- *Australia.* An Interdependency Visa is available for an individual who is in a same-sex common law relationship with an Australian citizen (or Australian permanent resident or eligible New Zealand citizen). Visa applicants are eligible to obtain different types of temporary Interdependency Visas depending on whether they are already residing in Australia or elsewhere in the world. Interdependency Temporary Visa holders are eligible for Interdependency Permanent Visas. The Australian government limits issuance of Interdependency Visas to individuals who can successfully demonstrate that they are at least 18 years old, that the applicant and his partner "have a mutual commitment to a shared life," and that the applicant and his partner have been cohabitating for at least one year prior to submission of the visa application. In determining whether applicants have met the cohabitation requirement, Australian immigration officials look to factors such as joint ownership of real estate or other major assets, joint bank accounts, statutory declarations from partners' friends and family about the nature of their relationship, and joint travel.[15]

- *Canada.* Common-Law Partner or Conjugal Partner Visas are available for an individual who is in a same-sex (or opposite-sex), conjugal relationship for a continuous duration of at least one year. For the Common-Law Partner Visa category, visa applicants must provide documentation demonstrating the existence of a combined household, including (but not limited to) joint home ownership, joint bank accounts or credit card accounts, joint management of utilities and household expenses, and proof of correspondence at the same address.[16]

- *New Zealand.* A Partner Visa (also known as a "Partnership Visa") is available for an individual who is in a same-sex common law relationship with a New Zealand citizen or New Zealand permanent resident. Basic requirements include that the visa applicant and the

[15] *See* Christopher A. Duenas, *Coming to America: The Immigration Obstacle Facing Binational Same-Sex Couples*, 73 S. CAL. L. REV. 811, 828 (2000) [hereinafter DUENAS]; Bonnie Miluso, *Family "De-Unification" in the United States: International Law Encourages Immigration Reform for Same-Gender Binational Partners*, 36 GEO. WASH. INT'L L. REV. 915, 930 (2004); and Australian Government, Department of Immigration and Citizenship, "Visas, Immigration and Refugees," *http://www.immi.gov.au/migrants/family/family-visas-partner.htm* (last viewed June 1, 2009).

[16] *See* Canadian Government, Citizenship and Immigration Canada, "Sponsoring your family: Spouses and dependent children – Who can apply," *http://www.cic.gc.ca/english/immigrate/sponsor/spouse-apply-who.asp#common_law* (last viewed June 1, 2009).

New Zealand sponsor both be at least 18 years old (or have the consent of parents or legal guardians if one or both are between the ages of 16 and 18 years), that they are not closely related, and that they have been in a "genuine and stable" relationship for at least one year. New Zealand can also grant immediate permanent residency status to a visa applicant if it can be demonstrated that he and his sponsor have been in a "genuine and stable" relationship for at least two years, although New Zealand is considered to require substantial proof of the relationship.[17]

- *South Africa.* A Life-Partner Visa is available for an individual who is in a same sex common law, or "life partner," relationship with a South African citizen or South African permanent resident. One initial requirement is the existence of a relationship between the applicant and the South African sponsor for at least one year prior to the visa application. In order for permanent residency to be granted via the Life Partner Visa, it must be shown that the relationship remains in existence two years after the visa was granted; failure to so demonstrate will lead to revocation of the visa. The visa would be immune from revocation five years after issuance, however, regardless of whether or not the relationship remains in existence.[18]

- *United Kingdom.* An Unmarried Partner Visa is available for an individual who is in a same-sex common law relationship with a U.K. citizen only. Basic requirements include that the visa applicant must have been permanently living in a subsisting relationship for two years or more with his U.K. sponsor, the applicant and sponsor must reside at the same address, the applicant and sponsor must demonstrate that they are unable to marry, and the applicant and sponsor must essentially demonstrate that they will not require public funds.[19]

Of the industrialized, English-speaking nations of the world, the United States is the only one to not extend recognition of same-sex partners within the context of visa issuance and other immigration benefits[20] (although it is not the only one to reject formal legal recognition of same-sex unions in one form or another).[21]

---

[17] *See* DUENAS, *supra* note 13, at 830; and GlobalVisas.com, "[New Zealand] Partner Visa," *http://www.globalvisas.com/new_zealand/partner_visa.html* (last viewed June 1, 2009).
[18] *See* GlobalVisas.com, "South Africa Spousal Visa," *http://www.globalvisas.com/south_africa/south_africa_spousal_visa.html* (last viewed June 1, 2009).
[19] *See* SHUBERT, *supra* note 12, at 556; DUENAS, *supra* note 13, at 835; and U.K. Visa Partners Ltd., "Unmarried Partner Visa," *http://www.ukvisapartners.com/unmarried_partners_visa.php* (last viewed June 1, 2009).
[20] DUENAS, *supra* note 13, at 813.
[21] *See, e.g.*, AYOUB & WONG, *supra* note 12, at 578 (noting that both "Australia and Israel have reformed their immigration policies to recognize same-sex couples without granting the right to marry or creating an alternative partnership scheme"); and SHUBERT, *supra* note 12, at 542 (noting that "countries [have provided same-sex couples with immigration benefits] without recognizing marriages between same-sex partners").

### Vulnerabilities of the Uniting American Families Act

In its current form, UAFA would render the United States' immigration system even more vulnerable to fraud and manipulation by individuals who would seek entry under false pretenses, primarily because the proposed statutory language does not incorporate some basic and relevant fraud-prevention measures. Given that many permanent partner relationships in the United States and elsewhere are same-sex relationships and that same-sex relationships are not afforded legal recognition under current federal law, their unofficial, legally unrecognizable nature makes them virtually unverifiable. Their unverifiable nature practically assures a significant volume of fraud, and places a near-impossible administrative burden upon the federal immigration officials who will be tasked with reviewing permanent partner visa applications and conducting subsequent investigations.

As discussed above,[22] some nations have included certain rules and restrictions on individuals seeking permanent partner visas to guard against fraud. UAFA offers the opportunity for permanent partner visas offered by other nations, but without including similar anti-fraud barriers. Requiring permanent partner visa applicants to offer documentary proof of pre-existing joint home or asset ownership, joint bank accounts or credit card accounts, shared responsibility for utility bills and other household-related financial obligations, and other similar, objective relationship ties would represent a substantial step toward preventing permanent partner visa fraud, as would requiring the permanent partners themselves, their family, their friends, and their co-workers to provide sworn statements about the nature and duration of the relationship at issue. Requiring revocation of both temporary and permanent visas in situations where it is subsequently determined by federal immigration officials that the relationship has ceased to exist and evidence that applicants will not become public charges upon entry into the United States should also be considered as prerequisites for bill advancement.

### Recommendations

It is recommended that the following proposed enforcement tools be included in the legislative text rather than being left to subsequent rulemaking discretion (which presumably would be the case under the present language and pre-existing federal immigration law):

- **Require** that the visa applicant and the permanent partner sponsor be able to demonstrate, with ample, objective documentary evidence, that they have a pre-existing permanent partner

[22] *See infra*, at pp. 4-5.

relationship that has been in existence for at least two years prior to the submission of visa application materials;

- **Require** that the permanent partner sponsor be able to demonstrate, with ample, objective documentary evidence, that he or she is in fact a U.S. citizen (i.e., not merely a legal permanent resident);

- **Require** that the visa applicant and the permanent partner sponsor supply documentary evidence to demonstrate the reality of their pre-existing relationship, including
  - **Proof** of joint ownership of real property or other assets of significant value
  - **Proof** of joint bank accounts, credit card accounts, or other financial accounts, including investment portfolios
  - **Proof** of joint rental obligations, such as home or automobile lease agreements
  - **Proof** of shared responsibility for household-related financial expenses, such as utility bills and maintenance bills
  - **Proof** of any other objectively determined shared responsibilities;

- **Require** some number of sworn statements from the visa applicant, the permanent partner sponsor, and the applicant's and sponsor's family, friends, coworkers, and other relevant individuals, about the true nature and duration of the applicant-sponsor relationship;

- **Require** sworn statements from both the visa applicant and the permanent partner sponsor swearing or affirming, under penalty of visa revocation and other permissible penalties, that they are economically self-sufficient and will not access any public benefits during their residency in the United States;

- **Require** automatic revocation of visas in situations where either the visa applicant or permanent partner sponsor remove themselves from the permanent partner relationship;

- **Make** the government's right of visa revocation an indefinite one, not subject to lapse;

- **Offset** the number of "permanent partner" visas from another visa category within the INA; and

- **Eliminate** the extended-family preference categories found in Section 203 of the INA.

**Conclusion**

UAFA's present legislative language is objectionable because it lacks sufficient fraud prevention measures and will all but guarantee substantial fraud via the permanent partner visa option. Without mandating additional safeguards akin to those used by other nations that have embraced similar permanent partner visa treatment, UAFA will only serve to compound already rampant immigrant benefit fraud and encourage more individuals to manipulate the visa process through the creation of phony permanent partner relationships in order to gain access to the United States. In addition, the UAFA neither offsets the number of "permanent partner" visas from other visa categories within the INA nor eliminates the family preference categories under Section 203 of the Immigration and Nationality Act (INA). Without these provisions, the UAFA will expand chain migration and hasten U.S. population growth.

Russ Feingold

**Statement of Senator Russell D. Feingold**
Hearing before the Senate Committee on the Judiciary
on
"The Uniting American Families Act:
Addressing Inequality in Federal Immigration Law"
June 3, 2009

Thank you, Mr. Chairman, for holding this important hearing.

I am proud to be a co-sponsor of the Uniting American Families Act, which would allow American citizens and legal permanent residents to sponsor their same-sex partners for legal residency here in the United States, under the same exacting immigration requirements that we apply to opposite-sex couples.

Right now, our family immigration rules force many committed long-term couples to make a terrible choice between living in different countries and leaving this country they love to stay together. Worse still, these couples have no protection against deportation proceedings, no matter how long they have been together and whether or not they have obtained a valid marriage license or other legal recognition in a jurisdiction that recognizes same-sex marriage or civil unions.

This discrimination is unfair, unjustifiable, and un-American. It affects as many as 36,000 gay and lesbian Americans in bi-national relationships, including my own constituents. To put a face on just one of these stories, consider Pamela Hathaway, a U.S. citizen who lived with her committed partner of four years, Lucie, in a house they bought together in Madison—until Lucie's visa expired. For the past year, Pamela and Lucie have been forced to live in different countries. The alternative is for Pamela to exile herself to Canada, one of 20 countries that offer immigration benefits for same-sex and opposite-partners alike.

I should point out that Lucie is a French teacher and Pamela is the executive director of her local neighborhood planning council. This couple has devoted their careers to serving their community, and we are telling them that if they want a healthy relationship, they must leave that community forever.

Is that what we want? To place an incalculable strain on loving, committed relationships, and to alienate—literally alienate—thousands of hardworking Americans? This makes no sense as economic policy in a competitive global marketplace, let alone as social policy in a nation that cherishes strong family bonds.

As the American Bar Association concluded in its resolution to support this legislation, "The current failure to recognize same-sex permanent partnerships for immigration purposes is cruel and unnecessary, and such critical protections should be available to help same-sex partners maintain their commitment to one another on an equal basis with different-sex spouses."

I wish to emphasize that this legislation represents no intrusion on any state's control over its own family law. It simply allows U.S. Citizen and Immigration Services to grant legal residency to permanent partners in committed, intimate, lifelong, financially interdependent relationships; to vigorously smoke out fraud; and to keep families together.

Mr. Chairman, thank you again for holding this hearing and for your leadership on this important and worthwhile bill.


*Helping Families Thrive*

8605 Explorer Dr., Colorado Springs, CO 80920
FocusOnTheFamily.com
719-531-3400

June 2, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the millions of families represented by Focus on the Family, we urge you to oppose S. 424, a bill that seeks to grant special immigrant visas to "permanent partners" of United States citizens.

This bill will create opportunities for abuse and fraud of United States immigration laws but more importantly, S. 424 is a fatal step toward the purposeful undermining of marriage, this country's most pro-child institution. There are important reasons why only legal marriage between one man and one woman has historically been allowed the privilege of spousal-sponsored immigrant visa status.

Marriage has been a source of stability and vitality for this country and every thriving civilization. It exists because the sexual union of a woman and a man results in children. And social science evidence for the last 30 years demonstrates that children do best by every measure when raised by their biological, married mother and father.

Moreover, Congress expressed its approval and endorsement of one-man, one-woman marriage when it passed the Defense of Marriage Act in 1996 (DOMA). The purpose behind DOMA was to support and endorse traditional marriage. If passed, S. 424 would undermine this policy.


*Helping Families Thrive*

8605 Explorer Dr., Colorado Springs, CO 80920
FocusOnTheFamily.com
719-531-3400

States and voters across the country have repeatedly upheld the time-honored definition of marriage. At least 40 states protect this definition either by statute or within their constitutions. Moreover, polls show that a majority of Americans support one-man, one-woman marriage.

Supporters of S. 424 seek to use Congress to gain legal recognition for a lifestyle in the name of "equality." But the institution of marriage is *not* a legal vehicle for equality; it is a social institution with children at its heart. If passed, S. 424 will be much more than a minor tweak to federal law, it will be a large step toward the redefinition of vital family policy with inestimable consequences for our children.

We urge you to uphold the institution of marriage and reject the redefinition of "family" to grant special immigrant visas for same-sex couples.

Sincerely,

Tom Minnery

Tom Minnery
Senior Vice President
Government and Public Policy
Focus on the Family Action


**What UAFA Would Mean For Those Who Serve Their Nation**
Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"
June 3, 2009

Statement by the board of Gays and Lesbians in Foreign Affairs Agencies (GLIFAA), on behalf of the full membership.

GLIFAA, officially recognized by the U.S. State Department, represents lesbian, gay, bisexual, and transgender (LGBT) personnel and their families in the U.S. Department of State, U.S. Agency for International Development (USAID), Foreign Commercial Service, Foreign Agricultural Service, and other foreign affairs agencies and offices in the U.S. Government. Founded in 1992 by fewer than a dozen employees who faced official harassment simply because of their sexual orientation, GLIFAA continues to seek equality and fairness for LGBT employees and their families.

LGBT foreign service, civil service, and contract personnel serve their country domestically and at U.S. Embassies and Missions around the world, including some of the most challenging posts in Afghanistan and Iraq. But despite their service to their nation, these personnel must suffer severe immigration problems if their partners are not American citizens. Ironically, foreign postings are almost always easier for these personnel than domestic assignments. Nearly all developed countries, aside from the United States, will recognize a partner for immigration, and in most developing countries visa laws are relaxed. Some personnel come to the United States for short tours, only to watch their partners face harassment from immigration officials. Others are forced to serve exclusively overseas, isolating them from family members back home who may need them. And GLIFAA retirees with foreign partners cannot even return to the country they have served for so many years.

The GLIFAA board receives numerous letters from members about the challenges they face, and we respectfully call the committee's attention to the unique challenges faced by GLIFAA members with non-American partners.

One GLIFAA member from New York with a Brazilian partner writes: *"When my partner landed in Chicago, Immigration grilled him for two hours. They accused him of being illegal, overstaying, you name it. They found my business card in his luggage and demanded an explanation – as if it was inappropriate for him to have it. He patiently explained the situation numerous times, and was eventually released – but with permission to stay for only three months. Incidentally, two of my colleagues from Sao Paulo met their [opposite-sex] spouses after my partner and I met. They both are now U.S. citizens traveling on Diplomatic passports."*

A GLIFAA member from Illinois with a Czech partner writes: *"I was in the Army and served in Operation Iraqi Freedom until March 2005. I joined the Foreign Service in July 2006, and soon after shipped out to India with my partner. I'm due to return to Washington for eight months of language training, and the cost of plane tickets aside, I'm worried that he won't even be allowed to enter the country for the full eight months, because he can only qualify for an ordinary tourist visa. All I ask is for us to enter my country together - the same country I fought for in Iraq and the same country I still love and serve today."*

A GLIFAA member from Texas with a Canadian partner writes: *"My partner yet again had a problem on the border last week. He and our kids were traveling from Toronto to Texas to join me for Home Leave and the guard grilled him about why he had so many suitcases. When he explained that he was the*

*domestic partner of a Foreign Service officer traveling for Home Leave she didn't hide her disgust and tried to send him for secondary inspection, even though he has multiple entries with me and the kids. Fortunately her supervisor stepped in and let them all pass, but the guard didn't even speak to him and continued to show her disgust. So much for DHS customer service training… the thing we hate most is that the kids have to watch this."*

A GLIFAA member from Florida with a Bulgarian partner writes: *"We had been living in D.C. for two years during my posting to USAID headquarters, and my partner returned to Bulgaria for a visit with his family. On his return to Washington, he was detained by the INS and sent back to Bulgaria the next morning--even though he had never been out of status. Despite explaining that he was the partner of a foreign service officer assigned temporarily to Washington, the passport examiners decided he was an 'intending immigrant,' cancelled his visa, and put him on the next plane out of the country. I will never forget waiting for him that night at Dulles. When I finally got through to the INS shift leader, at 5 a.m., she told me, 'Listen, mister--if you hadn't been dragging this guy around the world with you for the last seven years, you wouldn't have this problem, now would you?' And she hung up on me."*

A GLIFAA member from the District of Columbia with a South Korean partner writes: *"As a consular officer in Seoul, I helped guide countless Americans through the mountains of paperwork necessary to marry foreign nationals and to sponsor them for immigration… a right that is still denied to me. The hardest part of my job was explaining to a more senior colleague that when he faces mandatory retirement in a few years, his Brazilian partner would likely not qualify for immigration, and the two of them – after a lifetime of service – would be forced to find another country that would accept them. As for me, I only serve outside the United States, because I can't imagine the stress of having my partner deported. The cruelty of this discrimination was made clear to me when my father survived a heart attack one year ago. It was like a message sent to us from up above: my father was now living in overtime, and we had to make every year count. I wished more than anything I could just ask for a posting in Washington to be near him… but then what would happen to my partner? He gave up his career to support me. Where would he live, what would he do? And why is my country asking families like mine to suffer like this, simply because we're different and we want to serve?"*

GLIFAA believes that families that defend our nation are families that our nation must defend. We respectfully thank the Judiciary Committee for their consideration.

The Uniting American Families Act: Improving the Lives of American Children

Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"

June 3, 2009

Statement of the Gay, Lesbian and Straight Education Network (GLSEN)

The Gay, Lesbian and Straight Education Network strives to assure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression. GLSEN supports the rights of all parents/families to participate in their children's school activities and calls upon public policy makers and school officials to adopt and enforce practices that recognize and support diverse families.

We commend Senator Leahy for holding a hearing on the Uniting American Families Act and binational lesbian, gay, bisexual, and transgender families, and for advocating for inclusion of these families in comprehensive immigration reform this year.

GLSEN strongly urges Congress to pass the Uniting American Families Act and to bring an end to the striking inequities in current federal immigration law.

Today, gay and lesbian Americans who fall in love across borders face an impossible choice between being with the person they love and staying in their country. Americans are forced to interrupt their careers, uproot their children, and leave the rest of their families behind in order to be with their partners. Children of binational LGBTQ couples suffer when their country does not consider their parents' relationship valid. The quality of their life and education can be dramatically impacted.

GLSEN is particularly interested in the passage of the Uniting American Families Act because it will have a direct and positive impact on the education of children of LGBT binational couples. According to the U.S. Census, 44% of the 37,000 gay and lesbian Americans in binational couples are raising children. These couples are devoted to actively participating in their children's lives. GLSEN's 2008 report, "Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual, and Transgender Parents and Their Children in Our Nation's K-12 Schools," reveals that involvement of LGBT parents in their children's education is considerably higher than that of the national average for all parents. For example, research shows that on average, 67% of LGBT parents act as a volunteer at their child's school, whereas only 42% of all parents volunteer. This kind of involvement can play an important role in ensuring greater educational success for their children.

The passage of UAFA will help to strengthen the involvement of LGBT parents and the academic success of their children, and give binational LGBT couples the chance to enrich their children's education in the United States without fear of deportation. GLSEN encourages Congress to act now in order to ensure that children are never denied the opportunity to be raised by both of their parents in the United States.

Pfizer Inc
235 East 42nd Street
New York, NY 10017
Tel 212 733 4935 Fax 212 808 8924
Email jeff.kindler@pfizer.com

**Jeffrey B. Kindler**
Chairman of the Board
Chief Executive Officer

June 1, 2009

The Honorable Patrick J. Leahy
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

Pfizer applauds you for sponsoring and holding a hearing on the Uniting American Families Act and for advocating for inclusion of gay and lesbian binational families in comprehensive immigration reform this year. Your leadership in promoting equality under US immigration law for same-sex couples is to be commended. Pfizer recognizes that our employees are the cornerstone for our success, and we value our diversity as a source of strength. Our support for the UAFA is in line with these values.

American immigration laws are based on the principle of family reunification. Unfortunately, same-sex partners are not considered under current laws as qualifying family members for immigration purposes. This omission has forced key Pfizer employees such as Gordon Stewart to make unacceptable choices, including leaving the United States to be with their partners or separating from their partners. These choices are emotionally and financially devastating.

Support for the Uniting American Families Act is squarely in line with Pfizer's commitment to global diversity and our support of domestic partnership benefits. Enactment of the Uniting American Families Act will bring U.S. immigration policy in line with the policy of many other countries that provide immigration rights to same-sex partners. Moreover, it will allow Pfizer's employees to keep their families intact and allow Pfizer to maintain a globally competitive and productive workforce.

Thank you for your thoughtful leadership on this important issue.

Very Truly Yours,

Jeff Kindler

Statement of

# The Honorable Patrick Leahy

United States Senator
Vermont
June 3, 2009

---

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
The Uniting American Families Act: Addressing Inequality in Federal Immigration Law
June 3, 2009

For too long, gay and lesbian American citizens whose partners are foreign nationals have been denied the ability to sponsor their loved ones for lawful permanent residency. Under current immigration law, many citizens have been forced to choose between their country and their loved ones. No American should face such a choice. The preservation of family unity is at the core of our immigration legal system. This American value must apply to all families.

During the past several years, Americans have increasingly come to reject the notion that their fellow Americans who are gay or lesbian should not have loving relationships. Federal policy should encourage rather than restrict our opportunity as Americans to sustain the relationships that fulfill our lives.

Today, the Judiciary Committee will hear testimony on the Uniting American Families Act, a bill I introduced last Congress and have reintroduced this year with the support of several members of this Committee. Our bill will allow the committed partners of Americans the opportunity to immigrate. What we consider today with this legislation is an issue of fair treatment under Federal law. It is time for the United States to join 19 other nations, many of which are our closest allies, in providing our gay and lesbian citizens this benefit under our immigration laws.

There is no place for discrimination in our Federal law. I note that traditional civil rights leaders like Congressman John Lewis and Julian Bond, the chairman of the National Association for the Advancement of Colored People (NAACP), have said unequivocally that the issue of gay rights is an issue of civil rights. To quote Chairman Bond: "Gay and lesbian rights are not special rights in any way. It isn't 'special' to be free from discrimination. It is an ordinary, universal entitlement of citizenship."

Some have expressed concern that if Federal immigration law were to recognize committed same-sex partnerships for purposes of immigration benefits, opportunities for fraud would increase. I am confident that the U.S. Citizenship and Immigration Services will have no more difficulty discovering fraudulent arrangements between same-sex couples than heterosexual couples. Our immigration agencies are well-trained and highly experienced in this regard. I have

little doubt that when this legislation is enacted, the immigration agency will safeguard against fraud and abuse in same-sex partnerships just as it does for heterosexual couples seeking immigration benefits.

The benefits this legislation seeks to provide are not contingent upon the definition of marriage, which I believe is an issue best left to the States. Former Vice President Cheney and I are most often thought of together in terms of his greeting me with a derogatory salutation on the Senate floor a few years ago. Yet this week he said much the same thing I have about States being able to decide whether their law would recognize gay marriages.

Just last month, President Obama and Secretary of State Clinton announced a new policy to provide domestic benefits to the men and women in our foreign service who are in same sex domestic partnerships. President Obama and Secretary Clinton acknowledged what many American corporations already recognize: The happiness and stability of their employees in their personal lives is essential to success and productivity in their professional lives. I applaud this decision. There is more work to be done. It was not long ago that homosexuality barred an immigrant from entry into the United States. It is time to take that constraint off the committed same sex partners of American citizens.

Congress and the administration hope to return to a discussion of comprehensive immigration reform in the near future. Senator Schumer, who chairs our Immigration Subcommittee, has begun a series of hearing to prepare us for taking action. In my view, no effort we make can be considered comprehensive without providing gay and lesbian Americans with immigration benefits equal to those enjoyed by heterosexual citizens. I hope today's hearing will help.

# # # # #


**Let us come home!**
**America's Love Exiles Support the Uniting American Families Act**

Testimony submitted to:
United States Senate Committee on the Judiciary

Hearing:
"The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"
June 3, 2009

**Statement of:**
**Love Exiles Foundation**

By
Martha McDevitt-Pugh, Chair
Robert Bragar, Board Member
Robert Checkoway, Board Member
Lin McDevitt-Pugh, Board Member

Love Exiles Foundation is the premier organization dedicated to supporting and obtaining migration rights for American gays and lesbians who have been forced to leave the US in order to be united with their non-US permanent partners. Our members are united by love, but divided by law. We have chapters and members throughout Europe as well as in Australia, Canada, Japan and South Africa.

We express our deep gratitude to Senator Leahy for holding a hearing on UAFA and gay and lesbian binational families, and for advocating for inclusion of these families in comprehensive immigration reform this year.

Discrimination against same-sex couples and their children in immigration law deprives US citizens of human dignity and the basic human right to be with our partners. It is also causing a needless exodus from the United States of talented U.S. citizens, their partners, their skills and their property.

This discrimination has created a notable brain drain for the United States. America's biggest companies are losing gay and lesbian employees to foreign countries. For example, at the "Out For Business" conference sponsored by Lehman Brothers in Montreal in 2006, a senior Human Resources manager at a major U.S. computer corporation told us: "We have no problems with same sex partners. If we cannot get the foreign partner into the US, we just move the job to Canada where our gay and lesbian employees can live legally with their foreign partners."

This is costing the US dearly at a time of economic crisis when America should be attracting jobs rather than exporting them.

**Love Exiles Foundation** **Amsterdam, the Netherlands**
www.loveexiles.org exiles@xs4all.nl **Tel. +31 6 2150 4249**
**Registered with the Chamber of Commerce, Amsterdam** **KvK number 34202916**


When a heterosexual person falls in love with a foreigner, issues arise about where to live together and how to adjust two lives to become one. But when a lesbian or gay American has a foreign permanent partner, this can have calamitous personal consequences. In many cases, US immigration law effectively forces the couple to leave the country, to become "love exiles" and seek refuge abroad.

Love Exiles Foundation is based in the Netherlands for this reason. There are at least 19 other countries around the world which provide immigration benefits for same-sex binational couples. Countries providing these benefits include virtually all of the United States' close allies in Western Europe, as well as Canada, Australia and Israel and South Africa. These countries have united around this issue. It is time for the U.S. to join.

The inequality of current law is clear. Heterosexual citizens who wish to sponsor their spouses have full rights under rules of family unification. But gay and lesbians Americans have no rights at all to sponsor their permanent partners. This means that gay and lesbian US citizens with foreign partners face hard choices:

A. We can choose to leave the US and seek refuge elsewhere. Sadly, many of us have done this, taking our property and skills to benefit the countries where our families are recognized. We are the Love Exiles.

B. We can struggle with the US immigration system, pressured to find an employer willing to provide sponsorship or a course of study that can offer access to a temporary student visa.

C. When all else fails, some are forced to live in the US in illegality and uncertainty, contracting marriages of convenience or going underground.

Please bring America's love exiles home.

Please remedy the current violation of human rights for America's lesbian and gay community.

Please join America's western allies by acknowledging same-sex permanent partners and our children.

Please pass the Uniting American Families Act as soon as possible.

**Love Exiles Foundation**
www.loveexiles.org exiles@xs4all.nl
**Registered with the Chamber of Commerce, Amsterdam**

**Amsterdam, the Netherlands**
**Tel. +31 6 2150 4249**
**KvK number 34202916**

Michael J. Maxwell, the former head of the Office of Security and Integrity (OSI) of the Bureau of Citizenship and Immigration Services.

On July 27, 2006, in his testimony before Congress, Mr. Maxwell quoted former Assistant Secretary of Homeland Security for Immigration and Customs Enforcement, Julie Myers as follows: "At an April 5, 2006, press conference to announce the creation of task forces to combat immigration and document fraud, Assistant Secretary for Immigration and Customs Enforcement (ICE) Julie Myers pointed out that terrorists have used legal immigration channels like asylum to embed in American society. She noted that "each year tens of thousands of applications for immigration benefits are denied because of fraud, and those are just the ones we find. "

In his testimony before the House Subcommittee on Immigration and Border Security and Claims Committee on the Judiciary Mr. Maxwell stated the following: "Recent USCIS immigration fraud assessments indicate that the incidence of fraud in some visa categories is as high as 33 percent." This information came from a GAO report dated March of 2006.

I am appending Mr. Maxwell's testimonial records to my testimony for your review.

Currently, the United States government does not recognize same sex unions, same sex marriages, or domestic partnership agreements. USCIS does not. The Internal Revenue Service does not. The Department of Health and Human Services, Social Security Administration does not. Nor does the Department of Veteran's Affairs. Same sex partners of veterans are not entitled to surviving veteran's benefits. Same sex couples cannot file a joint federal tax return. Social Security death benefits are not made available, to my knowledge, to surviving same sex partners of deceased individuals. And currently, there is no provision in the Immigration and Nationality Act to allow for a US citizen to petition for their same sex domestic partner or "permanent partner". It is this last issue that is being addressed in S 424 and the House of Representatives version, HR 1024 introduced by Rep. Jerold Nadler of NY.

Although a few states have enacted civil union or domestic partnership agreement legislation allowing same sex domestic or "permanent" partners to enter into a form of a formal committed relationship, the law, and a few others actually have same sex marriage statutes in place, the law has not caught up with this latest wave of social engineering. To my knowledge, there is little, if anything, on the books as it relates to the legal termination of a same sex civil union or domestic partnership agreement, and presumably there would be no legal means by which to officially terminate a "permanent partnership".

Add to that the further complication that more than thirty states have constitutional amendments barring same sex marriages and/or defining marriage as the union between one man and one woman. To further complicate an already vexing issue, enter the Defense of Marriage Act of 1996.

In 1996, President Clinton signed into law the Defense of Marriage Act. That statute defines marriage as the union between one man and one woman. As such, the passing of S 424 and its companion bill in the House, HR 1024, would be in direct contradiction with that law. Although the language of both bills do not refer to "permanent partners" as "spouses", the de facto intent

and the practical effect would be to grant to same sex partners, the same privilege of applying for an immigrant visa based upon their relationship, in the same manner, following the same regulations, and obtaining the same immigrant visa classifications as those enjoyed by US citizens applying for their foreign born spouses, without the need to present an officially issued document by a State or political subdivision attesting to the existence of the "permanent partnership", nor the ability to present an officially issued document by a court of competent jurisdiction judicially terminating or annulling the underlying "permanent partnership".

It is my belief that the logistical and regulatory issues that the passage of S 424 and HR 1024 would cause would be monumental and nightmarish. Furthermore, it will open the door wide for massive fraud. It will stand as an invitation for the fox to come into the henhouse. And trust me, the fox will willingly accept this invitation. The fox will be fraudulent document vendors, corrupt notaries public, and corrupt attorneys. History will repeat itself some 23 years or so after the fact, but will increase geometrically.

At this point, with only three states allowing same sex marriages, and thereby issuing documentation stating that the marriage has been registered and is recognized as valid by the State, with two more to come on line in the coming months, it leaves 45 states, Puerto Rico, The American Virgin Islands, Swain's Island, American Samoa, and Guam not issuing any form of documentation registering, recognizing, and validating any same sex relationship or "permanent partnership".

New York and New Jersey allow for domestic partner agreements, which allow same sex partners to register their relationships with the State in order to obtain certain benefits similar to married couples, such as health insurance, life insurance and the like. However, to my knowledge, they do not issue an official state sponsored or approved document attesting to the validity of the relationship.

And single issue, the lack of any official documentation attesting to the existence of a "permanent partnership" other than the parties' self serving statements, poses the greatest threat of fraud.

Currently, when a US citizen and their alien spouse file the necessary paperwork with USCIS in order to obtain an immigrant visa or permanent residence for the alien spouse, they must present, at the time of their interview with USCIS, evidence of the validity of the marriage, that it actually exists and has been legally entered into. That is accomplished by submitting a certified copy of the marriage license and marriage certificate. They also must submit evidence of co-mingling of assets, joint tax returns, health insurance policies, and other evidence that the marital relationship was entered into in good faith by both parties and that it is a viable, bona fide marriage and not a sham intended to circumvent the immigration laws of the United States.

Although, virtually ever sham marriage scheme involves the submission of the aforementioned documents, many of those documents are either forgeries or in the case of bank accounts, a symbolic bank account is opened by both parties to show a comingling of assets when in fact, both parties maintain separate bank accounts where the bulk of their assets are kept. The bank

account that is jointly opened is for show only and used to meet the document submission requirements set by USCIS.

As stated previously, the level of fraud in this one area of immigration benefits runs at approximately 33% according to recent ICE and GAO estimates. The problems associate with same sex permanent relationships is that the evidence that USCIS would ask to see to prove the viability of the marriage and the bona fides of the marriage would not be readily available to those engaged in a same sex permanent partnership. There would be no marriage certificate in the overwhelming majority of cases, especially in those states where same sex marriages, civil unions and/or domestic partner agreements are barred by law. The only way to attest to the existence of such a "permanent relationship" would be to submit self serving affidavits and letters from friends and family. Historically, such documents have an alarming incidence of fraud since there is no viable way to contradict what an affiant, friend or family states to be their opinion. Self serving affidavits and letters from friends and family are historically unreliable and amount to hearsay and have no probative value.

To add to that problem, there would be no joint federal income tax returns, no health insurance policies to show the alien as a beneficiary or vice versa, no other federally recognized documentation to show the comingling of assets and the like.

What will result is the formation of a new cottage industry preparing and providing false documentation to show co-habitation, such as rent receipts and leases for non-existent apartment complexes or non-existent landlords, and other documentation that would tend to show cohabitation.

However, the biggest and most likely pervasive fraud facilitation would be the issuance of fraudulent and self serving affidavits drafted by corrupt notaries public and attorneys claiming that two people are "permanent partners" as defined in S424 or HR1024, when in fact they are not "permanent partners" at all.

The key definition for this bill is:

"Uniting American Families Act of 2009 - Amends the Immigration and Nationality Act to include a "permanent partner" within the scope of such Act.

Defines a "permanent partner" as an individual 18 or older who:

**(1)** is in a committed, intimate relationship with another individual 18 or older in which both individuals intend a lifelong commitment;

**(2)** is financially interdependent with the other individual;

**(3)** is not married to, or in a permanent partnership with, any other individual other than the individual;

**(4)** is unable to contract with the other individual a marriage cognizable under this Act; and

**(5)** is not a first, second, or third degree blood relation of the other individual. Defines a "permanent partnership" as the relationship existing between two permanent partners."

In short, absent some form of legally recognized document issued by a competent state or local government entity sanctioning, recognizing and validating the aforementioned "permanent partnership", USCIS will be forced to take prospective petitioners and applicants for permanent residence under Section 245 of the INA pursuant to Section 201(b) of the INA, AT THEIR WORD that they are in such a relationship. There will be no documentary evidence issued by a neutral governmental entity attesting to this purported relationship that would be available to be submitted in connection with an Alien "Relative" Petition and an Application for Adjustment of Status.

Do we now relax the evidentiary requirements that currently exist simply to accommodate a class of individuals who are having difficulty proving the bona fides of their relationship? If we do that, then we would have to make that accommodation available across the board to those who are in a heterosexual and/or conventional marital relationship. Otherwise, it would force those who are in a conventional marriage to submit documentation that those who are not in a conventional relationship would not have to submit. It would in effect, discriminate against heterosexual marital partners, requiring them to submit additional documentation that same sex couples would not be required to submit to USCIS.

By relaxing the documentary requirements associated with obtaining permanent residence, we are opening the door to a high incidence of fraud. Although the system is riddled with fraud now, by eliminating the requirement to provide clear and convincing evidence of the bona fides of one's relationship, ie marriage or "permanent partnership", such as a marriage license and certificate, or some other state issued documentation, in order to obtain the benefit the alien is seeking, it would encourage an avalanche of fraud and make it next to impossible for USCIS fraud detection and national security officers to determine which applications are bona fide and which are sham relationships entered into simply to obtain an immigration benefit. For the ten to forty million illegal aliens currently living in the United States, it would give them a quick "path to citizenship" by simply engaging in a fraudulent "permanent partnership" instead of waiting for the much vaunted comprehensive immigration reform that has been promised.

It would make it much simpler for a terrorist, foreign intelligence operative, or criminal, to enter into a sham "permanent partnership", which is not intended to ever be "permanent", either with the US citizen's knowledge and consent, or by fraudulently inducing the US citizen to enter into a "permanent partnership" with them in order to obtain what I and others call the "Keys to the Kingdom".

And if that were not enough, the other problem is this. Other than the states that have same sex marriage laws, states that do not recognize a gay or same sex marriages do not have provisions for same sex couples to divorce. So the question arises. How do "permanent partners" who decide that they no longer want the "permanent partnership", nor want to be "permanent" any longer, end the relationship? Do they simply walk away with no legal termination of this

relationship? If so, it opens the door to one US citizen becoming a revolving door filing machine for immigrant visas for a host of "permanent partners". Without the need or ability to provide to USCIS a "permanent partnership" document issued by a State or political subdivision, or a divorce decree or some other form of legal documentation that the "permanent partnership" has been legally terminated, the possibility of fraud is limitless and a problem that is already rampant will mushroom into a much larger one, and do so geometrically.

If the rules and regulations are to be relaxed for same sex partners, by necessity, they would have to relaxed for heterosexual couples as well. And any relaxation of the current standards for obtaining permanent residence would act as a beacon to encourage even more fraud than what already exists.

As Mr. Maxwell stated in his July 27, 2006 testimony before the House, USCIS is at its breaking point. They lack the resources and funding to adequately investigate and root out fraud. The formation of the Fraud Detection and National Security unit within USCIS is an important first step. The reality though is that FDNS units throughout the country are understaffed and overwhelmed.

To add to this issue, it is well known that the United States Attorneys' offices throughout the United States do not routinely prosecute single scheme marriage fraud. The reason is simple. There are simply too many cases to prosecute. If they did routinely prosecuted single scheme marriage fraud cases, they would be doing nothing else. No bank robbery cases, kidnapping cases, drug cases, home mortgage fraud cases, counterfeiting case, etc. would be prosecuted for they would simply be overwhelmed with the amount of marriage fraud cases being presented.

Furthermore, these prosecutions are complicated due to the necessity to show the intent of at least one of the parties, if not both. It's complicated enough to prove a fraud scheme in a conventional marital relationship. Making it easier to perpetrate the fraud by removing any vestiges of documentary requirements, would make the criminal prosecution of such cases next to impossible. Therefore, the criminal prosecution and penalty provisions in S 424 modifying Title 8 USC 1325(c) are meaningless.

Allow me to illustrate just one likely fraud scenario. An alien is living in the United States. He is married and has children with his foreign born spouse who are living in their home country. He wishes to obtain permanent residence thereby putting him on a path to citizenship which will ultimately allow him to petition for his wife and children.

The easiest, fastest way to do so is to obtain an immigrant visa as the immediate relative of a United States citizen through marriage, or in the alternative, a "permanent partnership". He approaches a United States citizen and offers him $5,000.00 to enter into a "permanent partnership" arrangement for the purposes of obtaining an immigration benefit. The documentary requirements for such an immigration benefit have been substantially relaxed due to the unique nature of the relationship and the unavailability of conventional documentation that accompanies a traditional marital relationship. Therefore, it is easier to perpetrate the sham relationship with little or no chance of getting caught.

They file the papers with USCIS and are interviewed. Since he is now in a same sex "permanent partnership", he deliberately fails to disclose that he's married or has ever been married. USCIS would not think to question him about this since the nature of the present relationship would suggest that he has never been married. Since there are less documents required to show the bona fides of the domestic or permanent relationship, it is easier to provide limited evidence of the bona fides of the relationship The petition is approved as is the application for adjustment of status and the alien gets the keys to the kingdom in the form of Conditional Permanent Residence. The couple separate and the US citizen realizes he can repeat this process several times and make a tremendous amount of money by doing so.

The alien ultimately obtains citizenship and then applies for his foreign spouse and children based upon a traditional immigrant visa application filing. At the same time, the US citizen has engaged in yet another "permanent relationship" with another foreign national and is once again filing an I-130, "Alien Relative Petition" and yet another person is granted the keys to the kingdom.

A variation of this scenario is that once the initial papers are filed with USCIS, the foreign national falsely alleges that his US citizen "permanent partner" assaulted him and therefore committed domestic violence. He then files and I-360 self petition as the battered "permanent partner" of a US citizen. Therefore, in order for S 424 to be enacted, the Violence Against Women Act provisions of the INA would have to be modified as well.

Another issue surfaces. Currently, after two years of a marital relationship, once Conditional Permanent Residence is granted, the married couple must jointly file Form I-751 to remove the conditions of the alien's permanent residence. Failure to do so often time results in the institution of removal proceedings against the alien. If the alien and the US citizen cannot jointly file, the alien can ask for a waiver for one of three reasons. The US citizen died during the two year period of Conditional Permanent Residence; the marriage ended in annulment or divorce; or the alien was the victim of domestic violence at the hands of the US citizen.

Since there is no marital relationship under S 424 or HR 1024, there is no divorce. The relationship simply "ends" with no judicial oversight.

Lastly, a very real unintended consequence of S 424 is that there is the potential for heterosexual couples who cannot for one reason or another, enter into a marital contract, to avail themselves of this provision of the INA which would alleviate them of the necessity to enter into a legally binding marital contract and still obtain an immigration benefit.

In short, S 424 allows for foreign nationals to obtain all of the benefits of a marital relationship, for obtaining immigration benefits, without any of the obligation or responsibilities. It is conferring upon a foreign national a right that has always been a privilege. That privilege is to become a permanent resident of the United States and ultimately possibly become a citizen of this great country.

It is a well established legal theory and precept that an alien has the burden to prove, through clear and convincing evidence, that they are entitled to the benefit they are seeking under the

immigration law. This concept was the dicta in the Board of Immigration Appeals decision in The Matter of Brantigan, 11 I&N Dec. 493 (**BIA** 1966). This has been the law since 1966. It is the basis by which all adjudications are conducted, or should be conducted. There are those however, who believe that immigrating to this country is a right and not a privilege. That belief is in direct contradiction with the decision made in The Matter of Brantigan, supra.

In short, an alien does not have a 'right' to obtain an immigration benefit. They must show they are entitled to the benefit they are seeking, which in this case, is permanent residence.

Furthermore, USCIS cannot handle the current workload it has now. To increase it, even by 10 percent will cripple the agency and open the doors wide to fraud, fraud that will not be able to be investigated since USCIS would not have the resources by which to do so.

Mr. Chairman, members of the committee, I respectfully ask that you do not enact this legislation for it is my firm belief that it will cause much more harm than the good that people think it would. If there needs to be a national debate as to what the definition of marriage should be, so be it. But please, do not enact legislation that will undoubtedly open the floodgates to massive and pervasive fraud. As I said previously, those who fail to learn from history are condemned to repeat it. Please do not repeat the historical mistakes of IRCA 1986 simply to accommodate a highly vocal and highly motivated group who, may have a legitimate issue, and who are demanding some form of action that has not been clearly thought out. They are demanding some form of action even if it is the wrong action, and enacting S 424 would certainly be the wrong thing to do if fraud is a concern to this committee.

I wish to take this opportunity to thank the committee and Senator Sessions for allowing me to testify today and would be more than willing to personally appear before this committee to offer live testimony and answer any questions the committee may have.

NCLR NATIONAL CENTER FOR LESBIAN RIGHTS

NATIONAL OFFICE
870 Market St Suite 370
San Francisco CA 94102
tel 415 392 6257
fax 415 392 8442
info@nclrights.org
www.nclrights.org

SOUTHERN REGIONAL OFFICE
3170 3rd Ave North
St. Petersburg FL 33713
tel 727 490 4260
fax 727 490 4806

WASHINGTON DC
1325 Massachusetts Ave NW
Suite 600
Washington DC 20005

IN SUPPORT OF THE UNITING AMERICAN FAMILIES ACT

TESTIMONY SUBMITTED TO THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

JUNE 3, 2009

STATEMENT OF:
KATE KENDELL, ESQ.,
EXECUTIVE DIRECTOR, NATIONAL CENTER FOR LESBIAN RIGHTS

I am pleased to submit this written testimony in support of the Uniting American Families Act (UAFA) and to express our deep appreciation to Chairman Leahy, Ranking Member Sessions, and members of the Committee for holding this historic hearing on this important legislation. Thank you for the opportunity to submit testimony on behalf of the National Center for Lesbian Rights and the tens of thousands of families affected by the serious problem that this bill would correct. UAFA is a relatively modest bill, yet it is of critical importance to those who need it, for at its core the bill does one simple thing: it allows partners who have built families through love and commitment to stay together and care for one another.

Our organization, the National Center for Lesbian Rights (NCLR), is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. NCLR is headquartered in San Francisco and maintains a regional office in Washington, D.C. For 15 years, our Immigration Project has provided legal assistance to thousands of immigrants through our helpline, intake service, free monthly legal clinics, and direct representation at the claims and appeals levels. We also provide technical advice and assistance to private attorneys representing LGBT immigrants in proceedings before Immigration Courts, the Board of Immigration Appeals, the Federal Courts of Appeal, and the U.S. Supreme Court.

We are contacted by hundreds of bi-national same-sex couples each year, many with children, where the individuals involved care deeply for each other and are desperately seeking a way to stay together in the U.S. as families. Sometimes a family reaches out to us early in the process of seeking a way to remain together in this country permanently. More often, a family contacts us when a looming deadline presses on them. Sometimes the situation is even more dire, such as when one partner must leave the country immediately or has already been forced out or barred from returning. All have one thing in common: they face the prospect of having

their family divided for no reason other than the inequitable application of our immigration laws to same-sex couples. Often, to keep their immediate family together, they are left with no choice but to uproot children or to leave aging parents behind in order to be with the person whom they love and to whom they are committed. The result can also prove financially harsh for families. It is unfair to force hard-working, tax-paying citizens to choose between their country and the person they love just because they are part of a same-sex couple.

One of the basic tenets and core values of our immigration law is family unification –the ability of U.S. citizens and legal permanent residents to sponsor their family members for legal residency. However, that ability is categorically denied to U.S. citizens and legal permanent residents who have a same-sex partner. Despite the fact that these families are formed through love, caring, and mutual commitment, same-sex partners of U.S. citizens currently are not considered family for immigration purposes, no matter how long they have been together.

This discriminatory treatment of families is inhumane and unfair and must be changed. As Chairman Leahy wisely stated in his remarks at the introduction of UAFA in this Congress: "[T]he burdens and benefits of the laws created by the elected officials who represent all Americans should be shared equally, and without discrimination." 155 CONG. REC. S2,233-34 (daily ed. Feb. 12, 2009) (statement of Sen. Leahy). In so doing, the U.S. would join the nineteen other countries that have already equalized the treatment of same-sex couples in the application of their immigration laws: Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, and the United Kingdom. Human Rights Watch, *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, at Appendix B (2006), *available at* http://hrw.org/reports/2006/us0506/index.htm (last visited June 1, 2009).

UAFA's purpose and provisions are simple. UAFA will extend existing law to enable a U.S. citizen or legal permanent resident to sponsor his or her permanent partner for immigration purposes.

The bill's definition of "permanent partner" is a stringent one: a permanent partner for purposes of UAFA must be in a committed, intimate, and lifelong relationship with an adult permanent resident or citizen; must be financially interdependent with the citizen; must not be married or permanently partnered to any other person; must be unable to enter into a recognized marriage under federal law; and must not be related by blood in the first, second, or third degree to the citizen.

UAFA also includes stringent procedures to ensure that these qualifications are enforced. A couple will be required to prove that they meet the qualifications through documentation and testimony to federal officials under the same procedures applied to other U.S. citizens and permanent residents who are applying for family members. In other words, the couple will have to submit to the existing intensive process to prove that their relationship is serious and committed. The American partner must sign a legally binding and lasting promise of financial support for his or her permanent partner. Moreover, just like different-sex couples, permanent partners would be subject to severe criminal penalties for immigration fraud or other abuse in connection with the application for permanent residence. Importantly, the same strong

provisions that currently protect the integrity of our immigration process will apply under the changes in UAFA.

The changes in UAFA are limited to the extension of discrete immigration provisions to same-sex couples, by remedying the unequal treatment of these couples. It would not affect unmarried different-sex couples where one is an American and one is a foreign national; these couples may marry and seek relief under the Immigration and Nationality Act through that avenue. It also does not alter or change the federal definition of marriage for immigration purposes or for any other purpose. Instead, in keeping with immigration goals related to family unification, it simply provides U.S. citizens and legal permanent residents with the right to petition for the ability to sponsor their foreign national permanent partners to immigrate to the U.S.

Love, family and commitment know no geographical boundaries. The enduring bonds of a partner relationship do not come into being at the border, nor do they dissolve there. Americans should not be forced to choose between family and country. Congressman John Lewis, who is a sponsor and supporter of UAFA, has said "rather than divide and discriminate, let us come together and create one nation. We are all one people. We all live in the American house. We are all the American family. Let us recognize that the gay people living in our house share the same hopes, troubles, and dreams. It's time we treated them as equals, as family."

For all of these reasons, we urge support for and passage of UAFA. To help accomplish this goal, we urge the inclusion of UAFA in comprehensive immigration reform this year. Through these actions, Congress will be supporting families, and enabling them to permanently remain together to exercise their love and commitment for one another. This rather modest change in immigration law will benefit not only the immediate families affected, but also their extended families and communities.

It is my hope, and that of NCLR, that Congress pass UAFA as soon as possible in order to protect American families. Please accept my deep appreciation for this opportunity to present testimony on this important and historic legislation.

###


National Immigrant Justice Center

**The Uniting American Families Act:**
**End Discrimination Against LGBT Families in Immigration Law**

Testimony submitted to the United States Senate Committee on the Judiciary

Hearing: **"The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"**

June 3, 2009

Statement of Mary Meg McCarthy, Executive Director, Heartland Alliance's National Immigrant Justice Center

The National Immigrant Justice Center (NIJC) applauds Senator Leahy for reintroducing and holding hearings on the Uniting American Families Act (UAFA), which continues our nation's commitment to family unity as a bedrock principle of our immigration policy. UAFA would ensure stability, continuity, and safety for thousands of families whose ties to each other and to the United States currently receive no recognition under immigration law. As we work to fix our broken immigration system, it is essential that these families are included in any comprehensive reform. The law currently does not recognize same-gender permanent partnerships for immigration purposes, regardless of whether the parties have celebrated a state sanctioned marriage. Under the proposed bill, same-gender partners would have to satisfy immigration authorities that they meet the same exacting standards required for opposite-gender partners seeking immigration benefits, including a lifelong intimate commitment to each other and financial interdependence.

**Implications for Our Clients:** As a large-scale provider of low-cost legal services to immigrants, NIJC interviews many prospective clients who wish to remain in the United States with permanent same gender partners. Currently, NIJC must advise these individuals that immigration law does not recognize their relationships. While the impact of this discrimination is profound and disruptive for all families denied recognition, its impact can be particularly cruel for lesbian, gay, bisexual, and transgender (LGBT) immigrant partners from countries that have severe patterns of discrimination and violence against LGBT people. Although asylum might be available as an alternative relief for certain threatened LGBT individuals, it does not protect against discrimination and is an unusual and rare form of relief. Forcing same-gender partners and their families to either separate or to relocate to potentially unfriendly countries jeopardizes the welfare, human rights, and potentially the safety of them and their children.

**The organization:** NIJC, a program of Heartland Alliance for Human Needs and Human Rights, is an advocacy and legal aid organization based in Chicago. NIJC provides low cost and free legal services to approximately 8,000 individuals annually, and engages in advocacy at local and national levels to secure fair and humane treatment of immigrants. NIJC maintains a project, the National Asylum Partnership on Sexual Minorities, specifically devoted to LGBT immigrants.

Thank you for considering my statements on behalf of the National Immigrant Justice Center and Heartland Alliance for Human Needs and Human Rights.

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH

## National Latina Institute for Reproductive Health Demands an End to Discrimination Against LGBT Families

National Latina Institute for Reproductive Health Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"

United States Senate Committee on the Judiciary

June 3, 2009

The National Latina Institute for Reproductive Health (NLIRH) is the nation's leading voice on Latina reproductive health and rights. The mission of NLIRH is to ensure the fundamental human right to reproductive health and justice for Latinas, their families and their communities through public education, community mobilization and policy advocacy. NLIRH strongly believes we all have a human right to health care and to create our families as we see fit. In order to ensure our human rights and maintain our human dignity, NLIRH works towards the equitable access to abortion care services without restrictions, while combating the reproductive health disparities that disproportionately impact Latinas and immigrant women and address the unjust impact of immigration policy on our community. NLIRH considers immigration reform a matter of reproductive justice. Equitable access to quality, affordable reproductive health care services and family-centered immigration policies is vital.

We commend Chairman Patrick Leahy for holding a hearing on the essential Uniting American Families Act (S. 424), a bill that would allow U.S. citizens and legal permanent residents to sponsor permanent partners in the United States. NLIRH expresses our gratitude and applauds Chairman Leahy's advocacy in bringing this critical issue to the forefront on behalf all families, including lesbian, gay, bisexual, transgender (LGBT) bi-national families.

NLIRH strongly urges the Senate Committee on the Judiciary along with all Members of Congress to join us in ending discrimination against LGBT families in immigration law and ask that the Senate pass the Uniting American Families Act. Today, we testify in support of the Uniting American Families Act. The Uniting American Families Act is a critical step towards addressing the grave injustice and inequality that our community faces when confronted with the current immigration system.

Currently, the United States immigration policy forces many bi-national couples into exile abroad, forces many bi-national couples to make decisions that separates their families. According to data analyzed from U.S. Census, there were over 37,000 couples [1] throughout our

[1] *Family, Unvalued*, joint report of Immigration Equality and Human Rights Watch, available at http://www.hrw.org/en/reports/2009/05/01/family-unvalued

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH
50 Broad Street, Suite 1825 New York, NY 10004
1634 Eye Street NW, Suite 1001 Washington, DC 20006
nlirh@latinainstitute.org | www.latinainstitute.org

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH

country affected by the discriminatory immigration policies prohibiting the reunification of families and barring same-sex partners to sponsor their foreign born partners. Over 45 percent[2] of same-sex bi-national couples are raising children. NLIRH strongly believes it is unjust to discriminate based on sexual orientation, gender identity, gender expression or immigration status. We all deserve the basic dignity to create the families we wish to create, including the right to raise and parent our children.

The Uniting American Families Act is an integral part of comprehensive immigration reform and LGBT families must be included. The passing of this law would allow same-sex couples, or couples in which one of the persons identifies as transgender, would be able to sponsor their partners from abroad if they meet specific criteria that deem them "permanent partners." The United States must join the other nineteen countries that provide equal immigration benefits to LGBT couples and end the discriminatory immigration laws.

Granting permanent partners the same citizenship rights as spouses prevents the separation of families and ensures that discrimination based on sexual orientation is not an obstacle in the path to citizenship. Because immigration status affects the health care people have access to, discrimination in immigration policy against LGBT people works to further health disparities already experienced by LGBT Latin@s[3]. Since current federal laws do not allow same-sex persons to marry, LGBT citizen and permanent resident Latin@s are unable to sponsor their partners, and non-resident LGBT Latina@s cannot be sponsored by their U.S.-citizen partners. This discrimination is based solely on sexual orientation and it is unfair. Denying LGBT persons' permanent partner-sponsored visas affects the way in which their entire families access health care, meaning that not only parents' but also their children's health suffers.

The lack of a legal route to U.S. residency for the same-sex partners of U.S. citizens forces families to make the difficult choice between leaving their homes in the U.S. or splitting their families, a scenario that heterosexual couples do not face.

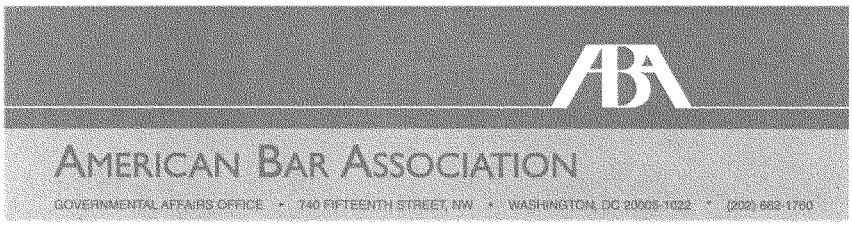
NLIRH urges Congress to pass the Uniting American Families Act of 2009 because it ends a discriminatory immigration policy against LGBT Latin@s and all LGBT bi-national families.

---

[2] Ibid

[3] NLIRH uses the term 'Latin@s' when referring the LGBT Latinos or Latinas; the term in non-gender specific

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH
50 Broad Street, Suite 1825 New York, NY 10004
1634 Eye Street NW, Suite 1001 Washington, DC 20006
nlirh@latinainstitute.org | www.latinainstitute.org




Statement of

CHRISTOPHER NUGENT

on behalf of the

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

for the hearing on

"The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"

June 3, 2009

Mr. Chairman, Senator Sessions and Members of the Committee:

My name is Christopher Nugent. I am a Senior Counsel with Holland & Knight LLP and Co-Chair the Rights of Immigrants Committee of the American Bar Association's Section of Individual Rights and Responsibilities. I appear today at the request of H. Thomas Wells Jr., President of the American Bar Association (ABA). On behalf of the ABA and it's over 400,000 members, I would like to thank you for this opportunity to express our strong support for the Uniting American Families Act.

**Introduction**

As the national voice of the legal profession, the ABA has a strong interest in ensuring that our immigration laws are fair and effective, as well as in supporting efforts to combat legal discrimination on the basis of race, gender, ethnicity, religion, nationality and sexual orientation.

In the area of immigration, the ABA has adopted numerous policy recommendations relating to the administration of our system of legal immigration. Central among these recommendations is the principle that the basis upon which foreign nationals may seek lawful permanent resident status should be humane and equitable, and should reflect the historic emphasis on both family reunification and the economic and cultural interests of the United States.

The ABA also has adopted numerous policy recommendations that oppose discrimination based upon sexual orientation and recognize the importance of providing committed same-sex couples and their families with basic legal protections to help those families stay together. For example, the ABA has supported enactment of laws that prohibit discrimination on the basis of sexual orientation in employment, housing and public accommodations, adoption, and child custody and visitation. These policies reflect the ABA's determination that sexual orientation is not, by itself, a legitimate basis for discrimination, particularly when the basic needs of families headed by same-sex couples are concerned.

In February of this year, the American Bar Association adopted a policy that supports the enactment of legislation to enable a United States citizen or lawful permanent resident who: (1) shares a committed, intimate relationship with another adult individual of the same-sex; (2) is not married to or in any other legally-recognized partnership with anyone other than that individual; and (3) is unable to enter into a marriage with that other individual that is cognizable under the Immigration and Nationality Act, to sponsor that individual for permanent residence in the United States. The Uniting American Families Act accomplishes this goal, while retaining and strengthening important protections against potential fraud and abuse, and we urge that Congress enact this legislation as soon as possible.

**Background**

Family unification is an express and central goal of immigration policy in the United States and has been for more than fifty years. Currently, however, this principle does not protect the families U.S. citizens and permanent residents form with same-sex partners who are foreign nationals. U.S. policy allows foreign spouses and fiancé(e)s to immigrate and live with their U.S.

partners. But it does not allow U.S. citizens and permanent residents to sponsor their same-sex partners for residence in the U.S. As a result, thousands of lesbian and gay bi-national couples and their children are kept apart, driven abroad, or forced to live in fear of being separated.

This policy damages not only those families, but U.S. society generally. Data from the 2000 U.S. Census reported 35,820 same-sex bi-national couples live together in the U.S. Because current law and policy prevents overseas same-sex partners from immigrating to the U.S., many of these bi-national couples are forced to leave this country, depriving our nation of the economic, cultural, social and other contributions these individuals could make here.

*Exclusion under United States Law*

Most Americans may take it for granted that if they fall in love with a foreigner, they will be able to maintain their relationship and live together in the United States. American citizens and lawful permanent residents in most circumstances are allowed to sponsor a family member for residency, subject to established rules and procedures that filter out engagements and marriages that are not *bona fide*. However, the definition of "family member" in immigration law currently does not include a same-sex permanent partner of a U.S. citizen or lawful permanent resident. Additionally, the federal Defense of Marriage Act, enacted in 1996, defines marriage for all federal purposes as the union of one man and one woman.[1] Accordingly, American citizens and lawful permanent residents are denied the ability to sponsor their same-sex partners for residency in the U.S.—even if they have been together for decades, even if their relationship is incontrovertible and public, even if they have married or formalized their partnership in a place where that is possible—as can a member of a different-sex couple. Countless gay and lesbian Americans and their children suffer prolonged or even permanent separation because the law does not recognize their relationship for immigration purposes.

Until 1991, gay and lesbian foreigners were excludable from the U.S. solely on the basis of their sexual orientation. While that *per se* exclusion has been repealed, same-sex bi-national couples still face substantial discrimination because a U.S. citizen or lawful permanent resident cannot sponsor his or her same-sex partner for residency in the U.S. This inability of same-sex partners to access immigration status on an equal basis with that available to different-sex spouses and other family members is contrary to the ABA's longstanding opposition to discrimination based upon sexual orientation.

While Connecticut, Iowa, Massachusetts, Belgium, the Netherlands, Canada, Spain and South Africa now permit same-sex couples to marry,[2] and several additional jurisdictions recognize civil unions or domestic partnerships, couples legally joined in these jurisdictions are not

[1] Because the federal Defense of Marriage Act (DOMA), Pub. L. No. 104-199, provides that marriage is only the union of one man and one woman for all federal purposes, it makes clear that, even if a marriage between two people of the same sex is valid under the law of a state or foreign country in which the marriage occurs, it will not be considered valid for purposes of federal law, including immigration law.

[2] In addition, in May 2009 the governor of Maine signed a bill approving gay marriage, but the law will not take effect until September 2009. Also in May 2009 the District of Columbia City Council voted to recognize same-sex marriages performed in other states that approve them, but Congress must approve the measure.

recognized as spouses for purposes of U.S. immigration law.[3] In fact, legally marrying in another country may actually impede a same-sex couple's ability to remain together in the United States, even when one of the spouses is an American citizen. Since one requirement for obtaining a non-immigrant visa (such as a student or tourist visa) is a demonstrable lack of intent to remain permanently in the United States, any evidence of a relationship as a permanent partner of a United States citizen or permanent resident—including a marriage or civil union or other legal partnership—can be and has been used to deny a non-citizen partner's entry into or continued stay in the United States.[4] Same-sex partners therefore are ineligible to access immigration opportunities that are routinely extended to fiancés and married spouses, regardless of the depth of their love and the permanency of their commitment to one another.

The Committee today will no doubt hear first-hand accounts of the adverse consequences the current law has on U.S. citizens, permanent residents and their children. Many sad stories have been documented of a U.S. citizen reluctantly moving abroad when a longtime partner's visa expires. Others are forced to live apart for months or years at a time, or live together in the U.S. under constant fear of deportation.[5] Non-resident partners who could be sponsored for U.S. residency, offer their job skills to U.S. employers, become taxpayers, and contribute to society—as non-resident partners in different-sex relationships are able to do—are excluded from these opportunities simply because their relationship is between individuals of the same-sex.

**Impact on Current Law and Protections from Abuse**

The Uniting American Families Act would not repeal or affect the Defense of Marriage Act in any way. Rather, the Act simply seeks to provide a mechanism by which same-sex permanent partners of U.S. citizens and lawful permanent residents have access to immigration status on an equivalent basis to married different-sex couples.

The Act also would not limit or affect the government's ability to prohibit fraud and abuse in the immigration context. Specifically, the Act would not prevent the government from requiring that unmarried partners meet the stringent eligibility criteria that are imposed upon spouses and fiancés (for example, that neither member of the couple is married to anyone other than the other member of the couple).

Moreover, same-sex couples would be subject to exactly the same documentation criteria that are imposed upon different-sex spouses, including being subject to the requirement that the parties demonstrate that the relationship is bona fide through documents like a joint lease or mortgage, joint bank account, family photos, and the like. The petitioning American partner also would be required to sign an Affidavit of Support, a legally binding contract that would obligate him or her to financially support the beneficiary for ten years.

---

[3] As noted above, the federal DOMA makes clear that marriages between two people of the same sex are not considered valid for purposes of federal law, including immigration law.

[4] *See* "Important Information for Binational couples contemplating same-sex marriage in Canada," Lesbian and Gay Immigration Rights Task Force Q&A Paper (June 18, 2003).

[5] *See* HUMAN RIGHTS WATCH et al., *supra*; Joe Dignan, *Going to Germany for Love*, GAY CITY NEWS, Jan. 1-7, 2004, at http://www.gaycitynews.com/gcn_301/goingtogermany.html.

In addition, the current penalties—five years imprisonment and a $250,000 fine—for marriage fraud in the INA and the U.S. Code would apply with equal force to same-sex couples. For these reasons, the Act would not increase the opportunity for marriage fraud.

**The Law in Other Countries**

In maintaining the current immigration restrictions that discriminate against same-sex couples, the United States' policy is in direct contradiction with many of our closest allies.

At least nineteen countries recognize same-sex couples for immigration purposes, affording rights that are the same as or similar to those afforded to different-sex couples. They are Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, New Zealand, the Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, and the United Kingdom. Many jurisdictions have granted same-sex couples immigration rights even without establishing a comprehensive partnership policy, let alone the right to marry.[6]

**Conclusion**

Central to this nation's long history of immigration law and policy is ensuring that Americans and their loved ones are able to stay together in the U.S. The current failure to recognize same-sex permanent partnerships for immigration purposes is cruel and unnecessary, and critical protections should be available to help same-sex partners maintain their commitment to one another on an equal basis with different-sex spouses.

Thank you, again, for inviting the ABA to convey its support for the Uniting American Families Act. The American Bar Association stands ready to work with the Committee towards ensuring enactment of this or similar legislation during the 111th Congress.

[6] *See* HUMAN RIGHTS WATCH et al., Appendix B.

**Testimony by Tony Perkins**
**President, Family Research Council**

**In opposition to S. 424**

**Senate Judiciary Committee**
**June 3, 2009**

Dear Senators:

I write to express my opposition and that of the Family Research Council to S. 424, a bill aimed at "permitting permanent partners of United States citizens" to immigrate to this country "in the same manner as spouses of citizens" based upon a non-marital, same-sex relationship. I urge you to vote "No" on S. 424.

**Families are formed by blood, marriage, and adoption.**

The very title given to this bill, the "Uniting American Families Act," is a misnomer. "Families" traditionally and historically have been, and legally under federal law continue to be, formed by blood, marriage, or adoption alone. "Partnerships" between people of the same sex who have a sexual relationship do not constitute "family" relationships, and are not treated as such in any other area of federal law. There is no reason for Congress now to carve out an exception to that rule in the area of immigration.

**The bill violates the federal Defense of Marriage Act (DOMA).**

Even more specifically granting special immigration rights to the homosexual partners of American citizens would constitute a violation of the federal Defense of Marriage Act (DOMA), which was adopted in 1996 by large bipartisan majorities of both houses of Congress and signed into law by President Bill Clinton. This law declares that for all purposes under federal law, marriage is defined as the union of one man and one woman, and for almost thirteen years it has been correctly interpreted as barring the federal government from granting any benefits to same-sex "partners" on any basis defined by a parallel to legal marriage between a man and a woman.

I realize that there are some in this body who would like to repeal DOMA. The Family Research Council would vigorously oppose such a step—but in any case, repeal of DOMA must logically and legally precede consideration of any measure such as this one which would grant any of the benefits or privileges of marriage to unmarried couples.

**Marriage is defined by the public purposes it serves.**

Marriage is the most fundamental institution of society. Despite being the most intimate of personal relationships, it is also viewed as a public institution—one licensed, registered, and regulated by the government. The only logical reason for this public involvement in this most private of relationships is because of the *public* purposes served by marriage—namely, the reproduction of the human race and the nurture of children by the parents whose union produced them. Since homosexual relationships are intrinsically incapable of serving this public purpose in

any cases whatsoever, there is no logical basis for treating them as marriage or as the equivalent of marriage, regardless of what *private* purposes they may serve for the individuals involved.

As for granting "benefits" of marriage upon same-sex partners without conferring the name "marriage," it is important to bear in mind a key principle—society gives benefits to marriage because marriage gives benefits to society. These true "benefits of marriage" are numerous and have been well-documented—both married husbands and wives and children raised by their own married mother and father are happier, healthier, and more prosperous than people in any other household situation.

Regardless of whatever personal benefits homosexual partners may believe that they derive from their relationship, they simply do not provide benefits to society that are at all comparable to the benefits provided by marriage between one man and one woman, and there is therefore no reason why society should privilege such relationships over ones which are merely close friendships without a sexual component.

**Homosexual relationships do not benefit American society.**

Apart from family relationships, which do not exist in this circumstance, preference in American immigration law has historically been given to persons who have skills of particular value to the American economy or society. Again, engaging in homosexual relationships does not provide such value. On the contrary, homosexual conduct is associated with numerous problems which would burden society, most notable among them the high rates of sexually transmitted diseases among homosexual men.[1]

**The bill's definition of "permanent partnerships" is too vague.**

While these are the reasons why, in principle, I believe it would be unwise to grant special privileges to would-be immigrants on the basis of a homosexual relationship, there are also specific practical problems with the legislation before you. Its definition of "a permanent partnership" does not require that such a partnership be one which is legally recognized in any jurisdiction which offers such recognition, so it entirely unclear how an individual would go about proving that such "a committed, intimate relationship . . . in which both individuals intend a lifelong commitment" even exists—or when it has been terminated.

Although the legislation includes a description of "permanent partnership fraud" and provides penalties for it, the vagueness of its definitions nevertheless creates an open invitation for such fraud to occur.

---

[1] Last year a leading AIDS researcher, Ronald Stall, a professor in the department of behavioral and community health sciences at the University of Pittsburgh, told a medical conference, "It may be a fallacy to say that HIV is the dominant, most dangerous and most damaging epidemic among gay men in the United States today. There are at least four other epidemics occurring among gay men and making each other worse. This is called a syndemic." Citing data from the Urban Men's Health Study, Stall named substance abuse, partner violence, depression, and childhood sexual abuse as the four other epidemics affecting this population. See: Jay Lewis, "A multifaceted approach may be needed to reduce HIV risk in MSM," *Infectious Disease News*, March 2008; online at: http://www.infectiousdiseasenews.com/200803/reduce.asp

**This bill would introduce new forms of discrimination into the law.**

While S. 424 says that its purpose is "to eliminate discrimination in the immigration laws," it actually introduces whole new areas of discrimination into those laws. Because, as noted above, entering and exiting a "permanent partnership" is much easier than entering and exiting a legal marriage, the bill actually introduces discrimination *against* those who are legally married, because they face higher hurdles for entry into a relationship that can derive benefit from the law than "permanent partners" do.

In fact, the bill can also be said to introduce discrimination on the basis of sexual orientation, as well—discrimination in favor of homosexuals, that is, because only homosexual couples (those "unable to contract with that other individual a marriage cognizable under this Act") are able to reap its benefits, thus placing both married heterosexuals and heterosexuals in their own "permanent partnership" at a disadvantage.

Given these difficulties, it seems clear that the most effective means of avoiding the pitfalls of "discrimination" with respect to granting spousal immigration rights is to simply continue the policy of granting such rights only to those in a legal marriage as defined by federal law.

**Marriage should not be redefined by back-door methods.**

Finally, let me add a note about the politics of this legislation. I know that there are those in this body who hold a position like that of President Obama—that is, you believe that civil marriage should continue to be defined as the union of a man and a woman, but are nevertheless inclined to support legislation like this which grants specific spousal rights to same-sex couples. I would point out to you that the court decisions over the last thirteen months in support of same-sex "marriage" in California, Connecticut, and Iowa have made it clear that such incremental steps are not a compromise that will forestall same-sex "marriage," but a major concession that merely paves the way for it.

I understand that there are also those of you in this body who openly advocate allowing civil marriages nationwide between same-sex couples on the same basis as opposite-sex couples, arguing that this is an issue of "civil rights." Since no such "right" is found in the text of the Constitution, those who wish to establish a "right" to same-sex "marriage" should pursue that goal by the only legitimate means for doing so—namely, by amending the U.S. Constitution. I urge you not to simply chip away at the natural and legal definition of marriage as the union of one man and one woman through incremental legislation such as this bill.

The Senate should reject S. 424.

Sincerely,

Tony Perkins
President


June 3, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the hundreds of thousands of members of People For the American Way, I write in strong support of the Uniting American Families Act of 2009 (S. 424), which you introduced earlier this year, and which the Judiciary Committee considers today. People For the American Way is dedicated to promoting fair and equal treatment of all Americans. Accordingly, we support the right of same-sex couples to marry and to have the important legal protections that accompany marriage.

Currently, because same-sex partners are denied the right to marry, they are not afforded equal rights under immigration law. While the US Immigration and Nationality Act (INA) allows US citizens and legal permanent residents to sponsor their spouses and other members of their immediate families for immigration into the United States, gay men and lesbians do not have the same right to sponsor their partners. S. 424 addresses this issue.

S. 424 would allow same-sex partners to be united legally through the US immigration process. It would correct bias in the INA by adding the term "permanent partner" to the law's definition of family members; therefore, same-sex partners of US citizens and lawful permanent residents would be eligible for green cards and immigrant visas available to spouses and other family members.

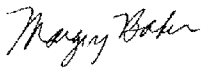
S. 424 would define a "permanent partner" as someone who is: 18 years of age or older; involved in a committed lifelong relationship with another adult; financially interdependent with his or her partner; not involved in a relationship with any other person; not a blood relative of that person; and not able to marry that person under US law. In this way, S. 424 would provide the non-American permanent partner of a gay man or lesbian with the same opportunity to immigrate to the US that the law now gives the married spouse of an American citizen or legal permanent resident. To protect against abuse, S. 424 would impose the same penalties for fraud as those currently imposed for marriage fraud.

S. 424 is a meaningful step toward providing equality to same-sex couples and keeping their families together. If passed, S. 424 would allow many same-sex partners to begin the immigration process more quickly, efficiently, and with fewer limitations. S. 424 would provide gay men and lesbians whose partners are US citizens or legal permanent residents an equal opportunity to apply for family-based visas and green cards. For many, this would be the only avenue available to keep their families together in the US.

2000 M Street, NW ♦ Suite 400 ♦ Washington, DC 20036
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

People For the American Way strongly supports S. 424. We commend you, Chairman Leahy, for holding this hearing today and thank you for your sponsorship of this legislation.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program Planning

Statement of Christine C. Quinn, New York City Council Speaker

I am submitting this testimony on behalf of the many New York families that are being hurt by current United States immigration law and do not have the opportunity to testify themselves. First, I want to thank New York Representative Jerrold Nadler for his leadership on this important legislation and for his distinguished service to the people of New York City throughout his career. I also thank Senator Patrick Leahy for his leadership on this legislation in the Senate. Senator Charles Schumer, Senator Kirsten Gillibrand and all the members of New York State's congressional delegation deserve praise for co-sponsoring this legislation.

The principle of "family unification," by which United States citizens are entitled to sponsor immediate family members for legal immigration, is the cornerstone of United States immigration law. While this principle has protected and promoted binational opposite-sex couples and families, the Immigration and Nationality Act fails to recognize the legitimacy and validity of same-sex lesbian, gay, bisexual, or transgender (LGBT) relationships, thus denying equal treatment under the law to over 35,000 same-sex binational couples.

Same-sex binational couples share a bond that is as strong as their opposite-sex couple counterparts. They contribute to their communities, pay taxes and work hard every day. The current Federal policy threatens to upend not only the lives of these couples, but the lives of their children as well, as nearly half (46%) of these same-sex binational couples are raising at least one child in their home.

Same-sex binational couples have established stable homes together, developed joyful loving bonds and, in many cases, raised children together, shared dreams together, celebrated anniversaries together, mourned loss together, and built lives together. However, under existing law, these same-sex binational couples live in constant fear of being deported and losing their families because of their same-sex status. Many of these same-sex couples have been both physically and emotionally torn apart, or have chosen together to leave the United States to avoid their own nation's discriminatory immigration policy.

To put it simply, this cannot remain our policy on immigration. No American citizen or legal permanent resident, regardless of their gender or sexual orientation, should be forced to choose between their loyalty to their families and their loyalty to this country. This policy of forcing citizens and residents to choose is diametrically opposed to American immigration policy's professed reverence of family unification, as well as to the profoundly American principle of equal treatment under the law.

Rather than persisting with such discriminatory behavior, I urge Congress to pass the Uniting American Families Act (H.R. 1024/S.424). The Act, introduced by New York Representative Jerrold Nadler and Vermont Senator Patrick Leahy in the 111th Session of Congress, would give equal consideration to binational families by expanding the Immigration and Nationality Act to define same-sex "permanent partners" as family members, with the same immigration implications as opposite-sex couples. In doing so, the United States would join other leading democracies worldwide, including Australia, Belgium, Canada, Denmark, Finland, France, Iceland, Israel, the Netherlands, Norway,

South Africa, Sweden, and the United Kingdom, that recognize and celebrate same-sex partners' rightful claim to be considered "family" under the law.

As New Yorkers, we rely upon the wisdom of our elected leaders in the United States House of Representatives and Senate to develop and pursue reasoned, fair and just legislation reflecting our ideals. As New Yorkers, American citizens and citizens of the world, we have an unqualified, vested interest in the promotion of human rights. In the words of the Rev. Dr. Martin Luther King Jr., "Where there is injustice for one, there is injustice for all."

In the interest of equality for all our citizens, I ask Congress to uphold the principle of "family unification" by passing the Uniting American Families Act and eliminating the distinction between same-sex and opposite-sex binational families.

Thank you.

[Letter from John Sampson, 27 year veteran of immigration enforcement, having recently retired from The Department of Homeland Security, Immigration and Customs Enforcement in August of 2008]

Mr. Chairman and Members of the Committee,

I am pleased and honored to testify before the Committee today. I am a 27 year veteran of immigration enforcement, with 27 years of experience as an enforcement agent of the former US Immigration and Naturalization Service and its successor agency, US Immigration and Customs Enforcement. I hold a Bachelor of Arts, cum laude, from Long Island University in Criminal Justice, and attended Thomas M. Cooley Law School in Lansing, Michigan, for two years. I am an honorably discharged veteran of both the United States Naval Reserve and United States Coast Guard Reserve.

I would like to discuss the impact the passage of Senate Bill 424, "Uniting American Families Act", would have on the United States in general, and the impact it would have on US Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and the immigration process in particular, as well as its feasibility of implementation should it be passed, as well as the issue of immigration marriage fraud which this bill would have an impact on.

First and foremost, please understand that to me, this issue is not a same sex marriage issue, or a "gay rights" issue. That issue should be put on the table for a national discussion and a decision should be made by the American people if our society will or will not redefine marriage to include same sex couples or not.

My concern regarding this issue is the substantial increase for potential for fraud in an already fraud prone system that the passage of this bill will bring.

During the course of my 27 year career with the former INS and its successor, ICE, I investigated in excess of one hundred cases of suspected marriage fraud. Many of these cases involved aliens who were in removal or deportation proceedings and who married a US citizen with the hopes of avoiding removal from the United States. Some of these cases involved US citizens who, in what can only be described as "misguided compassion", agreed to enter into a sham marriage solely for the purpose to allow the alien to obtain permanent residence in this country. However, the majority of these cases involved a more pernicious form of marriage fraud in which the alien deliberately, knowingly, intentionally, and maliciously induced an American citizen to marry them, claiming that they loved the American citizen, only to abandon their US citizen "spouse" the moment they secured permanent residence in this country.

In 1986, Congress passed, and then President Regan signed into law, the Immigration Reform and Control Act (IRCA) of 1986. One of the provisions of IRCA was to legalize, or to put it bluntly, grant amnesty to, millions of illegal aliens who had worked in the agricultural industry. The section of the Immigration and Nationality Act that ultimately dealt with Seasonal Agricultural Workers (SAW), was Section 217 of the INA.

In 1987, I was assigned to work in the legalization program of the now defunct US Immigration and Naturalization Service (INS). When we received our training on the law, it became painfully apparent to me that the documentary requirements for those aliens who were applying for Section 217 SAW legalization would be an open invitation for people to commit fraud, and to do so quite easily. I voiced my opinion to my superiors and was told in April of 1987 that there would be "no fraud" in the Legalization program, or if there was, it would be minimal. I didn't agree with that assessment. The reason was simple. The only document that an alien who was applying for SAW legalization benefits under IRCA needed to produce was a self serving affidavit or letter from a grower, farmer, or independent contractor who hired farm labor, attesting to the fact that the applicant had worked 90 man days during the qualifying periods set forth in Section 217 of the INA. Letters, affidavits, and similar documents are self serving and have virtually no probative value.

Although an affidavit is purportedly sworn to under the penalties of perjury, the fact of the matter is that if someone is prone to commit fraud, the need to lie on an affidavit doesn't enter into the equation as to whether or not the applicant is going to commit fraud. The entire application, by its very nature of being fraudulent, is a lie.

In December of 1987, I returned to Detention and Removal Operations, believing that I had left the Legalization program behind. I was wrong. In February of 1988, I was asked by my superiors if I would be willing to be detailed back to Legalization to conduct fraud investigations in the SAW program. It appeared that my prediction of massive and pervasive fraud came to pass.

So, I, along with two other officers, returned to Legalization and set up shop. In the 12 months we conducted investigations, our work resulted in 86 indictments for criminal conspiracy to commit fraud and document fraud. The fraud documents that were produced were the letters and affidavits used by unqualified illegal aliens to apply for legalization under the SAW provisions of IRCA. In addition to the 86 indictments we obtained, our work resulted in over 3,500 applications for Legalization benefits under SAW being denied in the Denver, Colorado legalization office.

It has been said that those who fail to learn from history are condemned to repeat it. S 424 is poised to repeat the historical errors and mistakes of IRCA. The very same issue of documentary evidence requirements will reappear should this bill be enacted.

The proposed legislation, Senate Bill 424, entitled "Uniting American Families Act" would simply add more visa applicants to an already broken system and create a two tiered system of immigrant visas based upon personal relationships between US citizens and foreign nationals. The possibility of fraud would increase significantly, should this bill become law.

Recent statistical estimates provided by USCIS and ICE within the Department of Homeland Security, places the number of certain types of visa fraud, which includes immediate relative visa petitions based upon marriages to US citizens, at 33%. This information was provided to the House of Representatives Subcommittee on International Terrorism and Nonproliferation Committee on International Relations on April 6, 2006, and again on July 27, 2006 before the Subcommittee on Immigration and Border Security and Claims Committee on the Judiciary by

IMMIGRATION REFORM FOR SAME-SEX COUPLES, PERMANENT PARTNERS AND THEIR FAMILIES SEEKING TO REUNITE

End Discrimination Against Lesbian, Gay, Bisexual and Transgender (LGBT) Families in Immigration Law, In Support of the Uniting American Families Act

Testimony Submitted to the United States Senate Committee on the Judiciary

Hearing: "**The Uniting American Families Act: Addressing Inequality in Federal Immigration Law**"

June 3, 2009

Statement of Yisroel Schulman, Esq., President and Attorney-In-Charge, New York Legal Assistance Group (NYLAG)

NYLAG's mission is to provide free, civil legal services to unemployed and working poor individuals and families residing in the five boroughs of New York City who would otherwise be unable to access legal assistance. Since 1990, NYLAG has been dedicated to providing legal services to underserved, impoverished populations through direct representation, impact and class action litigation, consultation and community education. As a city-wide multi-legal services agency, NYLAG provides services to a wide range of low income populations including victims of domestic violence, immigrants, the elderly, the chronically ill, children with special needs, and Holocaust survivors.

From our inception, NYLAG has been at the forefront of immigration issues and concerns. Our Immigration Protection Unit handles over 4,000 cases each year including adjustment of status applications, asylum matters, anti-immigrant discrimination, naturalization and VAWA self-petitions. We strongly urge Congress to pass The Uniting American Families Act as it ends discrimination against LGBT families in immigration law.

NYLAG would like to thank Senator Leahy for holding a hearing on The Uniting American Families Act, and for advocating for inclusion of lesbian, gay, bisexual and transgender (LGBT) binational families in comprehensive immigration reform this year.

THE UNITING AMERICAN FAMILIES ACT MUST BE PART OF ANY COMPREHENSIVE IMMIGRATION REFORM

The U.S. immigration system systematically discriminates against LGBT people and their families by denying immigration benefits to foreign-born same-sex partners of U.S. citizens and permanent residents. Same-sex partners of U.S. citizens and legal permanent residents are not considered "spouses and other immediate family members" for immigration purposes and are therefore unable to sponsor their foreign born life partners for residency. This exclusion even includes long-term, committed, permanent relationships. The result is that each year thousands of couples are forced to separate, leave the United States or go underground, simply to remain together as a family.

THIS DISCRIMINATION EFFECTS MANY SAME-SEX COUPLES AND FAMILIES
A report completed by Human Rights Watch and Immigration Equality includes numerous stories of same-sex binational couples who are not recognized under our immigration law. See *Family, Unvalued,* a joint report of Immigration Equality and Human Rights Watch, available at http://www.hrw.org/en/reports/2006/05/01/family-unvalued. Many of these couples are raising children together. Many often suffer harsh economic repercussions as travel and legal representation can cause a great financial burden. Also, living apart from one's family or living in fear of what feels like the inevitable separation can cause problems with emotional health, including depression or anxiety.

One example of this discrimination is a binational family living in Iowa. A woman from Iowa who lives with her partner from New Zealand contacted Immigration Equality. She states that U.S. immigration laws "do not allow my partner to live a free life, she is in constant fear of being deported and removed from this country and her family. We live a struggle every day as there is only one income. Together we are raising a twelve-year old son. Nadia, my partner, is my son's mother also, and losing her would destroy that little boy's life, she is just as much a part of him as I am. She keeps this family together and whole. I am also a veteran of the United States Navy and have done my time and service to my country. It breaks my heart that for all I've done with this country it will not see the person I love who has strength to hold me up when life is bad-she cannot remain even after the commitment we have put into each other and our son's life. I cannot imagine life without her. How could anyone live without their heart?" See *Id.*

THE NUMBER OF COUPLES EFFECTED
Although the Department of Homeland Security does not track the number of gay and lesbian immigrants and non-immigrants inside the United States, analysis from the 2000 census shows that there is an estimated 36,000 same-sex binational couples in the United States. This number does not include those couples and families who have already left the country so that they can remain together as a family.

On average, same-sex binational couples are in their late thirties. Twenty-nine percent of the non-citizen men and twenty percent of the non-citizen women in same-sex binational relationships report earning a college degree. Male households report household earnings over $40,000 and female households earn over $30,000. Approximately 45% of these couples are raising children. See *Family, Unvalued*, a joint report of Immigration Equality and Human Rights Watch, available at http://www.hrw.org/en/reports/2006/05/01/family-unvalued.

Lesbian and gay Americans in binational couples are forced to make terrible choices: interrupting careers, uprooting children, and leaving aging parents behind in order to be with the person they love. It is unfair to force hard-working U.S. citizens to choose between the United States of America and the person they love, just because they are lesbian or gay.

IMMIGRATION REFORM
Legislation is currently pending in both houses of Congress, The Uniting American Families Act

(S. 424/H.R. 1024), which would afford recognition to same-sex binational couples on essentially the same terms as opposite-sex binational couples. To qualify for legal permanent residence, the couple would need to show that they are in a long-term, committed relationship and prove they have a bona fide relationship through documentary and testimonial evidence; the U.S. citizen or legal permanent resident sponsor would need to file a binding affidavit of support and the foreign born partner would be placed on a two-year conditional residency. As with an opposite sex couples, the same-sex couples would be subject to severe criminal penalties for fraud or other abuse.

Of note, nineteen other countries already recognize same-sex partnerships for immigration purposes: Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, and the United Kingdom. The Uniting American Families Act will prevent countless families from leaving the U.S., and keep thousands of families, including children, from living in fear of the separation from their family.

From our history of work in the area of immigration, from working with immigrant communities and from the testimony above, NYLAG strongly urges Congress to pass The Uniting American Families Act as it will end discrimination against lesbian, gay, bisexual and transgender families in U.S. immigration law.

Written Statement of
Joe Solmonese
President
Human Rights Campaign

To the

Committee on Judiciary
U.S. Senate
Room 226
Dirksen Senate Office Building
June 3, 2009

Mr. Chairman and Members of the Committee:

My name is Joe Solmonese, and I am the President of the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental fairness and equality for all. On behalf of our over 750,000 members and supporters nationwide, I am honored to submit this statement in support of S. 424, the Uniting American Families Act of 2009.

**The Uniting American Families Act**

One of the fundamental principles of U.S. immigration law is the notion of family unification. That is why approximately 75 percent of the 1 million green cards or immigrant visas are issued to family members of U.S. citizens or permanent residents.

Tragically, lesbian and gay couples are not recognized as "families" under U.S. immigration law. Even if these bi-national couples have legally recognized marriages, civil unions or domestic partnerships in their home states, U.S. citizens still cannot sponsor their lesbian or gay partners for immigration. As a result, thousands of families are torn apart.

That is why the Uniting American Families Act is such a crucial piece of legislation. The Act will alleviate this burden by placing committed, lesbian and gay, bi-national couples on equal legal footing. The Act remedies the current injustice in our nation's immigration laws by allowing U.S. citizens and permanent residents to sponsor their same-sex partners for family-based immigration.

I want to thank the Chairman for his leadership on this legislation and for holding this hearing today.

**Why the Act is Needed**

Our government's failure to recognize lesbian and gay families for immigration purposes wreaks havoc on the lives of the American citizens who fall in love with non-citizens and the children who fear being deprived of one of their parents. Many are forced to leave family and friends, sell businesses and abandon the community and country they love in order to keep their families together. Families are forced to choose: separate or live in exile.

The effects of this injustice are all too real for thousands of Americans. The last census revealed that nearly 36,000 bi-national couples are affected by the inequality in our nation's immigration laws. This injustice affects entire families; nearly 47% percent of bi-national couples are raising children.

Lesbian and gay Americans are often left with the heartbreaking choice of saying goodbye to their partners or immigrating with their partners to a country with more fair-minded immigration laws. Consider the following examples:

> My partner and I have been together for 6 years, most of which have been spent going back and forth between the U.S. and Canada, my partner's country of citizenship. Canada considers me a permanent resident because of the country's recognition of my marriage to Lance.
>
> Unfortunately, I cannot say the same about my home country. Even though we are registered domestic partners in the state of Washington, we have no federal protections, including immigration rights. Thankfully, Lance is able to spend much of his time with me in the U.S. because he owns his own company and has flexibility in where he can work. Still, he has to leave the U.S. every so often to stay within his legal boundaries as a "visitor" in the U.S.
>
> I don't want Lance to be a visitor any longer.
>
> *Chris Boone, Seattle, Washington*
>
> I am an Australian. My partner is American. In Australia, we are accepted and she can live there without hassles. Here [in the United States], I cannot. But my partner missed her family too much so we decided to return here. Unfortunately, although we have been married (in England) for five years, this means nothing to the American government. I cannot stay here; and, in fact, this last time in Los Angeles, I was grilled for more than seven hours as to my status in this country and told that I will not receive any further extensions to my visa after my six months are up. This is devastating to us and we really do not know what to do. ... Why should we, as a couple, be *forced* to separate? We are not children — I am 50 and my partner is 53 — so why should we be treated as such? Our only way to live together now, as a couple, is for me to get sponsorship or a green

card, for which we have been applying for the past five years. Unfortunately, Australia is not one that gets many of the successful lottery draws.

*Jacki and Linda Fox, Fostoria, Ohio*

These stories are but two of hundreds. And because immigration is regulated on the federal level, there *is* no recourse for couples like Jacki and Linda unless Congress acts. As a result, even couples who are legally married in a state such as Iowa cannot stay together under current law. Passing UAFA would provide a permanent solution for these families.

**What the Act Would Do**

The Uniting American Families Act applies the same standards to lesbian and gay couples that the U.S. applies to different-sex couples where one member is seeking to bring a foreign partner into the country. The Act creates a separate category of family for immigration purposes, a "permanent partner." Under the measure, a permanent partner is any person 18 or older who is:

- in a committed, intimate relationship with another adult 18 or older in which both parties intend a lifelong commitment;
- financially interdependent with that other person;
- not married to, or in a permanent partnership with, anyone other than that other person; and
- unable to contract with that person in a marriage recognized under the Immigration and Nationality Act.

U.S. citizens and permanent residents could then sponsor their partners for family-based immigration purposes, in the same manner as heterosexual spouses.

The structure of the bill does not implicate or violate the Defense of Marriage Act ("DOMA").[1] DOMA defines "marriage" and "spouse" to refer only to the union between a man and a woman. UAFA does not include same-sex partners in the definition of "spouse." Instead, it creates another class of persons, permanent partners, who are eligible for federal sponsorship under federal immigration laws.

Further, the Act does not require Congress to address marriage at the federal level. The rights of permanent partners under the Act is limited to that of immigration and do not extend to the over one thousand federal benefits conferred on different-sex spouses. However, repeal of DOMA would solve the current inequity in our nation's immigration laws and allow legally married lesbian and gay couples the right to stay together without fear. Although HRC strongly believes that Congress should take that step in separate legislation, this legislation does not do so.

Our nation's laws should work to keep families together, not tear them apart. Currently five states recognize marriage equality for lesbian and gay families.[2] An additional six states and the District of Columbia have enacted some form of relationship recognition for lesbian and gay

[1] 1 U.S.C. § 7 (Lexis 2009).
[2] The states with marriage equality are Connecticut, Iowa, Maine, Massachusetts, and Vermont.

couples.[3] State recognition is increasing at a dramatic pace and additional states are expected to recognize marriage equality in the near future.[4] Denying lawfully married couples the full rights and benefits of citizenship is discriminatory and hurts our nation's families.

State and local governments as well as private employers have extended a variety of family-based benefits to same-sex couples. Currently, 16 states and over 200 local governments offer their public employees domestic partnership benefits. In growing numbers, employers across the country have also made the business decision to provide health benefits to domestic partners of their employees. Fifty-seven percent of Fortune 500 companies provide such coverage.

The HRC Foundation also tracks employers that provide Family and Medical Leave Act-type benefits to employees with same-sex domestic partners. As of January 1, 2008, the HRC Foundation was aware of 328 major corporations extending FMLA benefits to include leave on behalf of a same-sex partner. Currently, seven states and the District of Columbia include unmarried partners in state family and medical leave acts.[5]

HRC and our Congressional allies are working to pass legislation that reflects the steps already taken by many states and private employers. Several key pieces of legislation have been introduced that would extend family-based benefits to lesbian and gay couples. The ability to take time off to care for a sick partner or child is critical to ensuring families are able to care for each other. Expanding the FMLA to include same-sex couples is a necessary expansion of this law. Further, legislation has been introduced to end the taxation of benefits provided for domestic partners and other non-spouse beneficiaries under employers' health plans. Also, the Domestic Partnership Benefits and Obligations Act (DPBO) would provide the same family benefits to lesbian and gay federal civilian employees as are already provided to employees with different-sex spouses.

As many corporations and state and local governments have realized, recognizing lesbian and gay families is a crucial part of acknowledging and protecting all families. Federal legislation has followed suit, and it is time for our immigration practices to reflect this progress.

Other nations have embraced equality for their lesbian and gay citizens as well. Not all of these countries have marriage equality, yet they still allow these couples to emigrate. Currently, the United States lags behind at least 19 countries that recognize same-sex couples for immigration

---

[3] The six states that have a statewide law providing the equivalent of state-level spousal rights to same-sex couples are California, Nevada, New Hampshire , New Jersey, Oregon, and Washington.

[4] In New Hampshire, a bill to provide marriage equality has passed both their House and Senate. The Legislature is currently working with the Governor to resolve differences in the bill.

[5] The following states under their respective state FMLAs extend benefits that include same-sex couples: California and the District of Columbia extend benefits to registered domestic partners; Connecticut, New Jersey and Vermont provide benefits to parties in a civil union; Hawaii provides benefits to reciprocal beneficiaries; Oregon and Rhode Island provide benefits to family members, including same-sex domestic partners; and New Mexico provides benefits to same-sex spouses as long as they were married out-of-state in a state that recognizes marriage for same-sex couples.

purposes.[6] No country that has embraced immigration equality for same-sex couples has reported problems with fraud.

**The Act Contains Strong Prohibitions against Immigration Fraud**

Consistent with basic principles of U.S. immigration law, UAFA aims to unite families while retaining strong prohibitions against immigration fraud. As with current immigration laws for married couples, UAFA contains strict requirements for proof of the relations; imposes significant financial responsibilities and harsh penalties for fraud; and maintains long conditional residency requirements.

*Contains Strict Proof Requirements*
Bi-national, same-sex couples must establish that they are permanent partners under the same strict proof requirements in the INA that are required for spouses.[7] Individuals would be required to offer "clear and convincing" proof of a permanent partnership; this can include evidence of a civil union or marriage from a state with such recognition, sworn affidavits from friends and family, documentation of financial interdependence, and personal interviews.

Officials from the U.S. Citizenship and Immigration Services (formerly the Immigration and Naturalization Service) would have the same ability as under the INA to investigate the details of permanent partners' lives. Applicants for permanent partnership benefits would face the same rigorous "green card" interview as married couples. If the interviewer suspects fraud, the couple would be required to complete a second more rigorous interview in which the couple is questioned separately and the interviewer determines whether the answers are sufficiently consistent.

*Imposes Significant Financial Obligations and Severe Fines*
The UAFA mirrors the INA's current requirement that an individual bringing his or her spouse to live in the U.S. must file an affidavit of support in which he or she accepts legal financial responsibility for the immigrating party. This legal responsibility lasts until the permanent partner becomes a U.S. citizen or until he or she can be credited with 40 quarters of work (about 10 years worth) in the U.S. If the immigrant partner accesses means-based benefits before fulfilling this requirement or becoming a U.S. citizen, the government can sue the sponsor. This legal financial commitment provides a strong deterrent against fraud.

The UAFA also subjects individuals to the same severe penalties for fraud that currently exist under U.S. immigration law. These penalties include criminal penalties of up to five years in prison and $250,000 in fines for the U.S. citizen, and deportation for the foreign partner.

*Maintains Long Conditional Residency Requirements*
The UAFA maintains the conditional residence provisions of existing U.S. immigration law. If a couple has been in a permanent partnership for less than two years, the immigrating partner

[6] The countries that have embraced immigration equality are; Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland and the United Kingdom.
[7] 8 C.F.R. §204 (Lexis 2009).

becomes a conditional legal permanent resident ("LPR") for two years. The partners must apply together at the end of that two-year period, and submit to an interview with an immigration official demonstrating that they remain in a permanent partnership, in order to lift the condition. Failure to timely apply for the condition to be lifted can result in the deportation of the foreign partner. This provides yet another deterrent against fraud.

**The Time for Immigration Equality is Now**

The UAFA is vitally important legislation to so many bi-national same-sex couples who are struggling to keep their families together because of this unjust policy. For too long Congress has ignored the heart-wrenching real-life consequences our nation's immigration laws. Thousands of lesbian and gay couples live in constant fear of being stopped by officials who demand to see documentation and threaten detention, fines or deportation.

Support for this measure is strong and continues to grow. By the end of the last Congress, the bill had 118 cosponsors in the House, and 18 in the Senate. Additionally, the American public supports extending immigration equality to lesbian and gay couples. A July 2008 Feldman Group, Inc. survey found that 54% of Americans supported allowing a foreign-born same-sex partner of an American citizen to become a United States citizen.

Mr. Chairman, the time to pass this legislation is long overdue. As the tragic stories of separated couples show, the inequality in our current law tears families apart. We urge you to pass this legislation and give loving, committed lesbian and gay couples the right to keep their families together. No one should have to choose between their country and their family. Thank you again for holding this historic hearing, and thank you for your exceptional leadership on this legislation.

**Testimony of Gordon Stewart**
**United States Senate Committee on the Judiciary**

**"The Uniting American Families Act:**
**Addressing Inequality in Federal Immigration Law"**
**June 3, 2009**

Chairman Leahy, and members of the Committee, I am grateful for the opportunity to appear before you today. My name is Gordon Stewart, and I am an American living abroad simply due to the fact that our country's immigration laws have forced me to leave the United States in order to be with my partner, Renato, the person I love.

I am here today because, like so many other Americans in similar situations, I believe it is imperative that we fix our broken immigration system, and specifically that it is long past time we treat lesbian and gay Americans and our families equally under the law. I traveled to be with you today from London where I work for Pfizer.

I am fortunate to have worked for more than 14 years for Pfizer. Pfizer is a company that recognizes domestic partnership. Unfortunately the US government does not recognize Renato, my partner of more than 9 years. For 2 ½ years, Renato lived with me in the US as a full-time student, studying English and pre-Law. He is a trained lawyer in Brazil. In June 2003, while enrolled in a full-time, accredited academic program in New York, he returned to Brazil for what we thought would be a routine second renewal of his student visa. The renewal was rejected and he has never been able to return to our home in the US. For weeks, I left his things exactly as they were the day he left, hoping that soon he would be able to come home. He never came back to the US.

Renato wanted to live and study in the United States. Yet because the immigration laws did not recognize him as my family member, nothing I could do would bring him back to our home.

So to be with Renato, I commuted to Brazil every other weekend for more than a year and a half. This commuting took a huge toll on me emotionally, physically and financially. Eventually, I was fortunate to find a position with Pfizer in the UK, where we can live together again. The UK government has recognized us as dependent partners and we both have the right to live and work in the UK. While we are grateful for this solution, it means separation from our family and friends, and puts significant limitations on each of our career opportunities. And we were forced to sell our apartment in New York.

The United States' discriminatory immigration laws have also affected my extended family. I am lucky to have five siblings. In August, I will attend my niece's wedding in California. It will be a big family reunion but my partner will not able to join us. Renato cannot even get a tourist visa to visit the US. Imagine what that means.

If I want to be with my family for important occasions such as weddings, graduations, Thanksgiving, Christmas and the recent baptism of my godchild, I have to travel alone and leave Renato in London. Or if we want to celebrate an important occasion together, it is usually the two of us alone, far away from our family and close friends.

Recently, when my sister was diagnosed with cancer, Renato could not travel with me to visit her and I could not spend as much time with her as I wanted because I live and work in London. That is the reality of our life together.

Last year, I reluctantly and sadly sold our family farm in Goshen, Vermont because I cannot vacation there with Renato. Our family had the farm from when I was 6 years old, and our parents both died and were buried there. Imagine what it is like to own a property to which you cannot travel with your partner. It is impossible to maintain a 19th century farmhouse from the other side of the Atlantic. That is the reality of American immigration law for couples like us.

I am deeply disappointed that my country has treated Renato this way and I am furious that we can not visit or live together in the US. Despite the fact that I am a tax-paying, law-abiding and voting citizen, I feel discrimination from my government.

Fortunately, my company, Pfizer, has been very supportive from that awful day when Renato's visa renewal request was rejected in 2003.

The UK has allowed both Renato and me to move there based on my temporary transfer from Pfizer. The UK recognizes permanent partners for immigration purposes as do 18 other countries. Renato has a permanent partner visa. The US should offer the same.

The decision to move to the UK was the best decision I could have made at the time. But I would like to be able to come home; I should have the right to come with my partner to visit or to live; but we can't. That is the reality of US immigration law.

Thousands of other lesbian and gay families are separated like we are. Unlike us, however, they do not have the support of a company like Pfizer to help find a solution to this impossible situation. The Uniting American Families Act needs to be passed now. I hope today's hearing will be a step in that direction.

I would like to extend my sincere thanks to Senator Leahy for the strong stand he has taken on supporting families like mine. Let me thank all the Senators for taking the time to listen to my story. I am the voice of many wonderful Americans who have been forced to make the difficult choice between family and partner and country and partner.

Allow me to add that my company, Pfizer, has earned, for the fifth consecutive year, the top rating of 100 percent in the 2009 *Corporate Equality Index*, an annual ranking published by the Human Rights Campaign Foundation that evaluates businesses on their treatment of LGBT employees, investors and customers. Pfizer Chairman and CEO Jeff Kindler has said Pfizer supports its LGBT colleagues because "doing better in recruitment and retention, in understanding diverse markets and in making Pfizer a better place to work does ultimately drive up our value." However, he said we mainly "support our LGBT colleagues because it is the right thing to do."

America also should support its LGBT citizens and families. Because it is indeed the right thing to do.

Thank you again, Mr. Chairman.

Stonewall Young Democrats
7985 Santa Monica Blvd #325
West Hollywood, CA 90069

Stonewall
Young Democrats

In support of the passage of the Uniting American Families Act

**WHEREAS,** Stonewall Young Democrats is dedicated to represent and mobilize the LGBTQA youth within the democratic party and understands the need to advocate for issues affecting youth, and,

**WHEREAS,** under the Uniting American Families Act, to enable a United States citizen or lawful permanent resident who: (1) shares a committed, intimate relationship with another adult individual of the same-sex; (2) is not married to or in any other legally-recognized partnership with anyone other than that individual; and (3) is unable to enter into a marriage with that other individual that is cognizable under the Immigration and Nationality Act, to sponsor that individual for permanent residence in the United States; and,

**WHEREAS,** Stonewall Young Democrats understands that family unification is the central goal of immigration policy in the United States and has been for more than fifty years. However, this principle does not protect the families U.S. citizens and permanent residents form with same-sex partners who are foreign nationals; and,

**WHEREAS,** According to the 2000 Census, approximately 35,000 bi-national same-sex couples currently live in the U.S. At least sixteen other countries already have immigration policies allowing the sponsorship of same-sex partners. Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Sweden and the United Kingdom; and,

**THEREFORE, BE IT RESOLVED,** Stonewall Young Democrats supports the proposed legislation that would amend the nation's Immigration and National Act by adding same-sex "permanent partners" to the list of family members that a U.S. citizen or legal resident can sponsor for immigration. Stonewall Young Democrats urges the congress of the United States to pass, and President Obama to sign, the UAFA and support the removal of legal barriers to immigration by permanent same-sex partners.

Adopted this 11th day of May, 2009

Shawn Ansler, President
Stonewall Young Democrats of Los Angeles

**Testimony of Shirley Tan**
**United States Senate Committee on the Judiciary**

**"The Uniting American Families Act:**
**Addressing Inequality in Federal Immigration Law"**

**June 3, 2009**

Chairman Leahy, members of the committee, thank you for your invitation to appear before you this morning. My name is Shirley Tan, and I am a 43-year-old mother and housewife from Pacifica, California. I am grateful for the opportunity to share my story with you, and grateful, too, for Chairman Leahy's leadership on an issue that is so critically important to my family and the tens of thousands of others across the country.

I am honored to be here today with my 12-year-old twins, Jashley and Joriene, and my partner of 23 years, Jay Mercado. I met Jay when, as a graduation present, my father brought me to the United States. We met through our parents, who knew each other through the rotary club, and our love was instantaneous. Since that day, we have been committed to each other, and our family, unequivocally. Our relationship continued even after I returned to the Philippines following the expiration of my six month visa. Our relationship was expensive, given the long distance bills.

When I returned to the Philippines, I learned that the man who had, ten years before, brutally murdered my mother and sister, and almost killed me as well, was released from prison. I feared for my safety and I knew I was in danger and understood that in order to live, I had to leave the Philippines. Without anywhere else to go, I decided to go to Jay where I would be safe.

In 1995, I hired an attorney to apply for asylum and legalize my stay in the United States. When my application was denied, my attorney appealed the decision and Jay and I diligently inquired on a regular basis about the status of the appeal. Again and again, we were told "It is good that we have not heard anything yet, let's just wait."

I did not know it, but my appeal had also been denied. All the while, Jay and I went about building our life together. I gave birth to Jashley and Joriene, the biggest joy in our lives and became a full-time mom.

Our family has always been like every American family, and I am so proud of Jay and the twins. The boys attended Catholic school through 6$^{th}$ grade and are now in Cabrillo Elementary School. They excelled in their classes and has always been in the top of their class. I volunteer in every activity at their school, and when the school needs a parent to pitch in, I have always been the first one they call. Jay was a member of the school board at their Catholic school. I am a Eucharistic minister at Good Shepherd church, where Jay and I both sing in the Sunday mass choir.

Our family is fortunate. We have never felt discriminated against in our community. Our friends, mostly heterosexual couples, call us the "model family," and even said we are their role models. We try to mirror the best family values, and we attribute the fact that our

children are so well-adjusted to the love, security and consistency that we, as parents, have been able to provide. Jashley and Joriene's classmates at school know they have two moms, and it has never been an issue.

Our lives, I can say without any doubt, were almost perfect until the morning of January 28, 2009. That morning, at 6:30 a.m., Immigration Custom Enforcement agents showed up at my door. They were looking for a "Mexican girl," and, having nothing to fear, Jay did not think twice about allowing them into our home when they asked permission to search it. It turned out they were really looking for me.

The agents showed me a piece of paper, which was a 2002 deportation letter, which I informed them I had never seen. Before I knew it, I was handcuffed and taken away, like a criminal, as Jay's frail mother watched in hysterics. I was put into a van with two men in yellow jump suits and chains and searched like a criminal, in a way I have only seen on television and in the movies.

All the while my family was first and foremost the center of everything on my mind.

How would Jay work and take care of the kids if I was not there?

Who would continue to take care of Jay's ailing mother, the mother I had come to love, if I was not there?

Who would be there for my family if I was not there?

In an instant, my family, my American family, was being ripped away from me.

And when I did return home, I had an ankle monitoring bracelet. I went to great lengths to hide it from my children.

I have a partner who is a U.S. citizen, and two beautiful children who are also U.S. citizens, but not one of them can petition for me to remain in the United States with them. Because my partner is not a man, she cannot do anything to help me. Nor can my children, who keep asking why this happened to us and what will ultimately happen to our family.

Passage of the Uniting American Families Act, UAFA, will not only benefit me, but the thousands of people who are also in the same situation as I am. And so I respectfully submit to the committee today that changing the immigration laws of this country to include permanent partners will serve in the long run to keep families like ours together. Americans will be able to live at home with their partners rather than living in fear or in exile.

After 23 years building our life together, Jay and I know that our family is still at great risk of separation. We have a home together. Jay has a great job. We have a mortgage, a pension, friends and a community. We have everything together and it would be impossible to re-establish elsewhere. We have followed the law, respected the judicial system and simply want to keep our family together.

For my children, and couples and families like ours, it is critically important that we end discrimination in U.S. immigration law. So I ask that you please look closely at UAFA and how important its passage is for the thousands of couples who are affected by the unjust discrimination we are facing in the immigration process.

Before I close, I would like to take this opportunity to extend my gratitude to Congresswoman Jackie Speier and her staff, who have shown so much compassion especially for my children. Congresswoman Speier has been supportive throughout this ordeal and went out of her way to help me and my family. And I would like to extend a very special thank you to Senator Dianne Feinstein, a member of this committee, for everything she also did for Jay, myself and our children. Because of Senator Feinstein's efforts and the efforts of her staff, my deportation has been temporarily delayed until 2011. It is because of her great compassion that I am able to be with you today.

Chairman Leahy, and members of the committee, it is a great privilege to be here with you today. I was honored to receive your invitation and before you today not only because of my own family, but on behalf of the thousands of permanent partners who deserve equal treatment and to be able to remain with their loved ones and their children.

I humbly ask for your support of the Uniting American Families Act which would allow me to remain with my family and to strive for citizenship in this wonderful country that has been so good to me and my partner and such a blessed home to our children.

Thank you.

**Addressing Inequality in the Law for Permanent Partners**

**Testimony Submitted to U.S. Senate Committee on the Judiciary**

**Hearing:** "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"

Wednesday, June 3, 2009

**Statement of Rachel B. Tiven, Esq., Executive Director, Immigration Equality**

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender (LGBT) and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. Over 15,000 people subscribe to our monthly e-newsletter, and nearly 20,000 unique visitors consult our informational website each month. Our legal staff answers more than 1,500 queries annually from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations. In 2006, we collaborated with Human Rights Watch to publish a ground-breaking report on the plight of gay and lesbian binational couples, entitled *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*.

We applaud Senator Leahy for convening this hearing today and for his leadership over many years as the original Senate sponsor of the Uniting American Families Act.

Although Immigration Equality works on many issues affecting the LGBT immigrant community, no issue is more central to our mission than ending the discrimination that gay and lesbian binational couples face. Because there is no recognition of the central relationship in the lives of LGBT Americans, they are faced with a heart-rending choice that no one should have to make: separation from the person they love or exile from their own country.

**Family Unification**

Family unification is central to American immigration policy because Congress has recognized that the fundamental fabric of our society is family. Family-based immigration accounts for roughly 65% of all legal immigration to the United States.[1] Family ties transcend borders, and in recognition of this core value, the American immigration system gives special preference for the spouses of American citizens to obtain lawful permanent resident status without any limit on the number of visas available annually. Lesbian and gay citizens are completely excluded from this benefit.

**The Scope of the Problem**

An analysis of data from the 2000 Decennial Census estimated that approximately 36,000 same-sex binational couples live in the United States.[2] This number is miniscule compared to overall immigration levels: in 2008, a total of 1,107,126 individuals obtained lawful permanent resident status in the United States.[3] Thus, if every permanent partner currently in the U.S. were granted lawful permanent residence in the U.S., these applications would account for .03% of all grants of lawful permanent residence.

The couples reported in the census are, on average, in their late 30s, with around one-third of the individuals holding college degrees.[4] The average income level is $40,359 for male couples and just over $28,000 for females.[5] Despite policy disincentives for openly gay and lesbian individuals to join the military, 7% of citizen partners and 3% of non-citizen partners are military veterans.[6] Significantly, almost half, 46%, of all same-sex binational couples are raising children in the home.[7] Each of these statistics represents a real family, with real fears and real dreams, the most fundamental of which is to remain together.

**The Human Toll**

Every day Immigration Equality hears from individuals in same-sex binational couples who tell us painful tales of trying to maintain their families despite almost impossible odds. To understand the real human impact of the current law, I will recount just some of the real-life stories that illustrate the scope of this injustice.

**Family Instability**

*Shirley Tan came to the United States from the Philippines after her mother and sister were brutally murdered by a family member; Shirley survived being shot in the head. Shirley came to the U.S. in 1986 and shortly thereafter met her life partner, Jaylynn ("Jay") who is a naturalized citizen. Shirley filed for asylum based on the violence she had suffered, but after several appeals, the case was denied. The last of the denial notices was sent to the wrong address by the Board of Immigration Appeals so Shirley did not know that her case was no longer pending. As a result, Shirley was ordered deported without being aware of the order. In January 2009, Immigration and Customs Enforcement agents arrested Shirley at the home she and Jay share with their family and took her away in handcuffs.*

*Shirley has been a stay-at-home mom for years, caring for the twin sons that she gave birth to twelve years ago using eggs donated by Jay. Shirley also looks after Jay's elderly mother. The family is a pillar of the community: Shirley is a Eucharistic minister in their Catholic church, and they both sing in the church choir. Their sons are model students at their local public school. The family cannot begin to imagine Shirley being deported at this point or having to start life anew for everyone in the Philippines. As Jay's 76-year-old mother says, "Why is this happening to them? It doesn't happen often that people find this kind of love." The family was unusually fortunate that Senator*

*Feinstein introduced a private bill on Shirley's behalf, staying her deportation for two years. Without a lasting solution like UAFA, however, the private bill is just delaying Shirley's inevitable deportation.*

One of the striking features of the statistical analysis performed of the 2000 census is how many same-sex binational couples are raising children together. Almost 16,000 of the couples counted in the census – 46% of all same-sex binational couples – report children in the household.[8] Among female couples, the figure is even more striking, 58% of female binational households include children. The vast majority of children in these households are U.S. citizens.[9]

Behind each of these statistics is a real family, with real children who have grown up knowing two loving parents. In each of these households, there is daily uncertainty about whether the family can remain together, or whether they will have to move abroad to new schools, new friends, and even a new language.

*Mark and Frederic have been partners for 19 years. They have a beautiful home in Pennsylvania and are the proud parents of John (8) and Claire (4). In the years before they adopted their children they lived abroad, and over the past decade Frederic has been able to stay in the U.S. through student and work visas. When his last visa came to an end without the possibility of renewal, they faced dire choices.*

*Frederic, a French citizen, was on a student visa for many years, and Mark's salary supported the entire family. The cost of Frederic's schooling was so high that the couple sold their house to pay for the tuition that enabled Frederic to keep his student visa. Leaving the U.S. would take the children away from their grandparents, and it would leave Mark's seriously ill sister without one of her primary caretakers. Mark says of their situation: "We are running out of money and options. We have built a beautiful family and would like to adopt again, but if the law doesn't change, we will be forced to uproot the children in order to stay together."*

The situation for children of gay and lesbian binational couples can grow even more dire if the couple separates. For many same-sex couples, the only way to safeguard their rights in the event one partner dies, becomes disabled, or the couple separates is by entering into a series of legal documents. These documents can include living wills, health care proxies, and second-parent adoptions. Binational couples may be unable or reluctant to create these documents, for fear they could be seen as evidence of "immigrant intent," which might cost the foreign partner her work or student visa. If the foreign partner has fallen out of lawful status, it is even less likely that she will take any steps to formalize the legal rights and obligations in her relationship. When there are children in the household, the lack of clarity of legal rights among the family members can create a horrific situation for the children. If the relationship ends badly, and the couple took no steps to formalize the relationship between the foreign partner and the children, the children can lose all contact with a parent who raised them.

*Lee came to New Jersey from South Africa for one year to work as a nanny when she was 19. When her year ended, she didn't want to return to South Africa in the age of Apartheid. Her decision to remain in the U.S. was further fueled by the fact that she was*

*in the early stages of "coming out" and she knew that her sexual orientation could be grounds for arrest in her country. Lee is now in her mid-thirties. Four years ago, she and her American partner decided to have children. Her partner gave birth to twin boys, one of whom has developmental delays, and Lee has been their primary caretaker. Because she is undocumented, however, Lee never completed a second-parent adoption, fearing any contact with the American court system. After more than ten years together, the couple is now separating. Not only does Lee have no legal right to be in the U.S., she has no formal legal ties to the boys, and may be cut out of their lives entirely.*

**Extended Family, Unvalued**

The severe impact of the discrimination faced directly by these couples is self-evident. They live under the constant stress of separating, often subject to the whims of the U.S. immigration system or an immigration system abroad. Equally important to the stress and pressure on the couples themselves, is the effect that these laws have on their extended families. When an American is forced to choose exile over separation from her partner, she is simultaneously exiling herself from her own family. This means that aging American parents must make due without the support of grown children to care for them. It also means that adult children and grandchildren are forced to have limited and long-distance relationships with their loved ones. Likewise, when an American has no choice but to live abroad, she can no longer be a daily part of her own parents' lives. In some circumstances, when her parents are older, this may mean that the U.S. government has to pay for nursing home care because the parent loses this vital support system.

*Eleanor Batchelder is an American citizen and Fumiko Ohno is Japanese. The two have been a couple for over twenty years and are both in their mid-sixties. In the early days of their relationship they traveled back and forth between Japan and the U.S. while Eleanor completed her PhD and Fumiko completed her bachelor's degree. They tried to make a life together in New York City, where Eleanor lived and cared for her nonagenarian mother. However, with Fumiko only able to get a short-term visa, this eventually became unworkable. Finally, two years ago, they decided to immigrate to Canada, a country to which neither of them had prior ties, so they could finally have a home together. In order to move to Canada, Eleanor had to move her mother out of her own apartment, where she had lived independently with Eleanor's daily assistance, and into a nursing home; she passed away last year. Eleanor's adult daughter lives in Yonkers, NY and recently gave birth to her first child. Eleanor has to make due with a long distance relationship with her new grandson and occasional visits.*

In many situations, the foreign national partner cannot even obtain a visa to visit the U.S. and thus the American partner's extended family may never even get to meet his life partner.

*Dean, a native of Cedar Rapids, Iowa, met his partner Wesley while visiting South Africa six years ago. Two years ago, they married in South Africa, and their marriage is now recognized in Iowa as well. Not only is Dean unable to sponsor Wesley for lawful permanent residence in the U.S., Wesley has not even been able to obtain a visitor's visa to the U.S.*

*Because Wesley has never been permitted to enter the United States, he has not been able to meet Dean's family and friends. With the support of his employer, a defense contractor, Dean takes a month to two months off every winter to visit Wesley. Dean is considering permanently relocating to Ireland, where he holds dual citizenship and could sponsor Wesley for immigration benefits.*

**Same Love, Different Result**

In other cases, the pain of forced separation ripples well beyond the immediate pain felt by the couple itself. Just as an American should never have to leave the country he loves to be with the partner he loves, his parents should never have to witness the joy of their son finding his soul mate, only to watch him move thousands of miles away.

*Janet Dagley is the mother of two grown children, a gay son and a straight daughter. Her daughter recently married a man from Ireland; she sponsored him for a green card and they are living near Janet in New Jersey. Janet's son fell in love with a man from the Czech Republic; American law forbids him from sponsoring his partner, and the couple is moving abroad in order to be together. While Janet is happy that her son has found someone to spend his life with, she still can't believe that a country like the United States would deny him the basic right to remain in the U.S. with his partner.*

*Janet says, "If you want to make a mother angry, give one of her children a right that you deny the other. And if you want to break a mother's heart, force one of her children to move far away from her in order to keep his household together. That's what the U.S. government has done to our family, and thousands of others in similar circumstances."*

**Loss to the Community**

There are many costs associated with exile which simply cannot be quantified. These costs are not necessarily a matter of lost revenue or taxes, but rather the loss that our entire society bears when American citizens, many of whom have roots in our country dating back generations, are forced to leave. The U.S. loses the very fabric of our society, and its citizens who have so strongly believed in the ideals our country stands for, lose their beliefs. Ironically, some Americans are forced to relocate to countries that are neither democracies nor tolerant of same-sex couples.

*N.J. and A.O. have been together for over two decades. N.J. is an American citizen whose family arrived in the United States in 1620. His brother is a former faculty member at West Point, and he is a graduate of Harvard College and Harvard law school. His life partner, A.O., is also Harvard educated. Says N.J., "My family has fought in every war America has ever fought, yet I cannot live in my own country with the person with whom I have shared my life for 22 years." In spite of N.J.'s clear love for his country and strong family ties, the couple lives in the Middle East, in A.O.'s country of origin, in order to stay together.*

*"I am American to the core," says N.J.. "It is a great privilege to be a United States*

*citizen and taxpayer, yet I am a second-class citizen. Every day I am forced to make a 'Sophie's Choice' between my family and my country. I always will choose my family. But we are not getting any younger and we dream of coming home."*

**Impact on Business**

The lack of recognition of same-sex relationships affects not only the individual family, but the larger community as well. In many instances, large companies are unable to retain talented workers who are forced to leave the United States to maintain their relationships. That is why a growing number of businesses have endorsed the Uniting American Families Act. In 2003, Intel Corporation wrote a letter to Sen. Dianne Feinstein about the legislation, then referred to as the Permanent Partner Immigration Act, stating:

> "We would like to register our strong support for Permanent Partner Immigration Act of 2003 ... [Current law] has forced several key Intel employees to make tough choices, including separating from their partners or leaving the United States to be with their loved ones."

Non-recognition for gay and lesbian families drives out talented employees, especially highly skilled workers whose talents would be welcome elsewhere.

*Jesus Gomez-Navarro and his partner "Ernesto" are Spanish citizens who have been in a committed relationship since 1989. Jesus came to the U.S. in 1996 to complete a postdoctoral fellowship at the University of Alabama. He is now the Senior Director of Clinical Research & Development in Oncology at Pfizer, where he works on a cancer vaccine imitative. In 2005, Jesus obtained lawful permanent residence in the U.S. However, he cannot sponsor Ernesto to stay here with him.*

*Instead, Ernesto cannot work in the U.S. and must remain enrolled in school to be here lawfully. He hopes to enter a Masters Degree program this year, but when he graduates in 2011, he will likely be out of options to remain in the U.S. Jesus says. "Ernesto and I are determined to remain together. If I have to, I will leave the US and end my R&D career with Pfizer Oncology."*

The effects of this discriminatory law may be even greater on small businesses. If a business owner decides that she must go into exile rather than leave her partner, she may leave American workers without jobs, and the U.S. government without valuable tax revenue.

*Rita Boyadjian is a first-generation American whose parents immigrated to the U.S. in the 1960's from Cairo, Egypt, to escape religious persecution as Christian Armenians. Her parents wanted to raise their family in the U.S. where they could practice their Christian faith without fear of government persecution. Rita has been with her German partner, "Margot" for over six years. The couple met in Los Angeles while Margot was studying on a student visa. The couple has a young child and is expecting a second child this August.*

*Rita is co-owner of a successful entertainment marketing company which employs 20 people and generates nearly $3 million in annual tax revenue. Margot's student visa will expire this summer and she does not want to break any immigration rules. The family thus feels it has no choice but to relocate to Germany, where Margot will be legally able to sponsor Rita for immigration status. Because the entertainment industry is centered in Los Angeles, Rita intends to return to California for two week periods every two months in order to keep her business from collapsing.*

*Rita explains, "I cannot begin to describe the daily anxiety I feel about leaving my business 6,000 miles away to run weeks at a time without me physically present. I fear my employees and my movie studio clients will tire of my inaccessibility due to the nine-hour time difference. At the same time, I also worry about leaving my family in Germany every time I have to go to Los Angeles without them. What if something bad happens, and I'm 6,000 miles away?"*

For many couples there is simply no option for the foreign national to remain in the U.S. lawfully and, rather than separate, the couple chooses to move abroad.

**The Brain Drain**

In addition to the loss an American citizen and his extended family may feel personally when he is forced to leave his country behind, he also leaves behind a hole in the American labor market and talent pool. Every time that an American and his partner make the gut-wrenching decision to leave the U.S., our country loses a contributing member of our society. As these stories illustrate, that person may be providing invaluable psychiatric services to an under-served community, or the couple may both provide specialized health care services, or the person may even be researching the cure for cancer. In each of these instances what is clear is that the losses suffered because of the inequality of our laws go well beyond the losses of the individual couple.

*Stephanie Woodworth is an American who met her African partner Maritha over ten years ago. They are both in their mid-40s and are both health care professionals. Shawn is a senior respiratory therapist and Maritha is a registered nurse. Their medical skills have allowed them to get jobs in the United Arab Emirates and be in the same country, but it is a country in which neither woman has any family ties. Stephanie was living in the UAE when her father died. Because the UAE is a Muslim country, there is no gay community for them to be a part of.*

*Maritha has "played by all the rules." She has a job offer and sponsorship for an immigrant visa from a hospital in Gainesville, Florida. In anticipation of Maritha's imminent green card, Stephanie returned to the U.S., accepted a job at a Gainesville hospital, bought a car, and put down a deposit on a house to rent. However, because of the problems in the employment-based immigration system, just after Maritha's priority date became current (giving her the legal right to apply for permanent residence), her priority date retrogressed meaning she would be forced to wait several more years to apply for her "green card." Stephanie spent months alone undoing all of the planning for their lives together in Gainesville, and rejoined Maritha in the UAE, where they*

*continue the indefinite wait for Maritha's visa to become current.*

For other couples, "being together" means learning how to maintain a relationship while being separated by thousands of miles. Long distances place incredible strains on relationships and often make it impossible for the American partner, who is forced to travel regularly, to keep a demanding job.

*Michael Upton was born in Burlington, Vermont on January 29, 1964, and grew up in a small town just south of Rutland. His father is a retired neurosurgeon, and his mother trained as a nurse. Michael attended medical school at the University of Vermont, and has practiced psychiatry (mostly in the Burlington, VT area) since finishing his residency in 1998.*

*Last year, Michael met Jandui, a Brazilian journalist, and the two fell in love. When Jandui completed his degree in journalism, he decided to come to the U.S., live with Michael and study English. He was accepted at St Michael's College in Vermont, but his application for a visa was denied because he was unable to "prove" that he would return to Brazil after his course of study. Despite the visa rejection, Michael and Jandui are determined to remain together. Michael resigned his job as a mental health counselor and team leader at the Veterans Administration in order to be able to travel to be with Jandui. His position remains vacant.*

**The Uniting American Families Act Solution**

All of the above complications, stresses, and uncertainties would be unnecessary if Congress would pass the Uniting American Families Act. The bill would give gay and lesbian binational couples the same opportunity to prove the bona fides of their relationship that opposite-sex couples currently enjoy. Under the law, an American citizen or lawful permanent resident could petition for her same-sex "permanent partner" if their relationship qualifies under the Act. The bill defines "permanent partner" as any person 18 or older who is:

1. In a committed, intimate relationship with an adult U.S. citizen or legal permanent resident 18 years or older in which both parties intend a lifelong commitment;
2. Financially interdependent with that other person;
3. Not married to, or in a permanent partnership with, anyone other than that other person;
4. Unable to contract with that person a marriage cognizable under the Immigration and Nationality Act; and
5. Not a first, second, or third degree blood relation of that other individual.

The UAFA would treat same-sex couples the same way it treats opposite-sex couples. U.S. citizens would be permitted to sponsor permanent partners as "immediate relatives," meaning they would not be subject to numerical quotas. Lawful permanent residents could sponsor their permanent partners under the family preference system. Additionally, the UAFA would grant derivative status to the permanent partners of asylees, refugees, and certain employment-based non-immigrants.

The UAFA is by no means a free pass to lawful permanent residence. As with any opposite-sex married couple, permanent partners would need to prove that they are in a long-term committed relationship and that they are financially interdependent. The couple would have to provide the same types of proof of the relationship's genuineness as opposite-sex married couples must provide at their "green card" interview: joint leases; proof of co-ownership of property; proof that they are raising children together; joint bank accounts; joint credit cards; naming one another as beneficiaries of wills and insurance; affidavits from extended family members; photos with extended family, etc. If the immigration official has any questions about the validity of the relationship, the couple may be called back for a second interview, separated, and grilled on the details of their relationship, just as U.S. Citizenship and Immigration Services currently does with opposite-sex couples. If the petition is denied, the foreign partner would face deportation if he was here without lawful status.

As with cases involving opposite-sex couples, the American partner would be required to provide evidence that he could support the household at above 125% of the poverty level and sign a binding affidavit of support for the foreign partner. The affidavit would remain in effect until the foreign partner naturalized, worked at least ten years, or died. The affidavit permits the U.S. government to sue the American if the foreign partner seeks public assistance.

As with the current laws regarding marriage fraud, anyone who seeks immigration benefits based on a fraudulent permanent partnership will face up to five (5) years imprisonment and a fine of up to $250,000.

**Bringing the U.S. in Line with the Rest of the World**

There are currently at least 19 countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits. These countries include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom. Among these countries, only seven have laws granting equal marriage rights. In many others, notably the United Kingdom and Australia, immigration benefits were granted independent of other rights for same-sex couples due to the particularly grievous harm caused by separation.

Allowing American citizens and permanent residents to sponsor their same-sex partners for immigration benefits would not confer any rights on the couple outside of the limited scope of immigration law.

**Comprehensive Immigration Reform**

There is a strong consensus that the U.S. that the immigration system is "broken" and needs a top to bottom overhaul. There are millions of undocumented individuals in the country with no path to legalization and there are backlogs of decades for some categories of family-based immigration. Congress should address the overall problems within the immigration system and, when it does so, it is vital that immigration reform includes relief for families headed by same-sex couples. As this testimony has illustrated, thousands of Americans and their foreign partners are unable to make stable lives for themselves and their families in the U.S. They have been

failed by the current immigration system, and this system cannot be fully "reformed" without addressing this issue.

**Conclusion**

The family unit is at the heart of American society and as such, the fundamental tenet of our immigration system is to keep families together. For too long, gay and lesbian American citizens, their children, their parents, and their partners, have been unable to live the American dream because the U.S. immigration system does not value their families. The result has been a "brain drain" of talented workers and taxpayers; it has meant lives of instability and fear for children who don't know whether their parents can stay together; and it has meant that Americans have been forced to make terrible choices between the loves of their lives and the country they love. This problem can be remedied once and for all with passage of the Uniting American Families Act.

---

[1]In 2008, family-based immigration accounted for 716,244 grants of lawful permanent resident status, Department of Homeland Security, Annual Flow Report, March 2009, Table 2, at 3available at HYPERLINK "http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf" http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf .

[2] *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law,* joint report by Human Rights Watch and Immigration Equality, 2006, at 17,3 available at http://www.hrw.org/en/reports/2006/05/01/family-unvalued .
[3] Department of Homeland Security, Annual Flow Report, March 2009, available at HYPERLINK "http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf" http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf .
[4] *Family, Unvalued*, at 176.
[5] *Id.* at 177.
[6] *Id.*
[7] *Id.* at 176.
[8] *Family, Unvalued,* p. 176.
[9] *Id.* In female binational households, 87% of the children were U.S. citizens; in male households, 83% were U.S. citizens

UNITARIAN UNIVERSALIST
ASSOCIATION OF CONGREGATIONS
Washington Office for Advocacy
1100 G Street NW, Suite 800 Washington, DC 20005
202 393-5494 fax uua.org/socialjustice

Adam G. Gerhardstein
Director
Agerhardstein@uua.org
202 393-2255 x 21

# Stand on the Side of Love with BGLT Immigrant Families

**Testimony Submitted to the United States Senate on the Judiciary**

**Hearing: "The Uniting American Families Act: Addressing Inequality in Federal Immigration Law"**

**June 3, 2009**

**Statement of Adam G. Gerhardstein, Director**
**Unitarian Universalist Association of Congregations Washington Office for Advocacy**

The Unitarian Universalist Association (UUA) is a religious organization that combines two traditions: the Universalists, who organized in 1793, and the Unitarians, who organized in 1825. In 1961, they consolidated into the UUA, which today incorporates 1,046 congregations. Unitarian Universalism is a liberal religion which affirms the inherent worth and dignity of human beings and is deeply rooted in social justice as a direct expression of our faith.

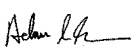
The UUA commends Senator Leahy for holding a hearing on the Uniting American Families Act and for bringing needed attention to the discrimination codified in our immigration policy against United States citizens and lawful permanent residents who are bisexual, gay, lesbian, and transgender (BGLT). Nineteen countries already provide equal immigration benefits to same-sex couples. The U.S. should join these by passing the Uniting American Families Act or incorporating the Uniting American Families Act into comprehensive immigration reform.

Each year, BGLT Americans fall in love across borders and find themselves facing an impossible choice between being with the person they love and staying in the country they love. According to the U.S. Census, approximately 37,000 same-sex couples in binational relationships live in the U.S. Nearly half of these couples are raising children. Without a legal path to citizenship for the noncitizen partner, these families' lives are fraught with uncertainty and fear.

Unitarian Universalists believe that the first principle of our faith, respecting "the inherent worth and dignity of every person," applies equally to people of all sexual orientations and gender identities. UU congregations and clergy have long recognized and celebrated same-sex marriages, and the UUA has made an institutional commitment to full equality for bisexual, gay, lesbian, and transgender people. We recognize that equality can only be achieved when it is recognized legally in society. Working for full equality for bisexual, gay, lesbian, and transgender persons is one of the UUA's highest legislative priorities; therefore, we urge Congress to stand on the side of love by passing the Uniting American Families Act and ending the discrimination that keeps American families apart.

Sincerely,

Adam Gerhardstein



*Affirming the Worth and Dignity of All People*

**The Uniting American Families Act:**
**Addressing Inequality in Federal Immigration Law**

U.S. Senate Judiciary Committee
Washington, DC

Wednesday, June 3, 2009
Dirksen Office Building Room 226
10:00 a.m.

Statement of Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies

Chairman Leahy, Ranking Member Sessions, and other committee members, thank you for the opportunity to be here today to discuss proposed changes to U.S. immigration law that would create a new type of relationship in immigration law -- "permanent partners" – for the purposes of obtaining benefits now available only to married men and women. I fully understand the goal of this legislation and the difficulties current law presents, particularly for same-sex couples. However, this legislation is addressing the issue from the wrong direction, and would create new problems for officials who adjudicate immigration benefits applications and for the many individuals involved in those applications.

The reason same-sex partners and others who are unmarried but in long-term relationships cannot now qualify for spousal immigration benefits is because federal law defines marriage as between a man and a woman. Immigration law and all other areas of federal law are subject to that definition. In addition, immigration law specifies exactly which types of relationships can qualify for visas, green cards, or other benefits, and in most cases they refer to marriage, employment or another close family tie that can be established through official documentation. If the goal is to give same-sex long-term partners equal access to immigration benefits, then the target should be the Defense Of Marriage Act, not the Immigration and Nationality Act. If that law were changed, which Congress has the power to do today, then this bill would not be necessary.

From a practical standpoint, this bill is unworkable and could wreak havoc in our legal immigration system. The four main problems I see:

1. **There is no mechanism to officially recognize or sanction "permanent partnerships", at least not in more than a few states and foreign countries, that consular officers and USCIS adjudicators can rely on to determine the eligibility and legitimacy of individuals who are applying for benefits.** Eligibility for immigration benefits is established by presenting documents proving that the sponsor and applicant have a qualifying relationship, such as marriage, parent-child, employer-employee, or sibling, for example. The first step is for the U.S.-based sponsor to submit a petition for the beneficiary. USCIS officers review the information on the petition to determine that the applicant qualifies to apply. In the case of a

marriage-based application, this would include a marriage certificate. The petitioner and beneficiary typically are not interviewed, so the documents play a critical role in the adjudication. Once the full application is made, the benefits or consular officer has the opportunity to look more closely at the case. The officer reviews supporting documents, such as financial information, personal records, telephone records and other information provided by the applicant and petitioner. If the case is adjudicated overseas the applicant is interviewed, but this does not usually occur with U.S.-based applications, which represent about half the total caseload.

Because so few places in the United States and around the world recognize "permanent partnerships", under this plan, adjudicators will not be able to establish confidently that applicants qualify in most cases. At most there are ten states and the District of Columbia that allow some form of same-sex marriage, civil union, or domestic partnership. There are only about 21 foreign countries that have these kinds of partnerships.[1] These are mostly in Europe, and citizens and residents from these countries make up a very small share (6%) of legal immigration to the United States.

It is already very difficult for consular officers and USCIS adjudicators to verify the legitimacy of the marriages they review, even with the requirement that applicants provide official marriage certificates and supporting evidence that the relationship is not solely for the purposes of immigration benefits. Many applicants come from countries where document fraud is extremely common, and bogus certificates are easily and cheaply obtained. Even in the United States, there are many jurisdictions that issue marriage licenses and certificates and divorce decrees, and adjudicators do not always have ability to verify the information. The same requirements can be imposed for documentation of "permanent partnerships" in those few jurisdictions that provide for them, but it is not clear the partnerships could be substantiated in places where there is no official recognition of the union. It is highly unreasonable to expect that consular officers and benefits adjudicators could perform this function as part of their review of the case, when they are already hard-pressed to correctly adjudicate the applications they now see with more standardized documents.

2. **This bill as written will introduce new opportunities for fraud in a program that is already a magnet for misrepresentation and abuse of the system. It will create thousands of new victims.** Marrying a U.S. citizen is by far the most common route for foreign nationals to gain U.S. residency. In 2008, more than 400,000 people obtained green cards based on marriage to a U.S. citizen, a legal permanent resident, or someone else who qualified for a green card.[2] Since 1998, more than 2.5 million foreign nationals have received green cards via marriage to a U.S. citizen.[3] While most marriages between American citizens and legal immigrants and foreigners are legitimate, marriage fraud is one of the most common ways for

---

[1] Paula L. Ettlebrick, "Worldwide Trend of Recognizing Same-sex Marriage," International Gay and Lesbian Human Rights Commission, December 4, 2006, http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/iglhrcscommentaries/298.html.

[2] Department of Homeland Security, *Yearbook of Immigration Statistics: 2008*, Table 7, http://www.dhs.gov/ximgtn/statistics/publications/LPR08.shtm.

[3] For a detailed examination of the marriage-based green card process and the problems with fraud, see David Seminara, *Hello, I Love You, Won't You Tell Me Your Name: Inside the Green Card Marriage Phenomenon*, Center for Immigration Studies, November, 2008, http://www.cis.org/marriagefraud.

otherwise unqualified individuals (often illegal aliens) to obtain permanent residency in the United States. Creating another qualifying relationship such as "permanent partners", especially one that may not be sanctioned, recognized or documented by a state or foreign government, will introduce even more fraud into our system and create more victims.

In a 2008 report published by my organization, former consular officer David Seminara describes eight different kinds of marriage fraud (see table below). All of these techniques, with the exception of phony arranged marriages, are sure to be used in the context of "permanent partnerships".

**Common Types of Marriage Fraud**

- Mail order bride arrangements.
- Phony "arranged" marriages in cultures where arranged marriage is still common.
- Cash-for-vows weddings, where Americans are paid to wed.
- Friends-and-family plans, where someone pitches in to help get someone else's spouse to the United States.
- "I do, I don't, I do" marriages, where foreign nationals divorce their spouses in their home countries, marry Americans, and get green cards two years later; then divorce the Americans, remarry their original spouses, and petition to bring them to the United States.
- Pop-up marriages for visa lottery winners. Green card winners can bring their spouses to the United States, so many suddenly find a financial incentive to marry shortly after wining the lottery.
- Exploitative relationships where Americans petition for persons they intend to traffic or exploit in some way.
- Heartbreakers, where foreigners dupe Americans into believing their intentions are true, when they actually just want a green card.

But there is one important distinction between "permanent partnerships" as described in this bill and marriages that are documented and recognized by governments that significantly increases the likelihood of fraud. According to Seminara: "The creation of 'permanent partner'

will remove a huge barrier that prevents many would-be perpetrators of fraud from carrying it out: namely the legal entanglements that marriage entails. Even though it is still relatively easy in most U.S. states to obtain a divorce, in my experience, many Americans who might be tempted to enter into a cash-for-marriage scam refrain from doing so because they would need to remain married to the foreign national, at least on paper, for two years in order for their spouse to gain a green card, and five years or more for their spouse to become an American citizen."[4] In addition to using them for the green card, Americans know that their foreign spouse can make a grab for a substantial portion of their financial assets in a divorce settlement – the bank account, the house, the high-def TV, the pension, etc. An American who agreed to enter into a fraudulent "permanent partnership" with a foreigner looking to immigrate to the U.S. in most jurisdictions would have no such legal and financial concerns, because the "permanent partnership" has no legal standing.

It is not hard to find examples of Americans who have lost their homes and their entire savings at the hands of foreign nationals who divorced them as soon as it was safe to do so. Marriage fraud motivated for immigration purposes creates thousands of victims each year, and produces emotional trauma as well as financial hardship on its victims. In addition, it represents a national security and public safety vulnerability – as noted in the CIS marriage fraud paper, if Third World gold-diggers and small-time con artists can obtain green cards so easily under our system, so can terrorists and criminals, and they have.

Here is just one example, told in the victim's own words:

"He pursued me so hard and came to the US on a tourist visa. We married after 8 months of dating, then lived together as husband and wife in Texas. I helped him get all his paperwork in order, vouched for him. I was in love. As SOON as the conditional part was over and our last interview, I was dumped and pregnant with our first child. He turned so cold and went on his merry way while I was devasted [sic] and abandoned. I could do nothing.

"He threatens me now all the time, has his green card so he comes and goes as he pleases and I've had to get numerous restraining orders on him because of just how cruel and mean he is to me. He hides assets overseas from me, doesn't pay his child support timely (only the bare minimum to keep them off his back) and runs a business here which he started on our marital funds and then cut me out in the divorce. He drives his jag around, has better lawyers than me and has never graduated from college yet found a Texas loophole in our laws so he designs houses as an architect here with no formal education or certification. It's mind boggling how much he gets away with. . . . Right now, he's overseas on his yearly month long vacation and sending me threats by email. I'm so scared for him to return in Jan. so I wondered if there was something I could do! I know he only married me for a greencard. It was so obvious now that I look back. He only "loved me" me because I was a citizen then how he dropped me the moment he had his green card even though I was pregnant. I had our baby all alone and had to go on food stamps, medicaid after he wiped out bank account and left me at the house alone. It foreclosed. I have paperwork on his cruelty, kept a journal of all the things he did right after he abandoned me with his green card and restraining orders. He has the condo and the ranch overseas and I've been through such a struggle and I can't believe there is no justice. Our divorce was done by only his lawyer, I had no say. I didn't even get to sign it and I walked away with nothing but my child and education. He's in Prague, Czech Republic right now. What do you suggest I do? He has a home there and a ranch which if course he conviently [sic] forgets about when we go to court and doesn't report that income to IRS. He also doesn't work much and lowers his income when they review child support since they give ample notice of our court day... so he doesn't have to pay me as much. . . . I have tried to find a way to report this abuse, his underhanded actions, his threats, how he cheats me out of money, etc. but the police say it's a "Civil" issue and won't help when he tries to keep my son just to hurt me. I've been hurt so much by him. The restraining orders are the only thing I can get and they always expire and then I have to redo them. He's getting smarter about

[4] E-mail correspondence with David Seminara, May 29, 2009.

not leaving anything in print anymore. He calls his threats in. It's now he said, she said. . . . He played perfect husband for those few years until he had that card. Had I known, I would have never married him, much less had a baby with him. What do you suggest I do? Who do I call? I need help!"[5]

3. **This bill does not provide any new tools or resources to fight marriage or "partnership" fraud.** Despite the fact that this proposal would produce an increase in benefits applications, and the fact that these benefits applications as a group would be especially vulnerable to fraud, the bill provides no new tools or resources for the State Department, USCIS, or state and local governments to preserve the integrity of the process and to fight fraud. The bill simply states that the existing anti-fraud measures and punishments, which are already inadequate, will apply to this category as well. Any proposal to create a new category such as this should also try to improve our benefits adjudication process so as to minimize the new cases of fraud.

The most important reforms would include: providing additional resources for anti-fraud investigations and prosecutions; require all applications to be adjudicated from the beneficiary's country of residence, with the U.S. spouse present for an interview; allow consular officers to revoke petitions approved by USCIS; tighten up the standards for approving waivers of ineligibility in marriage-based cases (currently about 75% are approved, providing a convenient loophole for criminals and immigration law violators to obtain green cards); create a national marriage/union/domestic partner database; require an automatic refusal of the application in cases where the applicants share no common language; allow USCIS to extend the period of conditional approval in some cases where the relationship does not appear bonafide.

4. **Adding a new class of applicants with a high risk for fraud will make it more difficult for legitimate applicants.** The people most affected by high rates of immigration fraud are the individuals with legitimate claims to immigration benefits and their families. High rates of fraud bog down the process for everyone and sap the time of the officers who adjudicate these cases. It already takes several months for a petition to be approved, even in the cases such as fiancée or U.S. citizen spouse, which are supposed to be the highest priority. In addition, the level of scrutiny that must be directed at these applications is frustrating and intimidating to legitimate applicants. Lawmakers should refrain from placing more burdens on the system until the application process can be improved and until the proper legal and documentary foundation for establishing the authenticity of these relationships has been established.

Respectfully submitted by,

Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies
jmv@cis.org

*The Center for Immigration Studies is a non-profit, non-partisan research institute that studies the impact of immigration on American society, and promotes a pro-immigrant, low-*

[5] Correspondence between the victim and David Seminara, December, 2008.

*immigration vision for immigration policy. Jessica M. Vaughan is a former State Department consular officer and expert on visas, immigration benefits and immigration law enforcement.*