

FOR THE RECORD

Res. No. 2172 – The Uniting American Families Act of 2009
New York City Council Hearing
Tuesday, September 29, 2009
ANONYMOUS Testimony for the Record – PLEASE READ

I am a New Yorker, born and raised on the Upper West Side, where my parents still live and where I visit regularly. I live in Paris where I work as a journalist and live with my boyfriend, whom I've been with for the last 4 years. We recently got PACS'ed (the French equivalent of civil unions), which among other minor benefits, allows me to renew my visa and stay there. France, like many countries, offers such immigration rights to stable and committed same sex couples, even though same sex marriage is not legal. We would love to move to the US, to New York in particular, where all of my family and close friends live. I have been forced to turn down lucrative job opportunities in America and stay in a foreign country in order to avoid being separated from the person I love. As a couple, we have been faced with the excruciatingly stressful burden of constantly figuring out ways to stay together in France, of finding different jobs that would renew my visa, and finally, when we felt like we were ready, we were thankfully able to obtain the PACS (civil union) which enables me to get a "family" visa that comes with working papers. This gives us the most important thing: the ability to stay together. Still, though, the conditions are far from ideal. I have been educated at some of America's best schools, but am forced to lower my professional standards and sacrifice my ambitions in order to stay in France and be with the person I have chosen to build my life with. The stress of living far from my home and loved ones and of struggling to find solutions to enable me to stay with my boyfriend has also had a harmful effect on my health. At age 17 I was diagnosed with Crohn's disease, which is characterized by painful gastrointestinal flareups greatly exacerbated and even provoked by stress. My disease has only gotten worse since I have been forced to live abroad for far longer than I ever planned or wanted. The way I see it, I'm losing out -- I'm deprived of my home country, the people I love, the place I feel most comfortable in. The separation is painful. But America is losing out, also -- I am a talented and successful individual, and because of a basic lack of civil rights for same sex couples, I'm not in America, contributing to the sea of talents and diverse voices that make up this country.

This is not a gay issue, a marriage issue, a civil union issue, or even an immigration issue. It is a fundamental, basic, minimum, no-brainer human rights issue. Even many staunch gay marriage opponents think that same sex couples at least have the right to BE TOGETHER. Is that really in question? How is it that America, always and forever my home, the country that enabled my great grandparents to escape brutal persecution in Europe, does not allow me the simple freedom to live there with the person I love and have shared my life with for the last 4 years? What would my ancestors think if they knew that I have been, in effect, exiled back to Europe, deprived of their promised land and my own native country? How can it be that the country that welcomes so many immigrants from every corner of the globe also excludes its own native-born citizens who happen to fall in love with foreign nationals that don't have visas to be in America? How is it possible that the country known for offering so much fails to provide this one essential right, cherished and taken for granted by so many, and desired by those Americans like me who have no choice but to live abroad, dreaming of the day when they can return and build a life with their partner in the land they love?

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TESTIMONY OF U.S. REPRESENTATIVE JERROLD NADLER (D-NY 08)

**Before the Council of the City of New York Committee on Civil Rights and
Committee on Immigration**

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

September 29, 2009

Good Afternoon Chairman Seabrook, Chairman Stewart and Members of the Committees on Civil Rights and Immigration. Thank you very much for holding this important hearing on the *Uniting American Families Act of 2009* (UFAA). As the sponsor of this legislation in the U.S. House of Representatives, I appreciate the opportunity to testify today and to offer my thanks to the City Council of New York for your consideration of Reso. No. 2172 calling on the United States Congress to pass the *Uniting American Families Act of 2009* (H.R. 1024/S. 424).

I have always found that among the worst kinds of injustice are those in which the law acts in a gratuitously cruel manner – that is to say, it harms individuals for no purpose. 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* in 2000 after hearing from my constituents and others about the pain that immigration laws were inflicting on their lives because they were gay or lesbian, and as such, these Americans were not allowed to sponsor their partners for immigration purposes.

This unequal policy forces tens of thousands of gay and lesbian Americans to face a terrible choice between leaving the country to be with the person they love or remaining here in the United States separate from their partner. Depending upon the law in their partner's country, it may be impossible for the two partners to be together in either country. This runs directly counter to the goal of family unity, which is supposed to be the bedrock of American immigration policy.

Our unequal immigration laws wreak havoc on the lives of thousands of bi-national couples and families across the country. It does not have to be that way. Congress can end this

injustice and stop this gratuitous cruelty right now by passing the *Uniting American Families Act*. UAFA is very simple – it would give same-sex couples the same immigration benefits as opposite-sex couples. Same-sex couples would have to prove the bona fide nature of their relationship, just as opposite-sex couples do, or face the same harsh penalties for fraud.

We are making progress in Washington on righting the wrongs done by our immigration laws to gay and lesbian couples and families. Today, UAFA has 116 cosponsors in the House and in 2009, UAFA has companion legislation in the Senate for the first time. In February, Senator Leahy introduced the Senate version of the *Uniting American Families Act of 2009* (S. 424), which has 22 cosponsors. In June, the Senate Judiciary Committee held the first Congressional hearing on the bill, where I was honored to testify. These bills have the support of the majority of the New York Congressional delegation, including both our junior and senior Senators.

In addition to working for the passage of the *Uniting American Families Act*, I have been working to insure the provisions of UAFA are included in a bill for Comprehensive Immigration Reform. To that end, I am pleased that my colleague, Representative Mike Honda, included the provisions of UAFA in H.R. 2709, the *Reuniting Families Act*, a bill that addresses all families and the impacts of current immigration law. As the discussion around comprehensive immigration reform moves forward, I will continue to work with my colleagues in the House and Senate to ensure that the provisions of UAFA are included in any immigration legislation.

It is time once and for all to end this unnecessary cruelty to loving couples. Thank you for considering this important resolution supporting our efforts to do so in Washington.

Thank you again for holding this hearing and providing me with the opportunity to testify.

Testimony

Terry Boggis
Director of Family Programs
Lesbian, Gay, Bisexual and Transgender Community Center

In support of
New York City Council Resolution ~~366~~
In support of ²¹⁷²
Uniting American Families Act (H.R. 1024, S. 424)

September 29, 2009

Good morning. My name is Terry Boggis, and I am the director of family programs at the Lesbian, Gay, Bisexual and Transgender Community Center.

In the 20 years since its founding, Center Kids has seen many thousands of families come through its doors, seeking services, support and social connections for themselves as parents and couples, and for their children.

Though witnessing this procession has largely been a joyful experience, it is impossible to do so without being aware of why a program such as ours is necessary to begin with. Our constituents come to the Center for many reasons, but across the board they come because they seek a space in which their intimate relationships are validated, honored, respected, and celebrated. This often doesn't happen out in the world, where the legal cannon renders our families invisible, and illegitimate.

And these are the lucky families, the intact families, the families that don't have to stare down the barrel of that gun that tells them they have to choose between separation and relocation, because only one partner is an American citizen. This variation on "Sophie's choice" is excruciating for bi-national couples. No one should be forced to choose between one's country and one's closest companion. To require that choice is barbaric.

I've received countless calls from LGBT people seeking information on the legal steps they can take to legitimize their relationships – the powers of attorney, wills, guardianship agreements, domestic partnerships, second parent adoptions, living wills, etc. – all in an attempt to prove the sincerity of their commitment and the depth of their connection when scrutinized by their government and its intimidating institutions – like the school system, the medical system, the welfare system, and so many others. Until the federal government makes fundamental changes in the law -- changes that reflect the reality of true family diversity in the United States -- all these efforts to protect themselves on the part of LGBT people will only go so far.

The Uniting American Families Act (H.R. 1024, S. 424) is a profoundly powerful, meaningful, and affirming measure, serving to remove obstacles to family formation and longevity, shoring up this deep and meaningful variation on family relationship.

We are most grateful to Congressman Jerrold Nadler and Senator Patrick Leahy for introducing the Uniting American Families Act, and we appreciate the efforts of New York City Council, particularly the Committees on Civil Rights and Immigration, in endorsing this resolution in support of that federal legislation. It is especially appropriate for the governing body of New York City -- both the primary gateway to the United States for so many immigrants, and the destination of choice for so many LGBT Americans -- to endorse the Uniting American Families Act of 2009.

On behalf of the thousands of LGBT families in New York, we also register our support -- of the Uniting American Families Act, and of this resolution.

NEW YORK CITY BAR

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TESTIMONY OF ETHAN GANC, MEMBER OF THE LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS COMMITTEE IN SUPPORT OF RESOLUTION NO. 2172, CALLING UPON THE UNITED STATES CONGRESS TO PASS THE UNITING AMERICAN FAMILIES ACT (H.R. 1024 / S. 424)

My name is Ethan Ganc, and I am a member of the Lesbian, Gay, Bisexual and Transgender Rights Committee (the "Committee") of the New York City Bar Association (the "City Bar"). On behalf of the City Bar, the Committee voices its support for the City Council's resolution urging passage of the Uniting American Families Act of 2009 ("UAFAs" or the "Bill"). The Bill would amend the Immigration and Nationality Act (the "INA") to permit U.S. citizens and legal residents in same-sex relationships to sponsor their partners for immigration purposes in the same manner as spouses of citizens and lawful permanent residents and to penalize immigration fraud in connection with permanent partnerships.

The Bill applies similar standards to same-sex couples in "permanent partnerships" that the U.S. applies to opposite-sex married couples where one member is seeking to bring a foreign partner into the country. Under the INA, a U.S. citizen or permanent resident may petition for his or her opposite-sex spouse to receive legal status in the United States; however, the INA does not recognize same-sex relationships, and this discriminatory practice often forces the couple to separate or move abroad in order to stay together. Enactment of the Bill would fulfill the promise of family unification in the U.S. immigration system by bringing same-sex couples into parity with opposite-sex married couples in this context.

The UAFAs does not add same-sex couples to the category of "spouse" in the INA. Instead, it recognizes a new category of relationship, "permanent partnership," under the INA. The standards of proof and the procedures governing adjudication would be identical to the INA's current "immediate relative" category, absent the marriage certificate. The beneficiary would need to prove that he or she is:

- At least 18 years of age;
- In an intimate relationship with the sponsoring adult U.S. citizen or legal permanent resident in which both parties intend a lifelong commitment;
- Financially interdependent with that person;
- Not married or in a permanent partnership with anyone other than that person; and
- Unable to contract, with that person, a marriage that is recognized under the INA.¹

This is referred to as the Permanent Partner Checklist.

¹ HR 1024 Sec. 2, proposed new 8 USC 1101(a)(52)(A)-(E).

The Bill strikes a balance between protecting families and preventing fraud. To ensure that the foreign national does not become a public charge, the U.S. citizen partner would need to commit, through an affidavit of support, to support the foreign national for ten years, even if the partnership dissolves.

The Bill would mark an advance in the rights of bi-national same-sex couples, and the Committee supports the City Council's resolution urging the United States Congress to pass it.

Attached to my testimony is the Committee's full report to the Bill's sponsors, which I will now summarize, that details our support for the Bill including our position that the Bill should be updated to reflect recent developments in the law of same-sex relationships around the world.

When the Bill was originally written, no international jurisdiction offered marriage, and only a few jurisdictions offered marriage equivalents to same-sex couples.² Thus, in 2000, a legal test that gave substantial weight to marriage or equivalents, such as civil unions or California-style domestic partnerships (which I'll refer to as "MOEs"), had less practical importance than the kind of facts-and-circumstances test that the INA already applied to "immediate relatives." Currently, ten states plus the District of Columbia,³ and at least 27 international jurisdictions have MOEs,⁴ meaning that for millions of same-sex couples worldwide, it is no more difficult to acquire government-authorized MOE status than it is for opposite-sex couples to marry.

Under ordinary circumstances, American law does not judge the quality of a marriage. Instead, because of the serious and binding nature of the legal responsibilities, it assumes that couples will bear the risk of policing themselves so that they do not enter into impulsive marriages that exist in name only. The same is true of virtually all of the 38 jurisdictions that offer MOEs to same-sex couples.

The Bill, however, because it was originally drafted in an era when MOEs were rare, gives no deference to MOEs. Thus, the Bill requires same-sex couples who have entered into MOEs to submit to an additional level of proof not required of their opposite-sex married counterparts. Even if a same-sex couple in a long-term relationship has entered into a MOE, the non-US national will not have immigration rights unless he or she can satisfy the criteria of the Permanent Partner Checklist in the eyes of immigration law judges, who do not follow common standards and are subjected to limited appellate review. Therefore, it is our Committee's hope that the Bill will be modified to recognize – or give deference to – couples who have entered into an MOE, subject to immigration law's standard anti-marriage fraud provisions.

² See Human Rights Watch & Immigration Equality, *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, Appendix B: Countries Protecting Same-Sex Couples' Immigration Rights, pp. 160 et seq. (2006), available at <http://www.immigrationequality.org/uploadedfiles/FamilyUnvalued.pdf> <visited June 1, 2009>.

³ Op cit. National Lesbian & Gay Task Force, *Relationship Recognition for Same-Sex Couples in the U.S.* [map], available at http://www.thetaskforce.org/downloads/reports/issue_maps/relationship_recognition_07_09_color.pdf.

⁴ Marriage Law Foundation, *International Survey of Legal Recognition of Same-Sex Couples* (2009), available at <http://marriagelawfoundation.org/publications/International.pdf>. See also *World homosexuality laws*, http://en.wikipedia.org/wiki/File:World_homosexuality_laws.svg <visited June 1, 2009>.

In summary, the Committee supports the City Council's resolution urging passage of the Bill.

Respectfully submitted,

Ethan Ganc

Member

Lesbian, Gay, Bisexual and Transgender Rights Committee

New York City Bar Association

September 29, 2009

**NEW YORK
CITY BAR**

ATTACHMENT 1

**REPORT BY THE
COMMITTEE ON LESBIAN, GAY, BISEXUAL AND
TRANSGENDER RIGHTS**

**IN SUPPORT OF THE UNITING
AMERICAN FAMILIES ACT OF 2009
H.R. 1024 / S.424**

**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS**

**H.R 1024
S.424**

**Representative Nadler
Senator Leahy**

To amend the Immigration and Nationality Act to eliminate discrimination in the immigration laws by permitting permanent partners of United States citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of citizens and lawful permanent residents and to penalize immigration fraud in connection with permanent partnerships.

Uniting American Families Act of 2009

THIS BILL IS APPROVED WITH MODIFICATIONS RECOMMENDED

A. Introduction

The Lesbian, Gay, Bisexual and Transgender Rights Committee (the "Committee") of the New York City Bar Association supports the Uniting American Families Act of 2009 ("UFAA" or the "Bill"). The Bill would permit U.S. citizens and legal residents in same-sex relationships to sponsor their partners for immigration purposes. The UFAA is consistent with a fundamental principle of U.S. immigration law: family unification.

Enactment of the UFAA would add the United States to the list of at least nineteen countries that provide immigration benefits to same-sex couples, including 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. Nonetheless, given substantial changes in the legal background since a version of the Bill was first introduced in 2000, and evidence of inconsistent judicial decision making, we urge that the Bill be updated to recognize, for immigration purposes, same-sex marriages and their equivalents licensed under the laws of non-federal jurisdictions.

B. History of the Bill

UFAA was introduced in the House of Representatives as H.R. 1024, by Representative Jerrold Nadler (D-NY), and in the Senate as S.424, by Senator Patrick Leahy (D-VT), on February 12, 2009. On March 16, 2009, the House bill was referred to the House Committee on the Judiciary, which referred the Bill to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. The Senate bill was read twice and referred

to the Senate Committee on the Judiciary. As of May 28, 2009, the Bill has 102 co-sponsors in the House, and 17 co-sponsors in the Senate.

On May 22, 2009, Senator Leahy convened a Congressional hearing on UAFA for June 3, 2009. We submit this report in support of these hearings to demonstrate the importance of UAFA and equal immigration rights, particularly for residents and citizens of New York City. UAFA is the most recent reincarnation of the Permanent Partners Immigration Act of 2000, Permanent Partners Immigration Act of 2001, Permanent Partners Immigration Act of 2003, Uniting American Families Act (also referred to as the Permanent Partners Immigration Act of 2005) and Uniting American Families Act of 2007.

C. Immigration Inequality Harms Families

Based on an analysis of 2000 U.S. Census data by UCLA's Williams Institute, the U.S. has 35,820 bi-national same-sex couples, with 46% of those couples raising children under 18 in their homes. According to the Williams Institute, if the Bill were to pass and same-sex couples behaved in the same manner as their married counterparts, approximately 8,500 same-sex couples would seek immigration rights for the non-citizen partner.¹

Without legal recognition under immigration law, these couples are at risk for disruption to their lives unimaginable to opposite-sex married couples. The following real-life stories from New York City illustrate the harm that the inability to sponsor one's same-sex partner for immigration purposes has caused to the partners and the community.

- An American citizen resident of Sunnyside, Queens met her Irish citizen same-sex partner while they were both students at Yale University. They chose to remain in the United States, and expended thousands of dollars on immigration visa fees, attorney fees, and accommodation and travel to and from Ireland in order to secure a multitude of visas. This took a toll both on their wallets and on their well-being. The Irish citizen partner was also severely limited in the work she could perform under these visa programs, and, thus, could not reach her full employment potential while here in the U.S.
- A Manhattan, New York resident and American citizen fell in love with a Macedonian citizen and planned to move to Europe so that they could be together. When he then fell ill and needed a hip replacement due to degenerative arthritis, that move had to be canceled, as his health insurance would not cover such an operation overseas. They spent months trying to find a mechanism for his partner, who had a law degree from the University of Macedonia, to join him in the U.S. This effort came to no avail and this Manhattan resident faced recovery from his operation alone without the person he loved nearby.

¹ Gary J. Gates, "Bi-National Same-Sex Unmarried Partners in Census 2000: A demographic portrait" (October 1, 2005). The Williams Institute. Paper gates_3, http://repositories.cdlib.org/uclalaw/williams/gates_3 <visited June 1, 2009>.

- An American citizen and Brooklyn, New York resident had been with her Korean citizen partner for over a year. Several months into their relationship, she learned that her partner had overstayed her six-month visa in order to stay close to her mother here in the U.S., who was estranged from her father and living on her own. This Brooklyn resident believed she could sponsor her partner to stay in this country legally, so that their relationship could continue and the partner could continue to take care of her mother. But, even had the couple married, this would not have been possible.
- A Long Island resident and American citizen fell in love with a Spanish citizen in 2004, and in 2006, they were legally married in Spain. This New York resident's parents were very elderly, and he had to stay in the U.S. to take care of them, rather than live in Spain, where he and his partner would enjoy full legal immigration rights. Instead, this couple expended thousands of dollars in the hopes that the Spanish partner could eventually enter into an American university to study for a degree he had already earned in Spain, just so they could be together.²

Without the UAFA, thousands of people's lives will continue to be disrupted by the constant search for a way to live in the United States with their permanent partners. Couples will spend vast amounts of time and energy navigating the harrowing and complicated immigration system. For these couples, who are committed to sharing their lives together, UAFA would be a solution.

D. The Bill's Impact on Family Unification

The Bill applies similar standards to same-sex couples in "permanent partnerships" that the U.S. applies to opposite-sex married couples where one member is seeking to bring a foreign partner into the country. Under current U.S. immigration law, the Immigration and Nationality Act (the "INA"), a U.S. citizen or permanent resident may petition his/her opposite-sex spouse for legal status in the United States. However, the INA does not recognize same-sex relationships, and this discriminatory practice often forces the couple to separate or move abroad in order to stay together. Therefore, enactment of the Bill would fulfill the promise of family unification in the U.S. immigration system, and be a significant step towards the recognition of marital rights for same-sex couples, by bringing them parity with opposite-sex married couples in this context.

The UAFA does not add same-sex couples to the category of "spouse" in the INA. Instead, it recognizes a new category of relationship, "permanent partnership," under the INA. The standards of proof and the procedures governing adjudication would be identical to the INA's current "immediate relative" category, absent the marriage certificate. Specifically, the beneficiary would need to prove (the "Permanent Partner Checklist") that he/she is:

² See also Andrew Jacobs, "Gay Couples Split by Immigration Law; Under 1996 Act, Personal Commitments Are Not Recognized," *New York Times* (Mar. 23, 1999), available at <http://www.nytimes.com/1999/03/23/nyregion/gay-couples-split-immigration-law-under-1996-act-personal-commitments-are-not.html> <visited June 1, 2009>.

- At least 18 years of age;
- In an intimate relationship with the sponsoring adult U.S. citizen or legal permanent resident in which both parties intend a lifelong commitment;
- Financially interdependent with that person;
- Not married or in a permanent partnership with anyone other than that person; and
- Unable to contract, with that person, a marriage that is recognized under the INA.³

The Bill strikes a balance between protecting families and preventing fraud. To ensure that the foreign national does not become a public charge, the U.S. citizen partner would need to commit, through an affidavit of support, to support the foreign national for ten years, even if the partnership dissolves.

E. Updating the Bill for the 21st Century Recognition Landscape

The Bill would mark an advance in the rights of bi-national same-sex couples, but it should be updated to reflect recent developments in the law of same-sex relationships around the world. The Bill's Permanent Partner Checklist comes from the Permanent Partners Immigration Act of 2000,⁴ which addressed a vastly different legal landscape. In 2000, Vermont was the only U.S. state with a marriage equivalent, civil unions.⁵ No international jurisdiction offered marriage, and only a few jurisdictions offered marriage equivalents to same-sex couples.⁶ Thus, in 2000, a legal test that gave substantial weight to marriage or equivalents, such as civil unions or California-style strong domestic partnerships ("MOEs"), had less practical importance than the kind of facts-and-circumstances test that the INA already applied to "immediate relatives." In 2009, ten states plus the District of Columbia,⁷ and 29 international jurisdictions (including the vast majority of Western Europe and South America) have MOEs,⁸ meaning that for millions of same-sex couples worldwide, it is no more difficult to acquire government-authorized MOE status than it is for opposite-sex couples to marry.

Under ordinary circumstances, American law does not judge the quality of a marriage. Instead, because of the serious and binding nature of the legal responsibilities, it assumes that

³ HR 1024 Sec. 2, proposed new 8 USC 1101(a)(52)(A)-(E).

⁴ HR 3650 106th Cong. 2d Session, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_bills&docid=f:h3650ih.txt.pdf <visited June 1, 2009>.

⁵ National Lesbian & Gay Task Force, *Relationship Recognition for Same-Sex Couples in the U.S.* [map], available at http://www.thetaskforce.org/downloads/reports/issue_maps/relationship_recognition_05_09.pdf <visited June 1, 2009>.

⁶ See Human Rights Watch & Immigration Equality, *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, Appendix B: Countries Protecting Same-Sex Couples' Immigration Rights, pp. 160 et seq. (2006), available at <http://www.immigrationequality.org/uploadedfiles/FamilyUnvalued.pdf> <visited June 1, 2009>.

⁷ Op cit. National Lesbian & Gay Task Force, *Relationship Recognition for Same-Sex Couples in the U.S.* [map].

⁸ Marriage Law Foundation, *International Survey of Legal Recognition of Same-Sex Couples* (2009), available at <http://marriagelawfoundation.org/publications/International.pdf>. See also *World homosexuality laws*, http://en.wikipedia.org/wiki/File:World_homosexuality_laws.svg <visited June 1, 2009>.

couples will bear the risk of policing themselves so that they do not enter into impulsive marriages that exist in name only. The same is true of virtually all of the 39 jurisdictions that offer MOEs to same-sex couples.

The Bill, because it was drafted in an era when MOEs were rare, gives no deference to MOEs. Thus, the Bill requires same-sex couples who have entered into MOEs to submit to an additional level of proof not required of their opposite-sex married counterparts. Even if a same-sex couple in a long-term relationship has entered into a MOE, the non-US national will not have immigration rights unless they can prove that they meet the criteria of the Permanent Partner Checklist to the satisfaction of an immigration law judge. In contrast, an opposite-sex married couple need not prove their compliance with the checklist because their marriage alone presumptively suffices, subject to immigration law's anti-marriage fraud provisions.

Unfortunately, in the case of an intimate spousal relationship, many of the long-time tests used to determine whether someone is an "immediate relative" will not easily fit. We would hope that the terms "committed" and "intimate" will not result in intrusive explorations of a couple's sexual history. Same-sex spouses, like opposite-sex ones, have varied financial arrangements -- one may contribute disproportionately, or they may keep their financial affairs separate -- yet under the Bill, some same-sex couples in MOEs could be denied immigration recognition as inadequately "financially interdependent." It is also puzzling that the Bill bars first cousins from its benefits, when opposite-sex first cousins may marry in virtually all U.S. states.

The ambiguous standards of the Permanent Partner Checklist are a particular concern because U.S. immigration judges' decisions are given great deference on review. There is strong empirical evidence of vast discrepancies in asylum decisions based on individual immigration judges' gender and work histories, as well as on the quality of an applicant's legal representation.⁹ In addition, there is empirical evidence of discrimination against lesbians and gays in the immigration system and the judicial system as a whole.¹⁰

Thus, the Bill expressly disadvantages same-sex couples with MOEs as compared to opposite-sex married couples, and then bases immigration decisions on a Permanent Partner Checklist interpreted by judges who do not follow common standards, some of whom may be biased against same-sex couples, and who are subject to only limited appellate review. Although the Bill would produce an improvement, the lack of standards will leave many bi-national same-sex couples in MOEs as unwilling participants in an expensive and often heartbreaking lottery for legal immigration status.

⁹ Jaya Ramji-Nogales *et al.*, "Refugee Roulette: Disparities in Asylum Adjudication" 60 *Stan. L. Rev.* 295 (2007); Margaret H. Taylor, "Refugee Roulette in an Administrative Law Context: The Deja vu of Decisional Disparities in Agency Adjudication," 60 *Stan. L. Rev.* 475 (2007). There is also evidence that the selection process for immigration judges has affected results, Charlie Savage, "Vetted Judges More Likely to Reject Asylum Bids," *New York Times* (Aug. 24, 2008), available at <http://www.nytimes.com/2008/08/24/washington/24judges.html> <visited June 1, 2009>.

¹⁰ Deborah A. Morgan, NLGLA Michael Greenberg Writing Competition, "Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases," 15 *Law & Sex.* 135 (2006) (anecdotal evidence of anti-gay discrimination in asylum cases); Todd Brower, "Of Courts and Closets: A Doctrinal and Empirical Analysis of Lesbian and Gay Identity in the Courts," 38 *San Diego L. Rev.* 565 (2001).

The proposed Bill modifications do not require repeal of the Defense of Marriage Act (“DOMA”). The New York City Bar has long opposed DOMA,¹¹ and continues to strongly oppose it, but DOMA is not controlling here. DOMA’s federal clause, 1 USC §7 (1996), provides:

In determining the meaning of any Act of Congress, ... the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.

DOMA does not bar recognition of non-marriage MOEs, such as civil unions or strong domestic partnerships, and Congress can apply the Bill to marriages as well. Many U.S. states that have mini-DOMAs barring marriage nonetheless provide at least limited recognition to civil unions and strong domestic partnerships entered into in other jurisdictions. Nor would the proposed Bill modifications have any effect on DOMA’s state clause, 28 USC §1738B (1996), which addresses only state powers to grant or withhold recognition of same-sex marriages under their own laws. If Congress was unwilling to extend recognition under the Bill to same-sex marriages because of DOMA concerns, marriages could nonetheless be considered under the Bill’s Permanent Partner Checklist, as they would in the Bill’s current form.

F. Conclusion

The Committee supports the Bill, and urges that it be modified to recognize couples if they have entered into an MOE, subject to immigration law’s standard anti-marriage fraud provisions. An MOE requires a substantial commitment from the couple and provides a bright-line test for the immigration courts. Any regulations issued under the Bill, if it becomes law, should set forth clear standards for factual tests.

June 2009

¹¹ See New York City Bar, “A Recommendation against the Passing of HR 3396; S. 1740,” 51 *The Record* 654 (1996).

Addressing Inequality in the Law for Permanent Partners

Testimony Submitted to the New York City Council, Tuesday, September 29, 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 our headquarters in lower Manhattan and a policy office in 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 nearly 2,000 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*.

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] More of them live in New York than in any other state save California. The number of same-sex binational couples 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.

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]

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, including Pfizer, Omnicom, Cisco, and Intel.

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 has been introduced in the House of Representatives by New York City's own Rep. Jerrold Nadler, and in the Senate by Senatore Patrick Leahy. It 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.

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. The language of the Uniting American Families Act is also included in pending legislation called the Reuniting Families Act (H.R. 2709), and it is imperative that Congress include **all** families in forthcoming comprehensive immigration reform.

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 or with comprehensive immigration legislation that includes it.

[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 3 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.

[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.

Speaker Quinn, Members of the Council and distinguished guests,

Good morning. My name is Eleanor Batchelder, and I am honored to be with you today and to offer my story as you consider a resolution in support of ending discrimination against LGBT binational families.

I am here today visiting from Toronto, where I currently live with my partner, as we are unable to live together in the United States. I lived in New York City, for 45 years, and my heart is still here, but because my commitment to my partner is invisible to the immigration laws of the United States, my life is now in Canada.

I first came to New York City in 1962, the fall that Lincoln Center opened, as a young wife and mother. In subsequent years, I divorced, moved from the Bronx to the Upper West Side of Manhattan, and worked as a secretary and then statistician on Wall Street. During the blackout of 1965, I spent the night on the 49th floor of Chase Manhattan Plaza.

I got a bachelor's degree at night from Hunter College while working days as a computer programmer. My three children went to both public and private schools, including PS 84, Bank Street, and Ethical Culture schools. In the 1970s, I worked for NYC Human Resources, in computer services.

In 1974, I came out as a lesbian-feminist in what proved to be the early years of the women's movement, and I was a co-founder of Womanbooks, a women's bookstore on West 92nd Street, an exciting venture in a very exciting time.

In 1983, I took a trip to Japan and began learning Japanese. In 1986, I met Fumiko, who was visiting New York City, and we became permanent partners, despite several separations. These separations were because of visa difficulties, and because of the stress of a situation where we had no future and where Fumiko could not legally work, forcing her to rely upon my money, my apartment, my language, and my family – very hard, for a self-respecting and generally independent person. At several points, it became too much for her and she would leave for a year or so, to regain her balance.

In 1997, I completed a Ph.D. in Linguistics from CUNY Graduate Center, and I went to join Fumiko in Japan. I taught English, and then received a post-doctoral fellowship from the Japanese government on recommendation of the National Science Foundation, and Fumiko finished her bachelor's degree at a Japanese college. In early 2001, after three years' absence, we returned to New York.

It was a bad time for employment, but I finally managed to get a job at my old agency, HRA, and Fumiko got a visa which, it later turned out, would not bear close inspection.

Eventually, after having tried every possibility to remain with me legally in New York, she returned to Japan in 2004. Despite our then-18-year relationship, we were “strangers before the law” in the United States, and I could not sponsor her for residency. This time, it was not until three years later that we rejoined, when we both had Canadian visas in hand. I qualified for permanent residence under the Canadian Skilled Worker program, and after we documented our long partnership, Fumiko qualified as my common-law spouse, since Canada had legalized same-sex marriage.

It was hard for me to leave New York. I have children here, and now a grandchild, and I was then managing the care of my 96-year-old mother, still in her own apartment. When we decided to go to Canada, I had to put Mom in a nursing home, where she died a year later. It was a hard decision; I was very conflicted and felt as though I was abandoning her.

Fumiko had created a new life for herself in Japan, including a new career she had found there working with developmentally disabled young adults. Being in Japan also meant being available to assist her older sister, who has debilitating osteoporosis. It was difficult for her to leave but, for both of us, being together turned out to be more important than any other consideration, and we are grateful to Canada for making that possible. Neither Japan nor the United States offered us this hospitality.

Ours is just one example of the unacceptable choices – affecting our family and community as well as ourselves – that many couples like us are forced to make. Do you think that any American citizen should be forced to become an exile in order to keep their family together? Couples like us, who have committed no crime but to fall in love with a foreigner, are asked to choose between the person we love and the country we call home. We shouldn't have to, and it is long past time to end this discrimination against our families.

As Congress considers The Uniting American Families Act, The Reuniting Families Act and a comprehensive immigration reform bill, I hope that my country will again embrace me, and allow me to come home, with my partner, and to be with my family here in New York. It doesn't seem like a lot to ask, and it is certainly the right thing to do.

I urge the Council to approve the proposed resolution. For this New Yorker and her family, and for many others.

Thank you.

Speaker Quinn, Members of the Council and Distinguished Guests,

My name is Navin Manglani and I am a 30-year old native New Yorker who was born and raised in New York. I am here today to tell my story and to urge this committee to pass the proposed resolution urging Congress to pass the Uniting American Families Act or a similar legal instrument granting me – and my family - the same rights as my neighbors and which would end the legal discrimination I face currently.

After graduating from Yale and completing my MBA at Columbia, I took over the helm of my family business in the Garments District. A few years later, I met my partner who was then pursuing his Master's in Public Health, and is currently in medical school. He expects to complete his MD in about a year. If he is not able to find a job in the United States upon graduating, we will be forced to relocate to another country in order to stay together. In addition to this being a daunting possibility for the two of us, it would negatively impact a wide variety of New Yorkers.

First, the business that I run in the garments industry currently employs 12 full-time people. We would be forced to close our company if I leave, and this would not only result in job loss for our employees, but also loss of business for the numerous vendors we work with and a loss of tax revenue for New York.

Second, since my father passed away, my mother, younger sister and younger brother have been dependent on me to run numerous aspects of our household, ranging from financial management of the family's money to being there for my siblings as a father figure. There is no doubt that my exit from the country would present a hardship

to our family. And, there is little doubt that numerous other New Yorkers in similar situations are also facing the very real possibility of seeing their families torn apart.

Third, my partner and I are involved in a number of community activities: I run a non-profit foundation, serve as the treasurer of my condominium, volunteer with local community orchestras and am involved with a number of charity groups, while my partner has volunteered at numerous hospitals in various capacities.

If my partner and I are forced to leave because the federal government fails to recognize same-sex couples for immigration rights, it would not only be a loss to our friends, family and colleagues, but also to the community at large. The United States has already lost a number of valuable citizens who were in similar situations. Please don't let us join that statistic. Please pass this resolution presented to you today and urge the Congress to pass UAFA or a similar legal instrument so that I and other New Yorkers so that we can sponsor our partners to stay with us, just as other New Yorkers can.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 2172

in favor in opposition

Date: 9/29/09

(PLEASE PRINT)

Name: Carlin Langley

Address: 4853 44th St. #2F Woodside, NY 11377

I represent: myself

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/29/09

(PLEASE PRINT)

Name: DR. THOMAS MOULTON

Address: 22-22 28th St Astoria

I represent: ALL IMMIGRANTS & BRENDAN FAX

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 2172

in favor in opposition

Date: 09.29.09

(PLEASE PRINT)

Name: ~~Congressman Jerrald Nadler~~ Erin Drinkwater

Address: 201 Varick St. Suite 669 NY NY

I represent: Congressman Jerrald Nadler

Address: 201 Varick St. Suite 669 NY NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 2172

in favor in opposition

Date: 9/29/2009

(PLEASE PRINT)

Name: Eleanor BATCHELDER

Address: 213 East 25 St, 5A

I represent: self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 2172

in favor in opposition

Date: Sept 29, 2009

(PLEASE PRINT)

Name: Rachel Tiven

Address: 333 West 84th Street

I represent: Immigration Equality

Address: 40 Exchange Place #1705

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 2172

in favor in opposition

Date: 9/29/2009

(PLEASE PRINT)

Name: Ethan Ganc

Address: 109 W 26th St #4A NYC

I represent: LGBT Rights Committee of NYC Bar

Address: 42 W 44th St NYC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 2172
 in favor in opposition

Date: 9/29/09

(PLEASE PRINT)

Name: Navin Mangalam
Address: 235 E. 40th St, 34C NY, NY 10016

I represent: myself

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ~~2172~~ Res. No. 2172
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Tomy Boggs
Address: 505 La Guardia Pl., NY, NY 10012

I represent: Lesbian, Gay, Bisexual + Transgender

Address: 208 W. 13th St. Community Center
NY, NY 10011

Please complete this card and return to the Sergeant-at-Arms