

10/15/08

Civil Union Review Commission - Testifier Portion

PUBLIC HEARING 1 (Pages 1 to 4)

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MEETING OF THE STATE OF NEW JERSEY DIVISION OF CIVIL RIGHTS
CIVIL UNION REVIEW COMMISSION

Wednesday, October 15, 2008
Trenton, New Jersey

BOARD MEMBERS PRESENT:

- J. FRANK VESPA-PAPALEO, Esquire, Chairman
- ESTHER NEVAREZ, Commissioner Liaison
- BARBARA G. ALLEN, Esquire, Ex-Officio Member
- ANNLYNNE BENSON
- REVEREND CHARLES BLUSTEIN-ORTMAN, Public Member
- BARBRA CASBAR-SIPERSTEIN, Public Member
- STEVEN GOLDSTEIN, Vice-Chairman
- STEPHEN HYLAND, Esquire, Secretary
- ERIN O'LEARY, Esquire, Ex-Officio Member
- MELISSA H. RAKSA, DAG, Ex-Officio Member

PRESENT VIA PHONE:

- JANSON WU
- JAMIE BOCCIA
- BETH ROBINSON, Esquire
- GINA PASTINO
- ROGER ASPERLING

HELD AT: 140 East Front Street
6th Floor
Trenton, New Jersey

REPORTED BY:

Renee Helmar, Shorthand Reporter

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MR. CHAIRMAN: Okay.

MR. WU: -- so I'm helping out.

MR. CHAIRMAN: No problem.

MR. WU: But I am in place of that client today.

MR. CHAIRMAN: Very good.

Well, you called at a perfect time. Let me get the spelling of your name, please.

MR. WU: Sure. It is Janson Wu, J-A-N-S-O-N, my last name is Wu, W-U.

MR. CHAIRMAN: Okay.

MR. WU: And I'm with Gay and Lesbian Advocates and Defenders.

MR. CHAIRMAN: Okay. Thank you, Mr. Wu. Welcome to our Commission Hearing, and we thank you for taking the time to be here, and we invite you to, please, update us on what just occurred in Connecticut.

MR. WU: Absolutely. Well, thank you, first, to the Commission, for inviting us to speak today about the victory that we just had in Connecticut.

The Kerrigan Case is the case which has been going on in GLAD since 2003, and we just received our opinion from the Connecticut

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TRANSCRIPT of the Civil Union

Review Commission, taken in the above-entitled matter before Renee Helmar, Shorthand Reporter and Notary Public of the State of New Jersey, taken at the offices of New Jersey Civil Rights, 6th Floor, Walter Lucas Commission Conference Room, 140 East Front Street, Trenton, New Jersey, on Wednesday, October 15, 2008, commencing at 1:15 p.m.

(Whereupon, the conference call was connected at approximately 1:45 p.m. and the following is testimony was transcribed.)

MR. GOLDSTEIN: Has somebody joined in?

MR. WU: Hi. This is Janson Wu from the Gay and Lesbian Advocates and Defenders.

MR. GOLDSTEIN: Hello.

MR. WU: Hi.

MR. CHAIRMAN: This is not Bennett?

MR. WU: No. Is this Steven?

MR. CHAIRMAN: No. This is Frank Vespa, the chair of the Commission. Steven is here, and our Commission has begun our meeting.

Are you here for Bennett?

MR. WU: I am. Ben sends his regrets. He has to leave a little early to go to Connecticut today --

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Supreme Court on Friday.

Holding that, not just the denial of the marriage, but, also, that the creation of a separate institution of civil union, doesn't meet the constitutional protections of equality, not in the State of Connecticut Constitution.

And, so, I was just going to just use my few minutes here, just to talk a little bit about the beginning of the opinion, which talked about the differences between marriage and civil unions, and the harms that creating a separate entering into institutions that same-sex couples does to those, to gain incidents in Connecticut.

But if there are questions about the rest of the decision as well, I welcome any questions about the decision in its entirety.

But I thought that I would just start, at least, with the court's discussion about the separate institutions of civil unions.

MR. CHAIRMAN: Okay. Go ahead.

MR. WU: So, the court actually began -- well, to give a little background, at the trial court level, the trial court actually found

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1 against us.

2 And the reason they found against us and
3 our plaintiffs, is that they found that the
4 plaintiffs were unable to demonstrate any legal
5 or actual harm due to the fact that the court,
6 the trial court, gone to the civil union,
7 provide the same legal rights under state law,
8 of the couples that had same-sex marriage.

9 And that the difference in labels, of
10 course, is merely as different in labels
11 affording to the marriages and civil unions.
12 And that wasn't enough to, kind of, show the
13 harm that is the trigger on -- the Constitution
14 allows us.

15 So, what the Supreme Court does, it starts
16 with this trial court's opinion and, basically,
17 shows that the opinion is faulty.

18 And in overruling the trial court's
19 decision, the court, in sense, says, that there
20 is a real difference between marriage and civil
21 unions.

22 And I am going to read a little bit from
23 the court, since they really put it the best.

24 But the court writes, "The legislature has
25 subjected persons to precisely the kind of

1 And it quotes from Goodridge and says,
2 "Marriage instills enormous, private and social
3 advantages on those who choose to marry. Civil
4 marriage is at one for people who want a
5 personal commitment to another human being in a
6 highly public celebration of the ideal
7 mutuality, companionship, intimacy, fidelity in
8 family.

9 Because it fulfills yearnings for
10 security, safe havens and connections that
11 expresses our autonomic humanities, civil
12 marriage is an esteemed institution."

13 The court moves on, though, and talks
14 about how it is not simply that the legislature
15 in Connecticut is treating gay people and
16 straight people differently, and it is not just
17 that they created separate institutions, but it
18 apparently encouraged marriage. But that we
19 have to also view that it is a contact in the
20 historical context of discrimination against
21 gay people in Connecticut, specifically here.

22 And, so, they write, "Especially in light
23 of the long and undisputed history of insidious
24 discrimination that gay persons have suffered,
25 we cannot discount the plaintiff's position

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1 differential treatment by creating a separate
2 legal classification for same-sex couples who,
3 like married couples, wish to have their
4 relationship recognized under the law."

5 The court goes on to say that it is not
6 just simply differential treatment, but it is
7 really treatment in creating by a separate
8 institution that is inferior to marriage.

9 And, so, the court then continues to talk
10 a little bit about why marriage and civil
11 unions aren't simply the same, but that
12 marriage is superior in many ways. It is the
13 way society views these institutions. That
14 marriage is more than some of this part, but it
15 is a convene institution of -- and parallel
16 confusion.

17 And, so, the court writes in this opinion,
18 "Marriage, therefore, is not merely shorthand,
19 for it just creates that of legal rights and
20 responsibilities, but it is one of the most
21 fundamental of human relationships."

22 And the court actually goes on and quotes
23 the Goodridge opinion in Massachusetts, which
24 granted the couples the right to marry in
25 Massachusetts.

1 that the legislature did establish a statutory
2 scheme consigning same-sex couples to civil
3 unions, has relegated them to an inferior
4 status, in that sense, declaring them to be
5 unworthy of the institution of marriage."

6 And, so, when you really look at what the
7 legislature has done, and look at that in a
8 conscious explanation, you can see that, it is
9 not simply access that an inferior institution
10 is created for same-sex couples, but that this
11 is an actual reflection of the historical
12 discrimination against gay and lesbian couples
13 and people.

14 The quote -- the court goes on to say,
15 "Ultimately, this message is that what same-sex
16 couples have, is not as important or as
17 different as, 'real marriage,' that such
18 relationships cannot have the name of
19 marriage."

20 One of the footnotes, actually, that I
21 wanted to highlight in this court's decision,
22 and I am having a hard time finding it,
23 actually talks about the harm that this
24 inferior status, the branding of inferiority on
25 these families have on the children of same-sex

1 parents.

2 And the court goes and writes, "The band
3 of same-sex marriage is likely to have, and
4 especially deleterious the effect of the
5 children of same-sex couples, a primary reason
6 why many same-sex couples wish to marry, so
7 that their children can feel secure in knowing
8 that their parents relationship are as solid
9 and as valued as the marital relationships as
10 their friends parents."

11 And that goes on to quote Goodridge again
12 in saying, "Excluding same-sex couples from
13 civil marriage will not make children of
14 opposite-sex marriages more secure. But it
15 does prevent children of the same-sex couples
16 from enjoying the immeasurable advantages that
17 blow from the assurances of same-sex family
18 structure, and the children will be reared,
19 educated and socialized."

20 So, really, kind of, taking the extension
21 of the harms to, you know, gay and lesbian
22 couples by the brand of superiority on -- to
23 the extent of the families with children.

24 So, the court goes on to say, you know, in
25 light of this history of discrimination as,

1 unions are inferior, you look at it in the
2 context of the history, that you cannot ignore
3 the inclusion that the civil unions are not
4 equal to marriages, and that they do harm the
5 gay and lesbians. And it does make it one of
6 those powerful pieces of the Connecticut
7 positions that you know are there.

8 I will stop there and see if anyone has
9 any questions about what I just talked about,
10 but also about the rest of the union in
11 general.

12 MR. HYLAND: Janson, this is Stephen
13 Hyland.

14 MR. WU: Hi.

15 MR. HYLAND: I didn't see in the opinion
16 that specific implementation date.

17 MR. WU: Yeah. So, what happens is that,
18 the court's opinion has to be published in the
19 reporter first, which will happen on the 28th,
20 I believe, and then the other side has 10 days
21 to file what is called, a Motion to Reconsider,
22 asking the court to look at their decision
23 again.

24 And after those 10 days, then the opinion
25 will be permanent, and then it will be re

1 "Due to the status of marriage in our society,
2 it is hardly surprising that civil unions are
3 perceived to be inferior to marriage.

4 Although marriage civil unions do embody
5 the same legal rights under our law, they are,
6 by no means, equal.

7 And as we have explained, the former
8 institution of transmitting a historical,
9 cultural and social significance, whereas the
10 latter most surely is not.

11 Even though the classifications traded
12 under our statutory scheme result in a type of
13 differential treatment that generally may be
14 characterized as symbolic or Neanderthal, this
15 court correctly has stated that such treatment,
16 nevertheless, is every bit as restricted as
17 needed exclusions, because it knows what it
18 feels in more tangible forms of discrimination
19 at least when, in the present case, the statute
20 feels out to be grouped, that is, historically,
21 has been the object of intolerance, ridicule or
22 worse."

23 So, in the end, the court really just
24 highlights the fact that, when you look at the
25 differential treatment and the fact that civil

1 managed. The trial court will enter a judgment
2 in favor of the plaintiff.

3 So, we're not exactly sure when, exactly,
4 that date will be, but we're targeting -- it
5 will probably be somewhere around November 8th,
6 where couples will finally be able to marry in
7 Connecticut.

8 REVEREND BLUSTEIN-ORTMAN: Janson, this is
9 Charley Ortman.

10 I was wondering if the court's decision to
11 review special requests made, is that review
12 based solely on technical issues, or merits of
13 the case?

14 MR. WU: It can be on many different
15 bases, including the merits of the case.

16 However, we think that is unlikely
17 considering that there is, you know, a majority
18 of justices, you know, agreeing and put a lot
19 of thought and time into their decisions and
20 opinions, that they would agree to reconsider
21 the decision.

22 MR. HYLAND: I understand -- this is
23 Stephen Hyland again -- I understand that the
24 legislature is going to take up a bill to make
25 the necessary changes in the marriage laws in

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1 Connecticut to accommodate -- or carry out the
2 decision.

3 MR. WU: Um-hum. You know, I haven't
4 heard of any firm plans for any type of bill to
5 be introduced into legislature.

6 We do believe that the court opinion will
7 go -- should go into affect regardless of
8 whether the legislature -- regardless of what
9 the legislature does, because the exclusions
10 from same-sex couples from marriage is now
11 constitutional.

12 With that being said, of course there is
13 certain things that you will have to, maybe,
14 want to clean up, such as the fact that there
15 is -- what is called a DOMA, and there is gay
16 laws defining that between a man and a woman.
17 That is the law that we think you guys should
18 probably be deleted from, the statute at this
19 point.

20 The legislation may want to address the
21 question, the unanswered question right now of,
22 what happens to civil union couples now; right,
23 will automatically be married, or will they
24 have to go and be married?

5 We believe that they should -- that they

1 status to the other so that you have that kind
2 of continuity, and look back to a specific
3 date.

4 MR. WU: And just to be clear, I wasn't
5 saying that these things, that the conversion
6 is the right way for Connecticut to go.

7 And we actually do believe that marriages
8 are different from civil unions, and let --
9 couples and civil unions right now will have
10 to, you know, decide whether they want to get
11 married, and then go through the process of
12 getting married, and their marriage will start
13 on that date.

14 With regards to your first question about
15 alimony and things like that, you know, there
16 is no specific solution. Is that -- what date
17 do you look back to with regards to those
18 determinations?

19 At least in Massachusetts, the way that it
20 has been happening is, that there is a statute
21 that a lot of the court's equitable powers to
22 determine -- to look at the entire length of
23 the relationship when deciding things like
24 property division and alimony, things like
25 that.

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1 will each go and actually marry, because they
2 won't be married just because you entered into
3 civil unions. That doesn't mean that you
4 aren't married.

5 And, so, there may be some questions about
6 that, that the legislature may want to address.

7 But, otherwise, we think that, you know,
8 once the court's opinion is reported and then
9 it is remanded to trial court, the trial court
10 enters an order that the state will begin
11 licensing marriages, marriages to same-sex
12 couples.

13 MR. HYLAND: This is Stephen Hyland again.

14 I have been wrestling with the issue,
15 lately, of duration of a relationship in terms
16 of alimony and property dispositions and all.
17 I have been looking at the Connecticut laws,
18 marriage laws in that regard.

19 So, I am a little concerned when you are
20 saying that you're considering whether or not
21 couples should be required to enter into a
22 marriage, or whether there is some other
23 mechanisms, such as a conversion similar to
24 what was done in California when they upgraded
25 their domestic partnership law from the one

1 And, so, they are actually able to, you
2 know, not just look at the start of the
3 marriage date, you know, because the couple may
4 have been together 10 years before that, but
5 not been able to marry.

6 I don't know, actually, if there is a
7 statute or law, common law, in Connecticut, but
8 that is something that I can definitely find
9 out and report back to the Commission if that
10 is what you want.

11 MR. HYLAND: I actually was looking at
12 that this morning. There is specific law, case
13 law in Connecticut that says that periods of
14 cohabitation cannot be taken into
15 consideration.

16 MR. WU: Okay.

17 MR. HYLAND: So, in the context of
18 marriage, if a couple had been living together
19 for 10 years and then married, the court could
20 not take into consideration the period prior to
21 the marriage for purposes of alimony.

22 MR. WU: Well, for purposes -- well, they
23 could, at least, look to -- they could look to
24 the beginning of the civil union dates, and the
25 civil union should be treated the same as

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1 marriages under Connecticut law.
 2 Prior to the civil union date, I guess
 3 that would be an open question.
 4 MR. HYLAND: Sure.
 5 MR. CHAIRMAN: Mr. Wu, I have a question;
 6 this is Frank Vespa.
 7 We have only five minutes left --
 8 MR. WU: Sure.
 9 MR. CHAIRMAN: -- and another speaker is
 10 going to call in.
 11 In the interest of thoroughness, can you
 12 just, briefly, tell us what the various
 13 dissenting decisions stated?
 14 MR. WU: Sure. And I will -- it is a long
 15 decision, so I don't know the second decisions
 16 as well, but the main dissent decision came
 17 from Borden, Justice Borden, and he really --
 18 he took issue with Justice Palmer, who is the
 19 author of the majority of the opinion. He took
 20 difference with Palmer with regard to the
 21 amount of scrutiny that classifications of
 22 sexual orientation should receive from the
 23 court.
 24 So, in the Constitutional Equal Protection
 25 Analysis, the court will apply, either, a

1 He talks a lot about how he disagrees with
 2 that intermediate level.
 3 MR. HYLAND: Was it that, or was it that
 4 he didn't feel that there was -- that they
 5 were -- they had met the standard, the quasi of
 6 that class?
 7 MR. WU: Those are the same things. They
 8 each enter into general scrutiny, is the same
 9 as that class, but that wasn't the main
 10 disagreement.
 11 With that being said, I think what is
 12 important to know is that, all seven justices
 13 agreed that the trial court was wrong in
 14 deciding that there was -- that there wasn't
 15 any differential treatment.
 16 All seven justices do say that there is
 17 differential treatment here, but then they just
 18 disagree as to what level of scrutiny that the
 19 court should give to that differential
 20 treatment.
 21 MR. CHAIRMAN: Okay.
 22 MR. HYLAND: Were the dissents published
 23 yet? I have not -- I have seen --
 24 MR. WU: They are online on the court Web
 25 site, or you can go online under our Web site,

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1 differential standard or a basic standard or
 2 they will apply an intermediate standard of
 3 scrutiny, or they will play a strict scrutiny,
 4 but they really look closely at what the
 5 legislature does with some amount of suspicion,
 6 because it is usually based upon something, as
 7 race, which the court has decided it shouldn't
 8 normally have any relevance, and much later
 9 position.
 10 And, so, what the majority opinion did
 11 was, it found that sexual orientation, at the
 12 very least, was deserving of intermediate
 13 scrutiny, where the court would look at this
 14 more closely with a rational basis reviewed.
 15 And they looked -- and they made lots of
 16 -- they went through a very long analysis
 17 looking at analogies to gender protection under
 18 the U.S. Constitution and the Supreme Court
 19 Case Law in that area, finding complete
 20 scrutiny for complications based upon gender.
 21 And, so, that was the basis of Palmer's
 22 ruling in this case.
 23 And what Justice Borden does, and he's
 24 made his opinion, dissenting opinion is the
 25 main one.

1 which is www.glad.org.
 2 MR. HYLAND: Thank you.
 3 MR. WU: All right.
 4 MR. GOLDSTEIN: Janson, it is Steven
 5 Goldstein, I just wanted to thank you for
 6 calling in.
 7 MR. WU: All right. Thank you for the
 8 opportunity, again, and if you have any
 9 questions, let us know.
 10 MR. GOLDSTEIN: Thank you.
 11 MR. CHAIRMAN: Thank you. Have a good
 12 day.
 13 MR. WU: Bye.
 14 MR. CHAIRMAN: Okay. Do we have somebody
 15 that just called in?
 16 MS. BOCCIA: Yes.
 17 MR. CHAIRMAN: Jamie?
 18 MS. BOCCIA: Jamie Boccia.
 19 MR. CHAIRMAN: Hi, Jamie, how are you;
 20 this is Frank Vespa-Papaleo, the chair of the
 21 Commission. And I thank you for calling in to
 22 us.
 23 We are here having a meeting, a public
 24 meeting of the New Jersey Civil Union Review
 25 Commission, which is interested in finding out

1 your experiences of having been married in
 2 Massachusetts, and your experiences as the
 3 result of New Jersey Civil Union Law.
 4 So, please, introduce yourself, tell us
 5 where you are from, and give us your story.
 6 MS. BOCCIA: Sure. My name is Jamie
 7 Boccia; I live in a small town in Ortley Beach,
 8 which is part of Toms River Township, now, New
 9 Jersey.
 10 And in August, August 12th actually, I was
 11 married in Massachusetts with my partner, Kim
 12 Doland, and we had it performed in
 13 Massachusetts.
 14 But when we came back about two weeks
 15 later, we went downtown to Toms River, and the
 16 way that it was explained to me by another
 17 friend who actually had a Civil Union done in
 18 New Jersey said, you just have to go to the
 19 town that you live in, and then you get the
 20 reaffirmation papers, and they just fill it out
 21 and you are recognized in New Jersey for civil
 22 union, so we thought.
 23 So, we went down there. And when we
 24 showed the paperwork of our marriage, they
 25 wouldn't accept it.

1 MR. CHAIRMAN: -- in their municipal
 2 office?
 3 MS. BOCCIA: That's correct.
 4 MR. CHAIRMAN: And it was the office that
 5 usually handles marriage licenses and all of
 6 that?
 7 MS. BOCCIA: Absolutely. Yes.
 8 MR. CHAIRMAN: And it was actually an
 9 employee of the town that told you this?
 10 MS. BOCCIA: That's correct.
 11 MR. CHAIRMAN: Okay. And was any -- did
 12 you speak to anyone higher up there; anyone;
 13 the manager of the town, the administrator?
 14 MS. BOCCIA: No. I figure, at that point,
 15 she, kind of, made it clear that, you know,
 16 this is the law, this is the way it is read
 17 and, you know, you have to have a civil union
 18 to a civil union, and that is all they would
 19 accept, you know, point blank. That was it.
 20 MR. CHAIRMAN: So, what is your status
 21 right now? Has the paperwork now been cleared
 22 up --
 23 MS. BOCCIA: No.
 24 MR. CHAIRMAN: -- or are you still in the
 25 same status?

1 And besides being embarrassing and
 2 frustrating, I was told that I would have to do
 3 it all over again. I would actually have to
 4 have a civil union, because the marriage
 5 wouldn't be recognized.
 6 And as I explained to Steven, in the
 7 hierarchy of marriage, you would think that a
 8 marriage would be above the civil union.
 9 They don't downgrade it, but somehow they
 10 saw it, from a civil union to a civil union,
 11 and the marriage would be recognized. And they
 12 basically dismissed us and told us that if we
 13 wanted to have this, we needed to have a civil
 14 union.
 15 So, you know, it was frustrating. I tried
 16 to contact whoever I could get a hold of.
 17 Actually, I got a hold of Steven, who
 18 explained to me that you were having this
 19 meeting today.
 20 It is a tough situation to go through, and
 21 it is frustrating, at best.
 22 MR. CHAIRMAN: And, Jamie, do you have --
 23 this is Frank Vespa.
 24 So, this was the Township of Toms River --
 25 MS. BOCCIA: That's correct.

1 MS. BOCCIA: Same status. They won't
 2 recognize it.
 3 MR. CHAIRMAN: Okay. Yeah. Let me just
 4 -- there are two things just by way of
 5 information.
 6 Number one, no one, whether married or
 7 civil union, whether heterosexual or gay or
 8 lesbian, is required to reaffirm their marriage
 9 from another state.
 10 Okay. That is something that you can do
 11 if you want to, but you are not required to
 12 reaffirm your marriage, okay?
 13 But, secondarily, if you wish to file a
 14 complaint with the Division on Civil Rights,
 15 which is the agency that I head up, please feel
 16 free to give me a call and we will be happy to
 17 investigate that as part of our law enforcement
 18 authority. That is something that we could do
 19 for you as well, okay?
 20 MS. BOCCIA: I appreciate it.
 21 MR. CHAIRMAN: And our number here is --
 22 my number is 609-984-3100.
 23 MR. HYLAND: This is Stephen Hyland.
 24 Just to clarify, because this is an
 25 opinion from the attorney general, that the

1 marriage is at least recognized as a civil
2 union.

3 So, to clarify what Frank was saying, you
4 do not have I go through any additional
5 procedure to be recognized at least as a civil
6 union in New Jersey.

7 MS. BOCCIA: Okay. And I'm sorry, I
8 missed your name.

9 MR. HYLAND: Stephen Hyland.

10 MS. BOCCIA: Okay.

11 MR. CHAIRMAN: Okay. But your testimony
12 is, that you desired a reaffirmation of your
13 marriage, and there was confusion at the
14 municipal governmental office about what, you
15 know, what you were supposed to do, and they
16 told you, you need to actually go ahead and
17 enter into a new civil union in order to take
18 care of the paperwork?

19 MS. BOCCIA: Correct. That we would have
20 to do it all over again --

21 MR. CHAIRMAN: All over again.

22 MS. BOCCIA: -- but as a civil union in
23 New Jersey.

24 MR. CHAIRMAN: Okay.

25 MS. BOCCIA: And that they weren't going

1 And we actually have somebody else on the
2 line as well.

3 And, Jamie, I really appreciate you
4 calling in and taking the time to share that
5 with us.

6 MS. BOCCIA: No problem. Thank you.

7 MR. CHAIRMAN: Okay. Thank you, and have
8 a great day. Take care.

9 MR. GOLDSTEIN: Thank you, Jamie.

10 MS. BOCCIA: Bye.

11 MR. CHAIRMAN: Beth, are you on the phone?

12 MS. ROBINSON: I am.

13 MR. CHAIRMAN: Hello, again. Welcome back
14 to the Civil Review Commission of New Jersey.

15 MS. ROBINSON: Thank you.

16 MR. CHAIRMAN: I remember that you
17 testified at our very first public hearing in
18 New Brunswick, New Jersey, in Vermont.

19 MS. ROBINSON: I'm sure that you remember
20 that the person who was doing the signing
21 couldn't keep up with me.

22 MR. CHAIRMAN: Yes. Well, we don't have a
23 signer today, but we do have a court reporter,
24 so you also have to -- we are asking everyone
25 to, please, speak slow enough so that we can

1 to recognize the marriage in Massachusetts.

2 MR. CHAIRMAN: Okay.

3 MS. BOCCIA: That is why we were getting
4 the affirmation papers, because of the
5 out-of-state situation.

6 MR. CHAIRMAN: Okay.

7 MR. HYLAND: That was the only basis? In
8 other words, it wasn't a requirement from an
9 employer or something like that?

10 MS. BOCCIA: No. What you have to do with
11 an employer now, is, obviously, you have to
12 show from the State of New Jersey, not from
13 Massachusetts, that it is recognized in the
14 State of New Jersey.

15 MR. HYLAND: That's --

16 MS. BOCCIA: They ask for that at where I
17 work, anyway.

18 MR. CHAIRMAN: Okay. We are not going to
19 get into discussion about what they should have
20 done, this is just a report about what actually
21 happened to you.

22 If you have any further information,
23 please feel free to share it with us, either
24 here or as a follow up, okay; we would be very
25 interested in hearing your experience.

1 get the full record.

2 REVEREND BLUSTEIN-ORTMAN: 15
3 miles-per-hour.

4 MR. CHAIRMAN: Right. And, Beth, I know
5 that you are an attorney in Vermont and very
6 active, and you have testified before us and
7 also have testified at the Vermont Commission
8 on Family Recognition and Protection.

9 So, thank you for being here. And if you
10 wouldn't mind sharing with us the results of,
11 sort of, since the last time that we met.

12 MS. ROBINSON: Sure. And I think that I
13 am going to talk a little bit about the Vermont
14 position --

15 MR. CHAIRMAN: Yes.

16 MS. ROBINSON: -- and its work.

17 It was created in July of '07, by house
18 and senate leaders in Vermont, and it consisted
19 of 11 members, including 5 former legislators,
20 3 Republican/Democratic, 2 purist legislators,
21 a college president, a former governor, a
22 business owner and an Episcopal priest.

23 And the Commission, its mandate was not to
24 come back and make a distinction from your
25 organization. The specific was not to come

1 back and make a substitutive recommendation, up
2 or down, on the ultimate question, but,
3 instead, was to take public testimony around
4 the state, focusing on a handful of defining
5 issues. What's really to report back to the
6 legislature, what Vermonters are saying about
7 these issues.

8 The Commission did hold eight public
9 hearings around the state. And, in addition,
10 held a hearing that was opened to the public,
11 but featured legal experts that provided
12 testimony.

13 At the public hearing, the public
14 testimony was intended to right from 80 to 200,
15 and they were held at sites widely scattered
16 throughout the states, primarily in more rural
17 areas, if the Commission desired to
18 particularly tap into the more rural parts of
19 the state.

20 They received over 100 written comments,
21 and then posted a report in that, it summarized
22 the testimony that they heard across the
23 spectrum into, really, a dozen broad states.

24 And it did make nine findings. Again,
25 avoiding the ultimate question, per its

1 lives, and the lives of their children and
2 families.

3 So, clearly, the Commission recognized
4 these practical obstacles.

5 It is this finding, the Commission looked
6 specifically at the issue of reportability, and
7 it talks not just about, sort of, the formal
8 legal analysis that apply when people travel
9 state-to-state, but the practical realities.

10 And the Commission found that the hurdles
11 reportability of civil unions could be, either,
12 a minor or major inconvenience, but it could
13 also present more dire consequences with the
14 health and welfare of our fundamental legal
15 rights of a member of the civil union couples
16 in this state.

17 The sixth finding is quite long, so I will
18 let you read it to yourselves, but addressing
19 the, sort of, the constant equality more
20 broadly, the Commission did find, and this is
21 towards the end of that Factfinding, that
22 providing statutory access to marriage would be
23 a clearer and more direct statement of full
24 equality by the state. A statement of full
25 inclusion of its gay and lesbian residents in

1 mandate.

2 And I don't know whether you want me to go
3 through some of the highlights of those
4 findings or --

5 MR. CHAIRMAN: Yes. Please. We have a
6 copy of the report. It is in each of our
7 packets, but if you wouldn't mind just quickly
8 going over those findings.

9 It is on Pages 26 and 27 of the report.

10 MS. ROBINSON: Yes. The historic finding
11 was one that was one of those reports, because
12 it really addressed -- one of the Commission
13 charges was to explore the practical obstacles
14 faceted by couples joined in civil union and
15 compared with marriage.

16 And the Commission found that many
17 testified that they were being denied the whole
18 promise of Act 91, which is the statute that
19 created our Civil Union Law.

20 They described -- encountered the whole
21 variety of instances where they found the
22 promise of equality to be unfulfilled.
23 Convoluting deficits demonstrate significant
24 deficits in the Civil Union Law with clear and
25 financial economic and social impact on their

1 the bundle of rights, obligations, protections
2 and responsibilities flowing from the status of
3 civil marriage.

4 It actually refers to an appendix, which
5 was a legal analysis that I had drafted to get
6 into the specifics, but are, sort of -- refers
7 to the broader concept of its findings.

8 So, over all, you know, again,
9 understanding that it wasn't asked to offer
10 opinion of the ultimate question.

11 The Commission clearly found that the goal
12 of equality that was a part of our Civil Union
13 Law at the time that we enacted it, wasn't
14 fully satisfied by that goal -- by that law.

15 And I think that was the Trust Report,
16 and, ultimately, our legislature will have an
17 opportunity to act on that in the coming
18 session.

19 MR. CHAIRMAN: Okay. Thank you, Beth.
20 Any questions?

21 MS. RAKSA: Yes. I have a question.

22 Hi, Beth, my name is Melissa Raksa. I had
23 questions about some of the further
24 recommendations --

25 MS. ROBINSON: Yes.

1 MS. RAKSA: -- that you have for further
2 studies.

3 First, is there something that the
4 Commission is going to do, or something that
5 you are asking the legislature to take a look
6 at?

7 MS. ROBINSON: No. The Commission is
8 done.

9 MS. RAKSA: Okay.

10 MS. ROBINSON: Its work is with the
11 publication of this work.

12 These were some of the questions that
13 Commissioners thought would be worthy of
14 further consideration by the legislature in the
15 coming session.

16 MR. HYLAND: Beth, this is Stephen Hyland.

17 I just need to know, are the appendices
18 available somewhere?

19 MS. ROBINSON: I believe that they are
20 available online; if they are not, I can
21 certainly make them available.

22 MR. HYLAND: Could you, perhaps, forward
23 them to Frank?

24 MS. ROBINSON: Yeah. What is the E-mail
25 address?

1 It held one here, in Bentwood, focused on
2 legal scholars and invited residents of Vermont
3 Law School. So, it was opened to the public,
4 but it wasn't public testimony.

5 And then it had about a hundred plus
6 written to the Commission that it evaluated,
7 included in its report.

8 MS. O'LEARY: So, the one hearing was a
9 separate date in where it was by invitation to
10 testify regarding the legal issues?

11 MS. ROBINSON: Exactly. There were three
12 Vermont Law School professors who represented
13 something of a range of views. And then there
14 was a gentleman from -- named Monty Stewart,
15 from out of state that was invited to come in,
16 because he was a leading advocate for the
17 Freedom to Marry.

18 MS. O'LEARY: Okay. Thank you.

19 REVEREND BLUSTEIN-ORTMAN: Beth, this is
20 Reverend Charley Ortman.

21 It was six months that the report was
22 issued, and I'm just wondering if there has
23 been any legislation that has been instituted
24 in response to the report, or if there has been
25 any pipeline --

1 MR. CHAIRMAN: It is -- I will get you
2 that information offline, it is a very lengthy
3 E-mail address.

4 MR. HYLAND: He is having a senior moment.

5 MR. CHAIRMAN: I am. Yeah. Because what
6 I printed out was just the report without the
7 appendices. So, I will follow up with you and
8 get that.

9 MS. ROBINSON: Okay.

10 MS. O'LEARY: Frank, I have a question.

11 MR. CHAIRMAN: Yes.

12 MS. O'LEARY: Hi; Erin O'Leary, and I am a
13 Commissioner.

14 I have a question about what you said your
15 group did. You said that you had several
16 public hearings as well as, what else?

17 MS. ROBINSON: Well, to be fair, I am not
18 a commissioner.

19 MS. O'LEARY: I'm sorry.

20 MS. ROBINSON: I testified at these
21 hearings, but I am not on the Vermont's
22 Commission.

23 What the Commission did was, it held eight
24 hearings around the state for members of the
25 public to come and testify.

1 MS. ROBINSON: Our legislature adjourns in
2 May, for the year.

3 So, this report came out about a week
4 before the legislature ended its session for
5 the year.

6 So, the answer to your question is, no,
7 but that is an explanation to why I fully
8 expect that, you know, nine will be back in the
9 legislature looking at the Commissioner's
10 report and talking about where to go from
11 there.

12 REVEREND BLUSTEIN-ORTMAN: Thank you.

13 MR. HYLAND: Beth, this is Steve Hyland,
14 again.

15 Did the Commission look at any, sort of,
16 transition from civil union to marriage for
17 couples who are already in the civil union?

18 MS. ROBINSON: No. In fact, one of the
19 questions or recommendations that it made was,
20 that that was an area for further study.

21 In Vermont -- this is on Page 28. If
22 Vermont were to select marriage, or Vermont gay
23 and lesbian couples, how should this be
24 addressed if any civil union license or
25 licenses were already issued?

1 That was not part of -- I don't recall any
 2 testimony with information on that subject. I
 3 think they realized it would be something of an
 4 inspiration.
 5 MR. HYLAND: And did they, at all, address
 6 the reciprocal beneficiary status? I don't
 7 think there are any out there, are there?
 8 MS. ROBINSON: There is a root to typical
 9 beneficiary status. I am not aware that
 10 anybody has availed themselves, but there is
 11 typical beneficiary options. And it was not
 12 something that they addressed in their report.
 13 MR. CHAIRMAN: Okay. Any other questions?
 14 (No response.)
 15 MR. CHAIRMAN: Okay. Beth, anything
 16 further that you would like to add?
 17 MS. ROBINSON: No. I appreciate the hard
 18 work that all of you are doing there in New
 19 Jersey, and I appreciate the opportunity to
 20 talk to you.
 21 MR. CHAIRMAN: Thank you very much, and
 22 please accept our appreciation for more of your
 23 participation throughout the whole process.
 24 And we will, hopefully, be finishing this
 25 hearing in a little while, and, you know, in

1 begin, is there anyone else that just joined us
 2 on the line? No?
 3 MR. ASPERLING: This is Roger Asperling.
 4 MR. CHAIRMAN: Hi, Roger, we are -- can
 5 you hold on a few more minutes?
 6 MR. ASPERLING: Sure.
 7 MR. CHAIRMAN: Okay. Thank you. You are
 8 welcome to listen in. We are not ready for
 9 your testimony yet.
 10 MR. ASPERLING: Okay. Great.
 11 MR. CHAIRMAN: Okay. Thank you.
 12 Okay, Gina, this is Frank Vespa, Chair of
 13 the Commission, my vice chair is Steven
 14 Goldstein, is here as well as most of our
 15 members of our Commission, to take testimony
 16 about, you know, your experiences.
 17 I know that you had previously testified,
 18 and we would like to get an update from you, as
 19 to your experiences with the Civil Union Law.
 20 MS. PASTINO: Okay. I want to say two
 21 things before I start.
 22 First of all, thank you for giving me the
 23 opportunity to testify again. I appreciate it,
 24 although I am disappointed that it still
 25 requires testimony.

1 the coming bit, we could have, also, a final
 2 report as well.
 3 MS. ROBINSON: Great. Look forward to it.
 4 MR. CHAIRMAN: Thank you, Beth.
 5 MR. GOLDSTEIN: Thank you, Beth.
 6 REVEREND BLUSTEIN-ORTMAN: From where I
 7 was sitting, that was a very reasonable
 8 rate-of-speech.
 9 MR. CHAIRMAN: And that is coming from a
 10 minister, so you are in good hands.
 11 Okay. All right. Let's move forward.
 12 Gina Pastino.
 13 MS. PASTINO: Yes.
 14 MR. CHAIRMAN: You are on. Welcome.
 15 MS. PASTINO: Thank you.
 16 MR. GOLDSTEIN: Naomi, are you on, too?
 17 MS. PASTINO: Naomi is stuck in traffic
 18 and not here yet. I just spoke with her, and
 19 we were talking about, maybe, after I get this
 20 testimony, we would put everything in writing
 21 --
 22 MR. CHAIRMAN: Okay.
 23 MS. PASTINO: -- if she doesn't make it
 24 here in time.
 25 MR. CHAIRMAN: Very good. Before you

1 And I also wanted to say, and I wanted the
 2 record to reflect, that I consider myself to be
 3 under oath right now. So, anything that I say,
 4 I am swearing to be the truth, and nothing but
 5 the truth.
 6 So, as you know, my partner Naomi and I,
 7 we have been together for over 14 years now.
 8 We have two children, a five year old and a two
 9 year old.
 10 And we testified before the Commission in
 11 October of 2007, about some of the difficulties
 12 we've had in hospital settings when it comes to
 13 getting recognized for our civil union.
 14 And we were hoping that, as time went on,
 15 that, you know, we would be recognized just
 16 like marriage between heterosexual couples.
 17 And what we had described to you, wouldn't
 18 happen again and, unfortunately, it has.
 19 And -- so, this is what happened to us
 20 over the summer. I had a very -- I had a
 21 life-threatening illness. I had viral
 22 meningitis and encephalitis back in May and was
 23 hospitalized for it.
 24 And while I was recovering at home over
 25 the summer, I had a very bad reaction to one of

1 the drugs that I was taking at the time.

2 And I called my doctor, who is based out
3 of Overlook Hospital, and he said that you have
4 to get to the nearest emergency room
5 immediately, because the risk was fatal cardiac
6 arrhythmia and convulsions.

7 So, it was the summertime and the kids
8 were home with Naomi and I, and so I had a
9 friend in town drive me to the emergency room,
10 because Naomi had to stay and wait at home with
11 the kids until the babysitter could arrive.

12 So, I went to the hospital; I checked in
13 and I gave them all of my relative information,
14 including that fact that, you know, Naomi and I
15 are civil union partners, please give her all
16 of the information when she does arrive, here
17 is my consent. All that stuff when you check
18 in at triage.

19 By the time that Naomi arrived at the
20 hospital, I was in a state where I really
21 couldn't talk to her. They were treating me
22 with anti-convulsions and other kinds of
23 medication where I was vomiting and stuff.

24 So, I really couldn't tell her what was
25 happening to me, what any of the test results

1 And, you know, he finally gave her the
2 information after a long discussion.

3 And, as a matter of fact, he gave her the
4 information in the hallway, in front of a bunch
5 of people. It wasn't privately, which, if he
6 was concerned about getting consent to give
7 information about my health, he didn't seem to
8 be worried about all the people that happened
9 to be milling about the nurses station at that
10 time.

11 And when he finally gave her the
12 information, he used a lot of medical jargon,
13 and he spoke to her in a way that was not easy
14 for her to understand.

15 She is a smart woman, but she is not a
16 physician, and he was giving her, you know,
17 medical terminology that she didn't necessarily
18 understand.

19 So, you know, once again, we were faced
20 with an emergency medical crisis that was
21 potentially life threatening, and here she is
22 having to, you know, justify who we are to each
23 other.

24 When you say our experience has
25 universally been, that if you say to somebody

1 were.

2 So, she asked the attending emergency room
3 physician to tell her what was happening with
4 me. And he said, who are you? And she said,
5 well, I'm her partner. And he said, I can't
6 give you any information, you know, I need her
7 consent. And I wasn't in any state of mind to
8 give my consent, even though it really
9 shouldn't have been necessary anyway. He said,
10 I can only give information out to family
11 members.

12 And, so, she started down the road of,
13 well, this is my civil union partner, we're,
14 you know, together, you know, you really need
15 to give me this information, I am entitled to
16 it.

17 And she had to explain to him what civil
18 unions were. And he wasn't, you know, quite
19 sure at first. He was reluctant to give my
20 information.

21 He did not understand, and hadn't heard of
22 civil unions before.

23 So, Naomi is, fortunately, a lawyer and
24 can actually talk to him pretty intelligently
25 about what the law means.

1 that you're, you know, in a civil union, they
2 go, what's that? And you have to say, well, we
3 are supposed to have the same rights as, you
4 know, the rights of heterosexual couples. And
5 they come back, but you are not married. And
6 you have to go, yes, I am. I am entitled to
7 this, that and the other thing.

8 We don't even know everything that we're
9 entitled to.

10 So, it is just, you know, I mean, I'm sure
11 that you can understand our frustrations over,
12 you know, having to, kind of, you know, explain
13 who we are to people in these types of
14 situations. We shouldn't be worried about
15 that. We should be worried about, am I going
16 to live through this experience?

17 And, you know, if Naomi were able to walk
18 in, or if I was able to walk in and say, this
19 is my spouse, and we are married, people would
20 instantly know the significance of that
21 relationship. They may not like it, but at
22 least everybody has a frame of reference in
23 this society regarding the term marriage and
24 spouse and husband and wife. Everybody knows
25 what that means.

1 So, you know, it's just -- we seem -- we
2 happen to be large consumers of health care. I
3 am a disabled person so, you know, I have,
4 unfortunately, found myself in, you know, these
5 types of emergency situations.

6 But I also, as I've testified last fall,
7 it happens when I am dealing with my kids, too.

8 And it is just, you know -- I don't want
9 to have to take the time out to explain to some
10 uninformed person what the laws are in New
11 Jersey and my relationship to Naomi.

12 I want to be able to walk in and say,
13 we're married, she is my spouse, I am,
14 therefore, entitled to, you know, what is
15 automatically given to heterosexual couples.

16 MR. CHAIRMAN: Well, thank you, Gina. I
17 really -- I apologize that you have to sit
18 here, in a public hearing, on the record with a
19 court reporter, having to divulge your
20 innermost medical information that most people
21 in the State of New Jersey would never want to
22 share with others.

23 And, so, I apologize that you were put
24 into that situation, having to share that kind
25 of stuff with us.

1 people, and they should have done so.

2 MS. PASTINO: Yeah, you know, we actually
3 had talked about writing a letter to them, and,
4 you know, it was just, you know -- we had
5 given, you know, my illness, and it was
6 actually the third time that I was hospitalized
7 this year, alone.

8 And, so, we just ran out of energy --

9 MR. HYLAND: I know.

10 MS. PASTINO: -- to, kind of, fight that
11 fight.

12 It is a hospital I don't -- I usually go
13 to Overlook Hospital. I don't usually go to
14 this hospital.

15 But, no, it is a good point, we should
16 have, but we are tired. Tired of having to
17 always fight to get what is legally -- what we
18 are legally entitled to. It is exhausting.

19 MR. CHAIRMAN: So, what you are saying,
20 Gina --

21 MS. PASTINO: You are in this, kind of,
22 altered health state that, you know -- and
23 having to deal with health issues. It is just
24 one more thing to worry about.

25 MR. CHAIRMAN: Well, Gina, it sounds like

1 So, thank you for really doing that for
2 us, and for sharing this very, very troublesome
3 situation that occurred to you.

4 MS. PASTINO: Thank you. I actually
5 haven't looked at it that way before, but you
6 are right. It is, you know, it is very
7 personal information that, you know, not
8 everybody knows about me, although they will
9 now.

10 But that is how important this is to me --

11 MR. CHAIRMAN: Right.

12 MS. PASTINO: -- that I am willing to put
13 this kind of personal information out there for
14 anybody to read. It's just, you know, I don't
15 want to have to keep reliving this awful, awful
16 experience, you know?

17 MR. HYLAND: Gina, this is Stephen Hyland.
18 I appreciate your having to go through this,
19 and also testifying on this.

20 I do have a question as to whether or not,
21 either, you or Naomi has raised the problem
22 that you had with the patient advocate at the
23 hospital?

24 It seems that a moment when the hospital
25 fell down, because they had not educated

1 what you are saying is, if you were able to --
2 if you and Naomi were married and could
3 actually call each other spouses legally, that
4 you could have both focused on dealing with
5 your life-threatening emergency medical
6 situation, rather than become, you know, a
7 legal advocate in the hospital when you are
8 sick.

9 MS. PASTINO: Exactly. That is exactly
10 true.

11 MR. CHAIRMAN: You really brought it home,
12 at least to me, with this, because this really
13 is -- it sounds like a real emergency situation
14 where, you know, someone could have perished
15 because of delays caused by words, by language.

16 MS. PASTINO: Right.

17 MR. CHAIRMAN: And that is really pretty
18 extreme.

19 Any other questions? Reverend Ortman?

20 REVEREND BLUSTEIN-ORTMAN: Naomi (sic), my
21 name is Charley Ortman.

22 MR. CHAIRMAN: Gina.

23 REVEREND BLUSTEIN-ORTMAN: I'm sorry,
24 Gina. And I'm sorry that you had to go through
25 all of this, and, also, sorry that I'm

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1 confused, because I thought that you said that
2 it did take place at Overlook, and, so --

3 MS. PASTINO: No. It took place at
4 Mountainside Hospital.

5 REVEREND BLUSTEIN-ORTMAN: Mountainside.

6 MS. PASTINO: Yeah. I normally go to
7 Overlook Hospital, because that is where my
8 doctor is out of, my primary care physician is
9 at Overlook, but because of the
10 life-threatening nature of it, I was declined
11 to drive to Overlook, I had to go to
12 Mountainside.

13 REVEREND BLUSTEIN-ORTMAN: Okay.

14 MR. CHAIRMAN: Gina --

15 MS. PASTINO: If something like this is
16 going to happen in a hospital that is right in,
17 you know, technically, it is in Glenwood, but,
18 you know, everybody from Montclair goes there.

19 REVEREND BLUSTEIN-ORTMAN: Four-fifths of
20 it goes there.

21 MS. PASTINO: Right. So, you know, it is
22 just heartening in that regard, you know, you
23 are in a community where, you know, you have a
24 lot of same-sex couples with families, you
25 know, with children.

1 But it wasn't a life-threatening situation
2 as it was this past summer.

3 MS. CASBAR SIPERSTEIN: But it was
4 disrespectful.

5 MS. PASTINO: It is.

6 MR. CHAIRMAN: Gina, this is Frank Vespa.

7 I urge you -- I hope that this Commission
8 will take to heart what you have testified
9 about today and, obviously, previously. We
10 take everyone's testimony very seriously.

11 I just -- I'm just going to say, your
12 testimony today, you know, brings tears to my
13 eyes, this kind of situation. I mean, it is
14 absolutely despicable. People should be
15 ashamed of themselves that this is still
16 happening here.

17 And that is why, you know, this Commission
18 is here, and we take our job very seriously.
19 And we go through this very thoughtfully.

20 I also welcome you to report any such
21 incidents like this immediately to my office,
22 the Division of Civil Rights, if this ever
23 happens. This is a kind of case where we will
24 have our legal staff on this the very next day
25 if there is an issue. And we will do

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1 REVEREND BLUSTEIN-ORTMAN: Yeah. It is a
2 shame.

3 MS. PASTINO: And language is a very
4 powerful tool. It really is.

5 MS. CASBAR SIPERSTEIN: Gina, this is
6 Barbra Siperstein.

7 You had mentioned that there was other
8 medical providers that acted much the same way
9 as they did at Mountainside Hospital?

10 MS. PASTINO: Yeah. We had testified in
11 October of 2007, about some experiences that we
12 have had at Saint Barnabas with my physician,
13 with -- my son was there.

14 And we also -- actually, we had issues
15 since then where, fortunately it wasn't
16 life-threatening situation, but it was another
17 situation where I was admitted to the hospital,
18 and, you know, the staff, they just couldn't
19 get it right. They kept calling Naomi my
20 mother, my sister, you know, my cousin, my
21 friend. Like, nobody could get it right.

22 And fortunately it matched, it didn't have
23 any negative outcome, it is just that, you
24 know, having to sit there and explain over and
25 over and over again.

1 everything that we can to make sure this gets
2 addressed.

3 If that means suing the hospitals, then we
4 will sue the hospitals if they are engaging in
5 violative policies.

6 So, please don't hesitate to call us, the
7 Division on Civil Rights.

8 And you mentioned earlier, if Naomi wanted
9 to add some additional comments, or if you do,
10 please don't hesitate to E-mail us or send to
11 us a written follow-up report or letter, we
12 would be happy to include that as part of your
13 testimony.

14 MS. PASTINO: Okay. Thank you very much.

15 MR. CHAIRMAN: Thank you.

16 MR. HYLAND: Gina, this is Stephen Hyland
17 again.

18 Briefly, can I urge you to have, either,
19 Naomi or yourself contact the public advocate
20 at that hospital, for the benefit of everybody
21 that may find themselves in a similar
22 situation?

23 REVEREND BLUSTEIN-ORTMAN: And if you
24 would like pastor accompaniment with that, I
25 can arrange for that.

1 MS. PASTINO: Okay. Thank you. We'll
2 definitely do that.

3 It's been an exhausting year, and, quite
4 honestly, our lives -- that was probably one of
5 the worst moments in our life an a lesbian
6 couple. It really was just awful for us.

7 So, you know, we are, kind of, getting,
8 you know, I'm getting back on my feet, so I
9 will have some more energy.

10 So, we were talking as this hearing was
11 approaching, and we really do need to sit down
12 and write a letter.

13 So -- and, again, thank you for the
14 opportunity to testify. I really do appreciate
15 it.

16 MR. CHAIRMAN: Thank you, Gina, have a
17 wonderful day. Take care.

18 MR. GOLDSTEIN: Thank you, Gina.

19 MS. PASTINO: Bye.

20 MR. CHAIRMAN: Mr. Asperling?

21 MR. ASPERLING: I'm here.

22 MR. CHAIRMAN: Okay. I am going to hand
23 over the reigns temporarily to Steve Goldstein
24 to chair this portion of the meeting since Mr.
25 Asperling actually has a matter before the

1 eligible for the medical benefits.

2 During the conversation, I asked the
3 question, if my partner was a woman, what would
4 be the situation? And the response was, no
5 problem.

6 Anyhow, the CEO of J and J, since they
7 responded that my retirement was covered by
8 ERISA, and they did not recognize civil unions.

9 Now, this has put me in a very difficult
10 position, because my partner does not have
11 health insurance, and on my retirement, I
12 cannot afford it.

13 If he has a serious illness, with the cost
14 of medical treatment these days, I could be
15 forced into bankruptcy.

16 Just aside from the J and J items is the
17 response from the shareholders to the
18 employees.

19 Now, you guys have all the documents on
20 file regarding this matter in your office, and
21 the legal action against J and J.

22 MR. HYLAND: Clarification.

23 MS. O'LEARY: Yeah. Clarification. This
24 is Civil Union Review Commission, and we are
25 separate from the Division on Civil Rights.

1 Division of Civil Rights.
2 Steven.

3 (Whereupon, Chairman
4 Vespa-Papaleo left the room.)

5 MR. GOLDSTEIN: Hi, Mr. Asperling, how are
6 you; may we call you Roger?

7 MR. ASPERLING: By all means.

8 MR. GOLDSTEIN: Okay, Roger. So you filed
9 a complaint with the Division of Civil Rights;
10 can you tell us about it?

11 MR. ASPERLING: Yeah. Well, thank you for
12 allowing me to participate here.

13 I am retiring from Johnson and Johnson
14 where I worked for 29 years.

15 And on September 5th, 2007, I had a civil
16 union ceremony conducted by David Delveccio
17 from New Jersey.

18 I then contacted J and J health benefits
19 to enroll my partner. At first I was
20 successful and he told me that he would receive
21 a Cigna benefit card in a few weeks.

22 When this did not arrive, I phoned Cigna
23 and they said they did not receive the request.

24 So, I, again, contacted J and J, and they
25 told me, that as I was retired, he was not

1 MR. ASPERLING: Okay.

2 MR. GOLDSTEIN: And, Roger, just to
3 clarify -- this is Steven Goldstein.

4 Thank you so much for -- we will let you
5 continue, but before you began your testimony,
6 Frank Vespa-Papaleo left the room, because he
7 is not only a chair of the Civil Union Review
8 Commission, he is also director of the Division
9 on Civil Rights for which you have your
10 complaint, so he felt bound to leave the room.

11 So, I just wanted to get that on the
12 record for our notes.

13 But, go ahead.

14 MR. ASPERLING: Okay. Anyhow, the legal
15 letter that came from J and J was very clear.
16 And that is the bottom line. And you can't
17 find a corporation like that.

18 So, that is about the whole story.

19 MR. GOLDSTEIN: All right. Roger?

20 MR. ASPERLING: Um-hum.

21 MR. GOLDSTEIN: First of all, does anyone
22 have any questions?

23 Thank you so much for testifying. Just
24 for the record, you present a situation that is
25 newly emerging where companies that, otherwise,

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1 do provide same-sex benefits to employees, are
 2 making decisions not to do that for retirees.
 3 I know one other such company, the Star
 4 Ledger, was in that boat.
 5 I also want to thank you for testifying
 6 because, there are civil rights organizations
 7 in this state that have received other
 8 complaints about companies like your's, and
 9 they have not wanted to come public because
 10 there was a fear of retaliation.
 11 So, you are not alone at your company.
 12 Certainly not.
 13 But you are retired, so you feel -- I
 14 suppose you feel -- would you have come forth
 15 if you were not retiring?
 16 MR. ASPERLING: Well, I have been retired
 17 for about 9 years, 10 years.
 18 MR. GOLDSTEIN: So, if you were --
 19 MR. ASPERLING: I'm 75 years old.
 20 MR. GOLDSTEIN: Gotcha. So, do you feel
 21 free -- I'm just curious -- freer to talk now
 22 that you are not there anymore; would you have
 23 felt inhibited to come forth, I'm just curious,
 24 if you were an employee there?
 25 MR. ASPERLING: No. No, problem at all.

1 about that.
 2 MR. GOLDSTEIN: And did you bring this to
 3 any diversity officer at the company?
 4 MR. ASPERLING: No, but I dealt with --
 5 MR. GOLDSTEIN: You don't work for the
 6 company anymore.
 7 MS. CASBAR SIPERSTEIN: He dealt with, I
 8 believe he said, the chairman of the board.
 9 MR. ASPERLING: That is right, Bill
 10 Weldon.
 11 MR. GOLDSTEIN: You dealt with the
 12 chairman of the board, directly?
 13 MR. ASPERLING: That's right.
 14 REVEREND BLUSTEIN-ORTMAN: Point of
 15 clarification, Roger; this is Reverend Charley
 16 Ortman, Commissioner.
 17 Just this week, I was -- I heard of a
 18 situation which a company was not willing to
 19 extend benefits to an opposite-sex married
 20 couple who were married after the employee had
 21 retired.
 22 So, I am just wondering how the ERISA was
 23 brought up, and how that was held as the reason
 24 for this exclusion, and if there was anything
 25 other than "no problem" in response to your

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1 MR. GOLDSTEIN: Okay. Good. God bless.
 2 MS. O'LEARY: Sir, can I ask a clarifying
 3 question that Commissioner Goldstein brought
 4 up? This is Erin O'Leary, and I am a
 5 Commissioner as well.
 6 Just for clarity sake, is it your
 7 understanding that Johnson and Johnson does
 8 recognize civil unions for the purposes of
 9 providing benefits to current employees, not
 10 retired?
 11 MR. ASPERLING: That's correct.
 12 MS. O'LEARY: Okay. Okay. I just wanted
 13 to clarify that.
 14 MR. GOLDSTEIN: And hasn't Johnson and
 15 Johnson won many awards, and were considered,
 16 and won many awards for being one of the
 17 country's leading companies on diversity and,
 18 specifically, LGBT inclusion?
 19 MR. ASPERLING: That is correct.
 20 MR. HYLAND: And this is Stephen Hyland.
 21 Are you aware if they have any kind of,
 22 either, a -- tax rebates or anything from the
 23 State of New Jersey or any kind of contracts
 24 with the State of New Jersey?
 25 MR. ASPERLING: I don't know anything

1 question?
 2 MR. ASPERLING: I think -- the only thing
 3 that I can think of is, ERISA is a federal
 4 agency, I guess you call it, and, therefore, it
 5 is not --
 6 MR. GOLDSTEIN: Federal.
 7 REVEREND BLUSTEIN-ORTMAN: But they
 8 brought ERISA up to you as the reason why this
 9 was not extended to your partner?
 10 MR. ASPERLING: That's correct.
 11 MR. GOLDSTEIN: So, it is interesting, the
 12 paradox here, because Johnson and Johnson, I
 13 assume, is a self-insured company, it does not
 14 evoke ERISA for existing employees, and then
 15 chooses to evoke ERISA for retired employees.
 16 MR. ASPERLING: That's correct.
 17 MR. GOLDSTEIN: Interesting.
 18 MS. CASBAR SIPERSTEIN: This is Babs
 19 Siperstein.
 20 So, they did not mention at all the fact
 21 that you were civil union after you retired as
 22 the reason?
 23 MR. ASPERLING: No. No. They didn't
 24 mention that as a reason.
 25 I don't have all the correspondence with

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1 me now, but it was sent to, not to you people,
 2 but someone else.
 3 MS. NEVAREZ: Actually, all of your
 4 information is in the public record, and I have
 5 to redact your personal information, because
 6 your Social Security number and your mother's
 7 maiden name. So your secrets are safe with us.
 8 MR. ASPERLING: I'm sorry, I didn't get
 9 that.
 10 MR. GOLDSTEIN: That's all right. Certain
 11 information of your's will not become public,
 12 like your Social Security number, so...
 13 MR. ASPERLING: I don't mind.
 14 MS. RAKSA: Oh, yes, you would.
 15 MR. GOLDSTEIN: How long have you and your
 16 partner been together, Mr. Asperling, Roger?
 17 MR. ASPERLING: Well, we had the civil
 18 union last year, September, but we have been
 19 together for almost two, three years before
 20 that.
 21 MR. GOLDSTEIN: Congratulations.
 22 Any other questions?
 23 REVEREND BLUSTEIN-ORTMAN: Thank you.
 24 MR. GOLDSTEIN: Thank you, Roger. And for
 25 the record, Frank was not here, and I'm going

1 checking that.
 2 MR. GOLDSTEIN: Thank you.
 3 MR. ASPERLING: Thank you very much.
 4 (Whereupon, the proceedings
 5 commenced at approximately 3:13
 6 p.m.)
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1 to bring him back in. And we appreciate, so
 2 much, your testimony.
 3 MR. ASPERLING: You're welcome.
 4 I just have one last question. Does this
 5 go anywhere?
 6 MR. GOLDSTEIN: Well, this Commission is
 7 going to issue a report; your testimony is
 8 included on the Web site of the Civil Union
 9 Review Commission, which are public documents,
 10 so anybody can access the testimony. And this
 11 Commission also writes periodical reports, and
 12 it may be well included in that as well.
 13 REVEREND BLUSTEIN-ORTMAN: And the only
 14 clergy member present on the Commission today,
 15 I would just answer, God willing.
 16 MR. ASPERLING: Thank you.
 17 MR. GOLDSTEIN: Thank you, Roger, again.
 18 MR. ASPERLING: What was that Web site?
 19 MR. GOLDSTEIN: I don't have the domain.
 20 It is actually -- it is a Web site with --
 21 MS. BENSON: For the Commission?
 22 MR. GOLDSTEIN: Yeah.
 23 MS. BENSON: It is njcivilrights.org/curc.
 24 MR. GOLDSTEIN: Way to go.
 25 MR. ASPERLING: Okay. I will keep

1 CERTIFICATE
 2
 3 I, RENEE HELMAR, a Shorthand Reporter, and Notary
 4 Public, certify that the foregoing is a true and accurate
 5 transcript of the proceedings which were held at the time,
 6 place and on the date herein before set forth.
 7 I further certify that I am neither attorney, nor
 8 counsel for, nor related to or employed by, any of the
 9 parties to the action in which these proceedings were taken,
 10 and further that I am not a relative or employee of any
 11 attorney or counsel employed in this action, nor am I
 12 financially interested in this case.
 13
 14
 15
 16
 17 Renee Helmar
 18 Shorthand Reporter
 19
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 25

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