APPENDIX D

Attorney General's Opinion

Attorney General, Richard Blumenthal

September 20, 2005

The Honorable J. Robert Galvin
Commissioner
Department of Public Health
410 Capitol Avenue
Hartford, CT 06134-0308

Dear Commissioner Galvin:

This letter is in response to a request from Elizabeth Frugale, Registrar of Vital Records, for a legal opinion as to whether Connecticut courts will recognize out-of-state civil unions, same-sex marriages and same-sex domestic partnerships after Connecticut's Act Concerning Civil Unions, 2005 Conn. Pub. Act No. 05-10 (the "Act" or "P.A. 05-10"), takes effect on October 1, 2005. In particular, Ms. Frugale has asked whether, after October 1st, a couple that has entered into a civil union, same-sex marriage, or domestic partnership out-of-state may legally enter into a civil union in Connecticut with the same partner. Because this issue is of statewide interest and importance, we are addressing our response to you in the form of a formal legal opinion. We apply well established, long standing principles of jurisprudence to a new, developing area of law--setting forth conclusions likely to be reached by our courts. They are, obviously, the ultimate source of answers.

Based on a reading of Connecticut law and the United States Constitution we conclude as follows:

- The Connecticut General Assembly in Public Act No. 05-10 specifically approved civil unions for same-sex couples. Since this law expressly articulates our State's public policy, civil unions performed under the laws of other States are valid in Connecticut under the Full Faith and Credit Clause of the United States Constitution.

- At present, our courts will conclude that Connecticut law and the Full Faith and Credit Clause of the United States Constitution require Connecticut to recognize Vermont civil unions and California same-sex domestic partnerships. Other out-of-state, legally authorized same-sex domestic partnerships may be recognized as civil unions in Connecticut depending on how specific provisions of other States' laws compare to ours.

- Same-sex couples whose civil unions and domestic partnerships are

performed in other States and recognized in Connecticut already have a valid civil union in Connecticut that need not and cannot be repeated in Connecticut.

- The Connecticut General Assembly has specifically determined that same-sex marriages are contrary to Connecticut law. Because the legislature has determined that marriages in Connecticut may only be between a man and a woman, same-sex marriages performed under laws of any other State violate Connecticut's expressly articulated public policy and are not required by the Full Faith and Credit Clause of the United States Constitution to be recognized here.

- Because same-sex marriages performed under the laws of another State are not valid marriages or civil unions in Connecticut, same-sex couples married under the laws of another State are allowed by Connecticut law to obtain a Connecticut civil union.

In determining whether Connecticut will recognize a civil union, same-sex marriage, or same-sex domestic partnership entered into in another State, the first step is a review of the Full Faith and Credit Clause of the U.S. Constitution, which governs the extent to which one State must recognize the laws of another State. The Full Faith and Credit Clause provides that:

> Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const., Art. 4, § 1; see also 28 U.S.C. § 1738 (implementing the Full Faith and Credit Clause).

In applying the Full Faith and Credit Clause, the U.S. Supreme Court has made clear that "the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." Nevada v. Hall 440 U.S. 410, 424 (1979).[2]

The Connecticut courts have adopted the generally-accepted view that a State may decline to recognize a same-sex civil union or same-sex marriage entered into in another State if such union violates the public policy of the reviewing State. See Rosengarten v. Downes, 71 Conn. App. 372, 802 A.2d 170 (2002); Lane v. Albanese No. FA044002128S, 2005 Conn. Super. Lexis 759 (Mar. 18, 2005).[3] As the Connecticut Appellate Court stated in Rosengarten when faced with the issue:

> The [Full Faith and Credit] clause (and the comparable due process clause standards) obligate the forum State to take jurisdiction and to apply foreign law, **subject to the forum's own interest in furthering its public policy.** In order for

> a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.

Rosengarten, 71 Conn. App. at 385 (emphasis added, italics and internal quotation marks omitted), quoting Congressional Research Service, Library of Congress, The Constitution of the United States of America, Analysis and Interpretation, (J.Killian & G. Costello, eds. 1996), art. IV, § 1, pp 855-56. Thus, assuming that an individual is a resident of Connecticut, or has some other significant contact with this State, the determination whether Connecticut will recognize an out-of-state civil union, same-sex marriage or same-sex domestic partnership turns on whether the relationship in question violates Connecticut's public policy.

Connecticut's public policy concerning civil unions, same-sex marriages, and same-sex domestic partnerships is set forth, in large part, in P.A. 05-10. With regard to same-sex marriages, it is clear that Connecticut does not recognize such marriages because the Act explicitly defines "marriage" as "the union of one man and one woman." P.A. 05-10, § 14.[4] As Representative Lawlor explained in introducing the legislation on the floor of the House:

> This Bill is intended, and specifically, according to its terms, acknowledges the current public policy that marriage is between a man and a woman. And if anyone wondered in the future, any member of the Supreme Court or any other court, what this Legislature intended in enacting civil unions, they would be wrong to conclude that it was our intention somehow to allow same-sex couples to be married. That's not the intention of this Bill. And I hope that's clear enough.

48 Conn. H. R. Proc., pt. 7, 2005 Sess. 1875-1876 (April 13, 2005)(remarks of Rep. Lawlor).

Because Connecticut's legislatively expressed public policy does not permit same-sex marriages within this State, we conclude that the State will not recognize same-sex marriages entered into in Massachusetts, or any other State, and is not required to recognize such marriages pursuant to the Full Faith and Credit Clause and 28 U.S.C. § 1738C.

With regard to same-sex civil unions, the State's public policy, as set forth in P.A. 05-10, clearly supports such unions. Specifically, P.A. 05-10 establishes a process for same-sex couples in Connecticut to enter into civil unions, beginning on October 1, 2005, and thereby obtain all the benefits, protections and responsibilities that are accorded to married couples under state law. The Act, like the marriage statutes that were its model, does not explicitly address the recognition of out-of-state civil unions.[5]

Any doubt about P.A. 05-10 recognizing out-of-state civil unions should be dispelled by statements on the floor of the House and Senate suggesting that the legislature intended such unions to be recognized. As the principal sponsor of the legislation, Senator McDonald, stated:

> Our Connecticut Appellate Court has ruled that it, in fact, **does not have jurisdiction to address even civil unions that were entered into in the State of Vermont.** Why? Because we have failed to act. That's our fault . . . It is us, having helped close the doors of the courthouse. **I ask you to open those doors today.**

48 Conn. S. Proc., pt. 4, 2005 Sess. 1002 (April 6, 2005)(remarks of Sen. McDonald)(emphasis added).

Senator McDonald was referring to Rosengarten v. Downes 71 Conn. App. 372, cert. granted and dismissed, 261 Conn. 936 (2002). In Rosengarten the Connecticut Appellate Court held that it had no jurisdiction to dissolve a civil union entered into in Vermont because such a union was contrary to Connecticut's public policy at that time.

The fact that Senator McDonald urged his colleagues to "open th[e] doors" of the courthouse, and implied that cases such as Rosengartenwould be decided differently if Senate Bill 963 (P.A. 05-10) were passed, leads to the inescapable conclusion that he intended passage of the Act to result in Connecticut courts recognizing, and exercising jurisdiction over, out-of-state civil unions.[6]

Representative O'Neill shared Senator McDonald's view that passage of the Act would give Connecticut courts jurisdiction over out-of-state civil unions, but wanted to ensure that same-sex marriages would not also be recognized. Specifically, Representative O'Neill argued for an explicit definition of "marriage" as a union between a man and a woman in the Act so that Connecticut courts that were faced with cases involving out-of-state same-sex marriages would not equate a same-sex marriage with a same-sex civil union. As stated by Representative O'Neill:

> [T]he [Lane v.] Albanese case was about a marriage from Massachusetts, not a civil union. Judge Prestley seems to be saying in this concluding sentence in her decision that her opinion, her decision might well have been different if there were legislation that had recognized and approved civil unions.
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> Now it's not explicit. She doesn't have that right in front of her. But she certainly seems to equate, for purposes of determining whether out-of-state same-sex marriages should be recognized by Connecticut, the civil union and same-sex marriage in Connecticut.
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> So, if we adopt civil union, if that had been on the books at the time that Judge Prestley was making her decision, she would certainly have to consider whether or not civil unions opens the door for her to be required to consider same-sex marriage as coming from Massachusetts.

48 Conn. H. R. Proc., pt. 7 , 2005 Sess. 2036-2037 (April 13, 2005)(remarks of Rep. O'Neill). As noted above, the explicit definition of marriage as a union between one man and one woman was added to the bill.

Thus, P.A. 05-10 and its legislative history evince a State public policy supporting civil unions and the recognition of civil unions, including civil unions that are performed in other States. Accordingly, we conclude that the Full Faith and Credit Clause requires Connecticut to recognize out-of-state civil unions involving residents of Connecticut because such unions are consistent with the public policy of this State. The only exception would be an out-of-state union contrary to Connecticut law because, for example, it involved individuals under the age of 18 or related by certain degrees of kinship. See Catalano v. Catalano, 148 Conn. 288, 170 A.2d 726 (1961).

In the case of Vermont, which is the only other State whose laws currently permit civil unions, we see no reason that Connecticut would not recognize civil unions performed in that State.

We reach the same conclusion with regard to California same-sex domestic partnerships. California, like Connecticut, restricts marriage to opposite-sex couples, but has passed legislation granting same-sex couples the same rights, protections, benefits, responsibilities, obligations and duties as married couples.[7] Cal. Fam. Code §§ 297.5 and 308.5 (2005). Although the relationship is called a "domestic partnership" instead of a civil union, its requirements are similar to those for a Connecticut civil union in that the individuals involved must be at least 18 years old, must not be related by blood in a way that would prevent them from being married under California law, and must not be married or a member of another domestic partnership. Cal. Fam. Code § 297 (2005).[8] To facilitate the determination whether an individual is a member of "another domestic partnership," and to clarify the validity of out-of-state same-sex relationships, California law provides that:

> A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.

Cal. Fam. Code § 299.2 (2005). With regard to marriages, "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Fam. Code § 308.5.

Given the similarity between California same-sex domestic partnerships and Connecticut civil unions, and the fact that California apparently will recognize a Connecticut civil union as equivalent to a California same-sex domestic partnership, we conclude that Connecticut courts will likely recognize a California same-sex domestic partnership as equivalent to a civil union. In the case of other States that may provide some form of domestic partnership, recognition would depend on the specific provisions of the laws permitting the domestic partnerships for comparison to Connecticut law.

Our conclusion that Connecticut courts will recognize a California same-sex domestic

partnership and a Vermont civil union, but will not recognize a Massachusetts same-sex marriage, is directly relevant to your second question. You have asked whether an individual who has entered into one of these three types of same-sex relationships in another State can legally enter into a Connecticut civil union.

The answer lies in the language of P.A. 05-10, § 2, which provides that "[a] person is eligible to enter into a civil union [in Connecticut pursuant to P.A. 05-10] if such person is: . . . Not a party to *another civil union* or marriage." 2005 Conn. Pub. Acts No. 05-10, § 2 (emphasis added). This phrase must be read to mean a validcivil union or marriage recognized in Connecticut. Connecticut will recognize California same-sex domestic partnerships and Vermont civil unions. An individual who is a party to either such relationship cannot enter into a civil union in Connecticut, because he or she is already "a party to another civil union," recognized as valid in this state. P.A. 05-10, § 2. An individual who is a party to an out-of-state same-sex marriage may obtain a Connecticut civil union because Connecticut courts will not recognize a same-sex marriage as either a civil union or a marriage.

In summary, civil unions performed in other States are entitled to full faith and credit in Connecticut, and cannot be repeated here. Out-of-state same-sex marriages have no legal force and effect here, and such couples can enter into a civil union in Connecticut.

We trust that the foregoing is responsive to your inquiry.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Jane R. Rosenberg
Assistant Attorney General

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[1]Currently, Vermont is the only state outside of Connecticut that allows civil unions and Massachusetts is the only state that allows same-sex marriages. Several states, including California, New Jersey, and Maine allow some form of same-sex domestic partnership. Because California's Domestic Partnership Act provides a particularly broad range of benefits to same-sex couples, this opinion will limit its discussion of same-sex domestic partnerships to California's model.

[2]In 1996, prompted by uncertainty as to whether the Full Faith and Credit Clause would require a marriage license issued to a same-sex couple in one State to be recognized in another State, Congress enacted the Defense of Marriage Act, ("DOMA"), pursuant to its power under the second clause of the Full Faith and Credit Clause. See H.R. Rep. No. 664, 104th Cong., 2d Sess. 2-10 (1996), reprinted in 1996 U.S.C.C.A.N., pp. 2906-2914. The

Defense of Marriage Act provides, in pertinent part, that:

> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

28 U.S.C. § 1738C. Under the Defense of Marriage Act, it is clear that Connecticut is not required by the Full Faith and Credit Clause to recognize same-sex marriages performed in Massachusetts or any other State. If Connecticut legislatively chooses to recognize such marriages it is free to do so. Neither civil unions nor domestic partnerships are explicitly addressed in DOMA.

[3]See also Hennefeld v. Township of Montclair, 22 N.J. Tax 166 (N.J. Tax Ct. 2005)(New Jersey is not required to recognize a Vermont civil union because "[t]he Full Faith and Credit Clause does not require a State to apply another State's law where it violates its own legitimate public policy"); Citizens for Equal Protection, Inc. v. Bruning368 F. Supp. 2d 980, 987 n. 5 (D. Neb. 2005)("[t]he court notes that the Full Faith and Credit Clause does not necessarily require acknowledgment of marriages that occur in other states"); Wilson v. Ake 354 F. Supp. 2d 1298, 1303 (M.D. Fla. 2005)("Florida is not required to recognize or apply Massachusetts' same-sex marriage law because it clearly conflicts with Florida's legitimate public policy of opposing same-sex marriage").

[4]This office most recently summarized the laws embodying Connecticut's public policy against same-sex marriages in an April 13, 2005 opinion discussing Public Act 05-10 addressed to Governor Rell. That opinion, in relevant part states:

> Current Connecticut law, both statutory and common, recognizes marriage as limited to members of the opposite sex. Our marriage statutes refer repeatedly to a "bride" and a "groom"; Conn. Gen. Stat. § 46b-25; as well as to a "husband" and a "wife." Conn. Gen. Stat. § 46b-36, 46b-37. These terms are commonly understood to refer to a "man" and a "woman," and not to two members of the same sex. See Baker v. Nelson, 191 N.W.2d 185, 186 (Minn. 1971). In the only Connecticut appellate decision that discusses the issue at all, the Connecticut Appellate Court held that the union of two persons of the same sex "[c]learly . . .is not a marriage recognized under [Conn. Gen. Stat.] § 46b-1 because it was not entered into between a man and a woman." Rosengarten v. Downes 71 Conn. App. 372, 378, *cert. granted and dismissed*, 261 Conn. 936 (2002). The court concluded that "the common law of Connecticut regarding rights arising out of marital status makes clear that this legal relation contemplated a contract made between a man and a woman." Id. At 383, citing 1Z. Swift, A Digest of the Laws of the State of Connecticut (1822), p. 18.

Several statutes explicitly state that Connecticut does not authorize marriage between members of the same sex. See Conn. Gen. Stat. § 46a-81r, providing that laws prohibiting discrimination based upon an individual's sexual orientation shall not be "deemed or construed ...(4) to authorize the recognition of or the right of marriage between persons of the same sex." See alsoConn. Gen. Stat. § 45a-727a (4), stating: "it is further found that the current public policy of the state of Connecticut is now limited to a marriage between a man and a woman."

[5]The marriage statutes on which the Act is modeled presumably do not contain a provision concerning the recognition of out-of-state marriages because the legislature deemed it unnecessary in light of existing common-law principles. Under Connecticut common-law, the well established rule is that "except in certain extreme cases, a marriage valid where the ceremony is performed is valid everywhere." Davis v. Davis 119 Conn. 194, 197 (1934); see also Loughran v. Loughran, 292 U.S. 216, 223 (1934)("[m]arriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction").

With regard to foreign civil unions, P.A. 05-10, § 13, states that: "All civil unions in which one or both parties are citizens of this state, celebrated in a foreign country, shall be valid, provided: (1) Each party would have legal capacity to contract such civil union in this state and the civil union is celebrated in conformity with the law of that country; or (2) the civil union is celebrated in the presence of the ambassador or minister to that country from the United States or in the presence of a consular officer of the United States accredited to such country, at a place within his or her consular jurisdiction, by any ordained or licensed member of the clergy engaged in the work of the ministry in any state of the United States or in any foreign country." This explicit recognition of foreign civil unions underscores the legislature's implicit recognition of civil unions performed under the laws of other States, a result in accord with the Full Faith and Credit Clause of the United States Constitution.

[6]In his comments, Senator McDonald also suggested that same-sex marriages would be recognized in Connecticut if Connecticut law was changed. Significantly, these comments were made prior to the addition of section 14 to P.A. 05-10 defining marriage as the union of a man and a woman.

[7]Recently, the California legislature approved same-sex marriages in the State of California. If this Act becomes law, same-sex marriages performed in California would not be recognized in Connecticut for the reasons set forth in regard to same-sex marriages performed in Massachusetts.

[8]Under California law, both individuals must also be capable of consenting to the partnership and have a common residence. Cal. Fam. Code § 297 (2005). The one significant difference between California and Connecticut law is that under California law, domestic partnerships are not reserved for same-sex couples. Instead, California law requires that in order to enter into a domestic partnership, two individuals must either (1) be of the same-sex; or (2) include

one individual who is over 62 years old and meets "the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. § 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. § 1381 for aged individuals." Cal. Fam. Code § 297(b)(5)(B)(2005). Because this opinion is concerned solely with the recognition of same-sex relationships, this latter type of California domestic partnership is not relevant to our analysis. Our remarks only apply to *same-sex*California domestic partnerships.