

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

U.S. Senate Judiciary Committee
Washington, DC

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Dirksen Office Building Room 226
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Statement of Jessica M. Vaughan
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Chairman Leahy, Ranking Member Sessions, and other committee members, thank you for the opportunity to be here today to discuss proposed changes to U.S. immigration law that would create a new type of relationship in immigration law -- "permanent partners" - for the purposes of obtaining benefits now available only to married men and women. I fully understand the goal of this legislation and the difficulties current law presents, particularly for same-sex couples. However, this legislation is addressing the issue from the wrong direction, and would create new problems for officials who adjudicate immigration benefits applications and for the many individuals involved in those applications.

The reason same-sex partners and others who are unmarried but in long-term relationships cannot now qualify for spousal immigration benefits is because federal law defines marriage as between a man and a woman. Immigration law and all other areas of federal law are subject to that definition. In addition, immigration law specifies exactly which types of relationships can qualify for visas, green cards, or other benefits, and in most cases they refer to marriage, employment or another close family tie that can be established through official documentation. If the goal is to give same-sex long-term partners equal access to immigration benefits, then the target should be the Defense Of Marriage Act, not the Immigration and Nationality Act. If that law were changed, which Congress has the power to do today, then this bill would not be necessary.

From a practical standpoint, this bill is unworkable and could wreak havoc in our legal immigration system. The four main problems I see:

1. There is no mechanism to officially recognize or sanction "permanent partnerships", at least not in more than a few states and foreign countries, that consular officers and USCIS

adjudicators can rely on to determine the eligibility and legitimacy of individuals who are applying for benefits. Eligibility for immigration benefits is established by presenting documents proving that the sponsor and applicant have a qualifying relationship, such as marriage, parent-child, employer-employee, or sibling, for example. The first step is for the U.S.-based sponsor to submit a petition for the beneficiary. USCIS officers review the information on the petition to determine that the applicant qualifies to apply. In the case of a marriage-based application, this would include a marriage certificate. The petitioner and beneficiary typically are not interviewed, so the documents play a critical role in the adjudication. Once the full application is made, the benefits or consular officer has the opportunity to look more closely at the case. The officer reviews supporting documents, such as financial information, personal records, telephone records and other information provided by the applicant and petitioner. If the case is adjudicated overseas the applicant is interviewed, but this does not usually occur with U.S.-based applications, which represent about half the total caseload.

Because so few places in the United States and around the world recognize "permanent partnerships", under this plan, adjudicators will not be able to establish confidently that applicants qualify in most cases. At most there are ten states and the District of Columbia that allow some form of same-sex marriage, civil union, or domestic partnership. There are only about 21 foreign countries that have these kinds of partnerships. These are mostly in Europe, and citizens and residents from these countries make up a very small share (6%) of legal immigration to the United States.

It is already very difficult for consular officers and USCIS adjudicators to verify the legitimacy of the marriages they review, even with the requirement that applicants provide official marriage certificates and supporting evidence that the relationship is not solely for the purposes of immigration benefits. Many applicants come from countries where document fraud is extremely common, and bogus certificates are easily and cheaply obtained. Even in the United States, there are many jurisdictions that issue marriage licenses and certificates and divorce decrees, and adjudicators do not always have ability to verify the information. The same requirements can be imposed for documentation of "permanent partnerships" in those few jurisdictions that provide for them, but it is not clear the partnerships could be substantiated in places where there is no official recognition of the union. It is highly unreasonable to expect that consular officers and benefits adjudicators could perform this function as part of their review of the case, when they are already hard-pressed to correctly adjudicate the applications they now see with more standardized documents.

2. This bill as written will introduce new opportunities for fraud in a program that is already a magnet for misrepresentation and abuse of the system. It will create thousands of new victims. Marrying a U.S. citizen is by far the most common route for foreign nationals to gain U.S. residency. In 2008, more than 400,000 people obtained green cards based on marriage to a U.S. citizen, a legal permanent resident, or someone else who qualified for a green card. Since 1998, more than 2.5 million foreign nationals have received green cards via marriage to a U.S. citizen. While most marriages between American citizens and legal immigrants and foreigners are legitimate, marriage fraud is one of the most common ways for otherwise unqualified individuals (often illegal aliens) to obtain permanent residency in the United States. Creating another qualifying relationship such as "permanent partners", especially one that may not be sanctioned,

recognized or documented by a state or foreign government, will introduce even more fraud into our system and create more victims.

In a 2008 report published by my organization, former consular officer David Seminara describes eight different kinds of marriage fraud (see table below). All of these techniques, with the exception of phony arranged marriages, are sure to be used in the context of "permanent partnerships".

But there is one important distinction between "permanent partnerships" as described in this bill and marriages that are documented and recognized by governments that significantly increases the likelihood of fraud. According to Seminara: "The creation of 'permanent partner' will remove a huge barrier that prevents many would-be perpetrators of fraud from carrying it out: namely the legal entanglements that marriage entails. Even though it is still relatively easy in most U.S. states to obtain a divorce, in my experience, many Americans who might be tempted to enter into a cash-for-marriage scam refrain from doing so because they would need to remain married to the foreign national, at least on paper, for two years in order for their spouse to gain a green card, and five years or more for their spouse to become an American citizen." In addition to using them for the green card, Americans know that their foreign spouse can make a grab for a substantial portion of their financial assets in a divorce settlement - the bank account, the house, the high-def TV, the pension, etc. An American who agreed to enter into a fraudulent "permanent partnership" with a foreigner looking to immigrate to the U.S. in most jurisdictions would have no such legal and financial concerns, because the "permanent partnership" has no legal standing.

It is not hard to find examples of Americans who have lost their homes and their entire savings at the hands of foreign nationals who divorced them as soon as it was safe to do so. Marriage fraud motivated for immigration purposes creates thousands of victims each year, and produces emotional trauma as well as financial hardship on its victims. In addition, it represents a national security and public safety vulnerability - as noted in the CIS marriage fraud paper, if Third World gold-diggers and small-time con artists can obtain green cards so easily under our system, so can terrorists and criminals, and they have.

Here is just one example, told in the victim's own words:

"He pursued me so hard and came to the US on a tourist visa. We married after 8 months of dating, then lived together as husband and wife in Texas. I helped him get all his paperwork in order, vouched for him. I was in love. As SOON as the conditional part was over and our last interview, I was dumped and pregnant with our first child. He turned so cold and went on his merry way while I was devastated [sic] and abandoned. I could do nothing.

"He threatens me now all the time, has his green card so he comes and goes as he pleases and I've had to get numerous restraining orders on him because of just how cruel and mean he is to me. He hides assets overseas from me, doesn't pay his child support timely (only the bare minimum to keep them off his back) and runs a business here which he started on our marital funds and then cut me out in the divorce. He drives his jag around, has better lawyers than me and has never graduated from college yet found a Texas loophole in our laws so he designs houses as an architect here with no formal education or certification. It's mind boggling how

much he gets away with. . . . Right now, he's overseas on his yearly month long vacation and sending me threats by email. I'm so scared for him to return in Jan. so I wondered if there was something I could do! I know he only married me for a greencard. It was so obvious now that I look back. He only "loved me" me because I was a citizen then how he dropped me the moment he had his green card even though I was pregnant. I had our baby all alone and had to go on food stamps, medicaid after he wiped out bank account and left me at the house alone. It foreclosed. I have paperwork on his cruelty, kept a journal of all the things he did right after he abandoned me with his green card and restraining orders. He has the condo and the ranch overseas and I've been through such a struggle and I can't believe there is no justice. Our divorce was done by only his lawyer, I had no say. I didn't even get to sign it and I walked away with nothing but my child and education. He's in Prague, Czech Republic right now. What do you suggest I do? He has a home there and a ranch which if course he conveniently [sic] forgets about when we go to court and doesn't report that income to IRS. He also doesn't work much and lowers his income when they review child support since they give ample notice of our court day... so he doesn't have to pay me as much. . . . I have tried to find a way to report this abuse, his underhanded actions, his threats, how he cheats me out of money, etc. but the police say it's a "Civil" issue and won't help when he tries to keep my son just to hurt me. I've been hurt so much by him. The restraining orders are the only thing I can get and they always expire and then I have to redo them. He's getting smarter about not leaving anything in print anymore. He calls his threats in. It's now he said, she said. . . . He played perfect husband for those few years until he had that card. Had I known, I would have never married him, much less had a baby with him. What do you suggest I do? Who do I call? I need help!"

3. This bill does not provide any new tools or resources to fight marriage or "partnership" fraud. Despite the fact that this proposal would produce an increase in benefits applications, and the fact that these benefits applications as a group would be especially vulnerable to fraud, the bill provides no new tools or resources for the State Department, USCIS, or state and local governments to preserve the integrity of the process and to fight fraud. The bill simply states that the existing anti-fraud measures and punishments, which are already inadequate, will apply to this category as well. Any proposal to create a new category such as this should also try to improve our benefits adjudication process so as to minimize the new cases of fraud.

The most important reforms would include: providing additional resources for anti-fraud investigations and prosecutions; require all applications to be adjudicated from the beneficiary's country of residence, with the U.S. spouse present for an interview; allow consular officers to revoke petitions approved by USCIS; tighten up the standards for approving waivers of ineligibility in marriage-based cases (currently about 75% are approved, providing a convenient loophole for criminals and immigration law violators to obtain green cards); create a national marriage/union/domestic partner database; require an automatic refusal of the application in cases where the applicants share no common language; allow USCIS to extend the period of conditional approval in some cases where the relationship does not appear bona fide.

4. Adding a new class of applicants with a high risk for fraud will make it more difficult for legitimate applicants. The people most affected by high rates of immigration fraud are the individuals with legitimate claims to immigration benefits and their families. High rates of fraud bog down the process for everyone and sap the time of the officers who adjudicate these cases. It

already takes several months for a petition to be approved, even in the cases such as fiancée or U.S. citizen spouse, which are supposed to be the highest priority. In addition, the level of scrutiny that must be directed at these applications is frustrating and intimidating to legitimate applicants. Lawmakers should refrain from placing more burdens on the system until the application process can be improved and until the proper legal and documentary foundation for establishing the authenticity of these relationships has been established.

Respectfully submitted by,

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The Center for Immigration Studies is a non-profit, non-partisan research institute that studies the impact of immigration on American society, and promotes a pro-immigrant, low-immigration vision for immigration policy. Jessica M. Vaughan is a former State Department consular officer and expert on visas, immigration benefits and immigration law enforcement.