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The Honorable Mark Warner
Governor of Virginia
Virginia State Capitol, 3rd Floor
Richmond, Virginia 23219

Dear Governor Warner:

A number of people have asked me to write to you with my thoughts on the implications of HB 751, sec. 20-45.3, relating to "civil unions between persons of same sex." As I understand it, the bill is now before you for your signature. The section reads as follows:

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

I would make two points about this provision. First, because it is unclear, it is likely to lead to much litigation. Sentence one purports to prohibit any agreement between persons of the same sex that itself purports to bestow "the privileges or obligations of marriage." That provision would be clear if it prohibited only those privileges or obligations that were bestowed *explicitly* in the name of marriage. But an agreement that bestowed the same privileges or obligations—privileges or obligations that happened also to be those of marriage under Virginia law—but did so without any mention of "marriage" or "civil union," might easily be read as prohibited under this language. Thus, to take the simplest of examples, an agreement between two persons of the same sex to care for each other "in sickness and in health, until death parts them," yet which makes no mention of "marriage" or "civil union," could be prohibited under this provision, for it purports "to bestow the privileges or obligations of marriage."

Second, on that altogether plausible reading, the most wholesome and socially beneficial of agreements between people of the same sex would be prohibited by being rendered unenforceable. In a free society, we should be enabling and encouraging people to arrange their affairs as they think best serves their needs. Thus, this provision is not only mean-spirited but contrary to the larger interests of the Commonwealth.

Yours truly,

Roger Pilon