



The Civil Union Act Means What It Says.

Some have suggested that the Illinois Religious Freedom Protection and Civil Union Act (“Civil Union Act”) does not mean it when it says that the Act provides to persons in a civil union “the same legal obligations, responsibilities, protections and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law.”¹ They have argued that because Section 45 of the Act² states that Sections 401 to 413 of the Illinois Marriage and Dissolution of Marriage Act (“Marriage Act”) “shall apply to a dissolution of a civil union” and Sections 301 to 306 of the Marriage Act “shall apply to the declaration of invalidity of a civil union,” the General Assembly meant to limit the protections from the Marriage Act offered couples in civil unions to those – and only those – specific statutory Sections. As a result, civil union couples would be denied all the remaining benefits offered married couples, such as equitable division of property and maintenance.³

There are several reasons why that argument should be rejected. *First*, the Civil Union Act says plainly that it covers “the *same* legal obligations, responsibilities, protections and benefits as are afforded or recognized by the law of Illinois to spouses[.]”⁴ There are no exceptions to that clear statement. Those who have suggested a narrow construction are relying, at least implicitly, on the *expressio unius* canon of statutory construction that interprets the mention of one thing to imply the exclusion of the other.⁵ However, this canon cannot be used to override the clear statement of legislative intent set forth in Sections 5, 10, and 20 of the Act.⁶ And, Section 20 of the Civil Union Act specifically

¹ 750 ILCS § 75/20.

² 750 ILCS § 75/45.

³ 750 ILCS §§ 5/503, 504.

⁴ 750 ILCS § 75/20 (emphasis added). *See also* 750 ILCS § 75/10 (stating that a “‘party to a civil union’ means, and shall be included in, any definition or use of the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’, and other terms that denote the spousal relationship, as those terms are use throughout the law.”)

⁵ *See People ex rel. Moss v. Pate*, 30 Ill.2d 271, 273 (1964).

⁶ *See Sulser v. Country Mut. Ins. Co.*, 147 Ill.2d 548, 555 (1992) (“*Expressio unius est exclusio alterius* is a rule of statutory construction, not a rule of law, and may be overcome by a strong indication of legislative intent.”); *Moss*, 30 Ill.2d at 273 (“The maxim *expressio unius est exclusio alterius* is not a rule of law but only a rule of

states that persons in a civil union and married persons will receive the same benefits as provided by Illinois statutes and all other sources of Illinois law—with no limitation.⁷

Second, statutes such as the Civil Union Act must be read as a whole in light of “the purpose and necessity for the law, the evils sought to be remedied and the goals to be achieved, and the consequences that would result from construing the statute one way or the other.”⁸ One of the two underlying purposes of the Act is to “provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses.”⁹ Reading Section 45 narrowly, as has been proposed, would thwart that purpose by denying persons in civil unions some of the most important obligations and protections offered spouses.

Third, a “statute should be read as a whole and construed so that no term is rendered superfluous or meaningless.”¹⁰ Interpreting Section 45 narrowly would require the Section to be read in isolation, rather than as a part of the Civil Union Act as a whole, and would render the statements about equivalence between the obligations and protections of civil unions and marriage in Sections 5, 10 and 20 of the Act meaningless.

Fourth, the scope of Section 45 is expressly limited by its title to “Dissolution [and] declaration of invalidity.” There was no reason to address other substantive or procedural rights in this provision given its limited scope.¹¹ Indeed, the sections of the Marriage Act cited in Section 45 of the Civil Union Act reference rights and responsibilities, including maintenance and disposition of property, granted to spouses during dissolution and invalidity actions.¹² The fact that those sections of the Marriage Act incorporate other portions of the Act further supports the argument that the General Assembly did not intend the sections of the Marriage Act listed in Section 45 to be an exhaustive list.

construction to be used by the courts where the intent of the legislature is not clearly manifest.”); *Phoenix Bond & Indem. Co. v. Pappas*, 309 Ill. App. 3d 779, 787 (1st Dist. 2000) (holding that even where a statute is ambiguous, the maxim should not apply if it would “defeat the purpose of a statute.”).

⁷ 750 ILCS § 75/20.

⁸ *Hubble v. Bi-State Development Agency*, 238 Ill. 2d 262, 268 (2010).

⁹ 750 ILCS § 75/5. The second purpose is “to provide adequate procedures for the certification and registration of a civil union.” *Id.*

¹⁰ *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010) (internal quotation marks omitted); *accord In re Marriage of Kates*, 198 Ill. 2d 156, 159 (2001).

¹¹ See *Land v. Board of Educ.*, 202 Ill.2d 414, 429 (2002) (“Our reading of section 34-8.1 is also supported by its title”); *Sardiga v. N. Trust Co.*, 2011 WL 947125, at *4 (Ill. App. Ct. 1st Dist. Mar. 15, 2011) (relying on title of statutory section); *Alvarez v. Pappas*, 374 Ill. App. 3d 39, 46 (1st Dist. 2007) (same).

¹² See 750 ILCS § 5/305 (maintenance); § 5/401(b) (“Judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property.”); § 5/413 (maintenance, child support).

A broad interpretation of the Civil Union Act is the only one that is consistent with its overall purpose and is corroborated by the legislative history of the Act. The opponents of the Act never suggested a narrow reading of the Act but rather opposed its passage precisely because of its breadth. The proponents of the Act stated numerous times that the Act affords civil union couples the “same legal obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois that relates to spouses.”¹³ The Act “will ensure access, equal access, to all couples in Illinois to numerous rights and benefits and protection guaranteed to married couples.”¹⁴ Passing the Act was a matter of equality and fairness. The narrow reading some have proposed for the Illinois Religious Freedom Protection and Civil Union Act should not be allowed to frustrate this expansive purpose.¹⁵

June 8, 2011

John A. Knight
Director
Lesbian, Gay, Bisexual & Transgender Project

¹³ S., TRANSCRIPTS OF DEBATE, 96 Gen. Assembly (Ill. Dec. 1, 2010) (statement of Sen. Koehler), *available at* <http://www.ilga.gov/senate/transcripts/strans96/09600136.pdf>.

¹⁴ S., TRANSCRIPTS OF DEBATE, 96 Gen. Assembly (Ill. Dec. 1, 2010) (statement of Sen. Steans), *available at* <http://www.ilga.gov/senate/transcripts/strans96/09600136.pdf>.

¹⁵ We are grateful to Jeffrey Sarles and Chad Clamage from Mayer Brown LLP for their contribution of legal research and analysis to this memorandum.