



# ARCHDIOCESE OF WASHINGTON

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Archdiocesan Pastoral Center: 5001 Eastern Avenue, Hyattsville, MD 20782-3447  
Mailing Address: Post Office Box 29260, Washington, DC 20017-0260  
301-853-4500 TDD 301-853-5300

Vicar General  
Moderator of the Curia  
Phone: 301-853-4520  
Fax: 301-853-5346

January 22, 2010

*VIA E-MAIL (ogc@dcboee.org) AND FACSIMILE (202-741-8774)*

Kenneth J. McGhie  
General Counsel's Office  
District of Columbia Board of Elections and Ethics  
One Judiciary Square  
441 4th Street N.W., Suite 270  
Washington, D.C. 20001

RE: Referendum on the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 (Bill 18-0482)

Dear Mr. McGhie:

On behalf of the Archdiocese of Washington, I am writing in support of the proposed referendum on the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 (the "Act"). The Archdiocese's opposition to the redefinition of marriage in the District of Columbia and our advocacy for the preservation of religious liberty in the event of the Act's enactment are well established. The Board has asserted as precedent its position that a popular vote on same-sex marriage would violate the D.C. Human Rights Act. However, the proposed referendum presents the Board with the opportunity to address a novel issue: a referendum on a law that promotes a purported human right at the expense of an established one.

Supporters of the Act have framed the legalization of same-sex marriage as a clear-cut matter of equality and civil rights, but instead it must be seen as a task in balancing competing interests: the interest of persons of the same sex to be able to marry each other, and the interest of persons with deeply held religious beliefs to be able to practice religion freely. Indeed, the Human Rights Act, so often cited in support of same-sex marriage, prohibits discrimination on the basis of religion just as strictly as it prohibits discrimination on the basis of sexual orientation. Despite the obvious call to strike a balance, the Act contains no meaningful exemption for District organizations and individuals whose faith teaches that by its nature and purpose, marriage is reserved to a man and woman.

The practice of one's religion can involve refraining from certain acts. Legalization of same-sex marriage in the District will inevitably present religious organizations and individuals

*Referendum on the Religious Freedom and Civil Marriage Equality Amendment Act of 2009*

January 22, 2010

Page 2 of 2

with situations where they must, in conscience, choose to refrain from some acts in order to follow their faith's teachings.

The right of the conscientious objector is well established and respected in other contexts. Medical professionals who hold sincere religious beliefs that abortion is immoral generally do not have to facilitate abortions in any way. Religious individuals who sincerely believe in absolute pacifism may not be required to serve in combat. Although the D.C. City Council has expressed concern that religious beliefs may be feigned as a veil for discriminatory practices, a broad body of Supreme Court cases has firmly established a mechanism for preventing such abuses of the law.

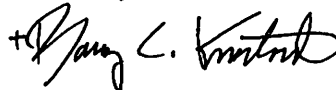
Supporters of the Act have also suggested that the conflict between religious liberty and same-sex marriage is best resolved by the preemptive abstention of religious organizations and individuals from activities that might place their rights in conflict with the Act. However, extensive precedent demonstrates that a law that would force religious individuals and organizations to withdraw from the public sphere in order to observe their faith violates the protections of both the First Amendment and the Religious Freedom Restoration Act.

By subjecting religious organizations and individuals to the threat of civil antidiscrimination lawsuits and other legal penalties for practicing their faith, the Act subordinates the right to religious liberty to the purported right to same-sex marriage. Where the two conflict, the Act compels religious liberty to cede. Therefore, the proposed referendum is not about authorizing discrimination prohibited under the Human Rights Act. It is about preserving a right that the Human Rights Act protects.

The well-worn distinction between referenda and initiatives is key here. Unlike an initiative on the definition of marriage, a referendum on the Act would not make an affirmative change in current District law, nor would it even necessarily concern the merits of same-sex marriage itself. Rather, this referendum would simply be an opportunity for the citizens of the District to declare that *something* is so wrong with the Act that it should not become law. In this case, the Board should allow District residents to determine whether the Council properly balanced the two interests placed in tension by the Act.

We respectfully urge that the Board allow the Council to hear its constituents' voice on the value of the religious liberty that the Act jeopardizes.

Sincerely,



Most Reverend Barry C. Knestout  
Vicar General  
Moderator of the Curia