



COUNCIL OF THE DISTRICT OF COLUMBIA
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TESTIMONY OF COUNCILMEMBER PHIL MENDELSON

**Special Board Meeting of the DC Board of Elections & Ethics
"A Referendum on the Religious Freedom & Civil Marriage Equality Amendment
Act of 2009"**

Members of the District of Columbia Board of Elections and Ethics,

Good afternoon, and thank you for the opportunity to appear before you to testify on whether the proposed measure "*A Referendum on the Religious Freedom & Civil Marriage Equality Amendment Act of 2009*" is a proper subject for a referendum. In my view, it is not.

This referendum, if approved by the Board, would ask voters to approve or reject Bill 18- 482, the "Religious Freedom and Civil Marriage Equality Amendment Act of 2009," which was approved by the Council on December 15, 2009 and signed by the Mayor on December 18, 2009. As I have testified previously before the Board, I do not believe that a civil right should be the subject of a referendum. Regardless, the law is clear that a matter integral to the Human Rights Act of 1977 shall not be subject to the initiative and referendum process. Thus, rejection is compelled, and rejection of the proposed referendum would be consistent with the Board's previous rulings, last year, on a similar, proposed initiative and referendum.

As you are aware, the Board is required to reject any initiative that authorizes, or would have the effect of authorizing, discrimination prohibited by the Human Rights Act of 1977 (HRA). This is rooted in the policy inherent in the HRA, and the longstanding policy of the District, to provide equal rights, and equal dignity, to all residents. Since the creation of domestic partnerships in 1992, progress toward equality has resulted in a vast expansion of rights and responsibilities for same-sex couples. Though progress has been incremental, the District has been resolute in its commitment to provide parity in the law for same-sex and opposite-sex couples.

The HRA's prohibition against discrimination based on sexual orientation permits no avenue other than the rejection of this proposed referendum. As the District currently recognizes same-sex marriages performed in other jurisdictions, the effect of this referendum would be to undo the marriage of couples currently residing in the District – and for only one reason: their sexual orientation. That is discriminatory, and unequal treatment under the law.

In June, proponents of today's referendum argued that an earlier proposed referendum would not discriminate in violation of the HRA because same-sex couples are able to avail themselves of

the District's domestic partnership laws. The Board correctly rejected this argument. In upholding the Board's decision the Superior Court noted:

[E]ven if unmarried same-sex couples could receive the same benefits as married couples, courts have long held that different treatment can equate to discrimination whether or not the material benefits and services offered appear uniform.

It is impermissible to continue requiring gay and lesbian individuals to operate as a separate but equal class of citizens in the District. Bill 18-482 remedies this inequity, achieving equal rights by ensuring that same-sex couples can avail themselves of the same system afforded to opposite-sex couples.

The legislation that is the subject of this referendum, then, is about fundamental fairness. But it is also about the recognition of basic civil rights for all District residents in keeping with the HRA. During consideration of Bill 18-482, the Council heard from opponents that we were wrong to consider this a civil rights issue. But the Committee Report on Bill 18-482, which I authored, addresses this. We quoted Former U.S. Supreme Court Justice Earl Warren in *Loving v. Virginia*:

"The freedom to marry has long been one of the vital personal rights essential to the orderly pursuit of happiness by free men. ...[It is] one of the 'basic civil rights of man,' fundamental to our very existence and survival."

We quoted NAACP Chairman Julian Bond, in a speech before members of the lesbian, gay, bisexual, and transgender community in March 2009:

"When someone asks me, 'are gay rights civil rights?' my answer is always, 'Of course they are.' Civil rights are positive legal prerogatives: the right to equal treatment before the law. These are the rights shared by everyone. There is no one in the United States who does not, or should not, enjoy or share in enjoying these rights. Gay and lesbian rights are not special rights in any way. It isn't 'special' to be free from discrimination. It is an ordinary, universal entitlement of citizenship."

We quoted Coretta Scott King in a 2004 speech before the Richard Stockton College in Pomona, Mississippi:

"Gay and lesbian people have families, and their families should have legal protection, whether by marriage or civil union. ...banning same-sex marriage is a form of gay bashing and it would do nothing at all to protect traditional marriages."

And we quoted Georgia Congressman John Lewis, who wrote in an op-ed in the Boston Globe in 2003:

"It is time to say forthrightly that the government's exclusion of our gay and lesbian brothers and sisters from civil marriage officially degrades them and their families. It denies them the basic human right to marry the person they love. It denies them numerous legal protections for their families."

This referendum would exclude certain individuals from the institution of marriage. It not only makes this choice for them but also brands their relationship as somehow inferior. This basic civil right is truly the choice of each individual, not the choice of the state. Bill 18-482 remedies the exclusion of same-sex couples from the institution of marriage, allowing them to rightfully claim access to this *fundamental* human right. In closing, I reiterate that as a matter of fairness and equity, a civil right should not be subject to a referendum.