

Testimony by Peter Sprigg, Senior Fellow for Policy Studies  
Family Research Council, 801 G Street NW, Washington, DC 20001

In support of "A Referendum on the Religious Freedom and Civil Marriage Equality  
Amendment Act of 2009"

District of Columbia Board of Elections and Ethics  
January 27, 2010

I urge you to permit a referendum on Bill 18-482, the so-called "Religious Freedom and  
Civil Marriage Equality Amendment Act of 2009."

The citizens of the District of Columbia have a right to pass judgment on the decisions of  
their elected officials through the referendum process. There is no good reason why that  
core democratic right should be infringed upon with respect to this bill.

I realize that supporters of this bill argue that fundamental human rights guaranteed by  
the D.C. Human Rights Act cannot be repealed by a vote of the people. However, the  
Council's bill redefining marriage was not adopted as a part of the Human Rights Act of  
1977; the bill itself states clearly that it amends the District's code of 1901. Therefore,  
repeal of this bill by referendum would work no alteration in the provisions of the Human  
Rights Act.

This straightforward conclusion is supported by the fact that the Human Rights Act  
makes no reference to the definition of marriage, and issues of marriage and domestic  
relations have never been interpreted as coming under its scope. The text of the Human  
Rights Act says that its purpose is to insure equality "in employment, in places of public  
accommodation, resort or amusement, in educational institutions, in public service, and in  
housing and commercial space accommodations." None of those categories logically  
include the definition of marriage.

Some would perhaps argue that the issuance of marriage licenses would be covered by  
the Human Rights Act's prohibition of discrimination by the District government itself in  
the issuance of licenses, services, or benefits. However, the theory that denial of marriage  
licenses to same-sex couples constitutes discrimination on the basis of sexual orientation  
in violation of the Human Rights Act is a theory that has not governed the behavior of  
any DC public official in the entire 32 years between the adoption of the Human Rights  
Act in 1977 and the adoption of Bill 18-482 in 2009. Indeed this argument was explicitly  
rejected by the courts in the 1995 case of *Dean v. District of Columbia*.

Furthermore, let us consider the implications of applying the Human Rights Act in a  
literal way to the issuance of marriage licenses. One of the protected categories in the  
Human Rights Act, in addition to "sexual orientation," is "familial status." Presumably  
this includes marital status. But if we cannot discriminate on the basis of marital status in  
the issuance of marriage licenses, that would suggest that we cannot limit the issuance of

marriage licenses to people who are currently unmarried. If people who are currently married have an equal right to a marriage license, then the implication is that the Human Rights Act requires recognition of polygamy. Such an interpretation is absurd, of course—but the idea that the Human Rights Act requires recognition of same-sex marriage is equally absurd.

It seems clear that the Human Rights Act was never intended to apply, and cannot logically be construed to apply, to the definition of marriage. However, even if it did, I would point out that strictly speaking, defining marriage as the union of one man and one woman does not “discriminate” on the basis of “sexual orientation” at all. Marriage license applications do not inquire as to the “sexual orientation” of the parties. Every individual adult in the District of Columbia, without exception, already has a right to marry. But everyone also has restrictions upon whom they may marry—again, without exception. No one is permitted to marry a child, a close blood relative, a person who is already married, or, in most nations of the world and most states in this nation, a person of the same sex. These restrictions apply equally to everyone—there is no “discrimination” involved.

Many people who now identify as “gay” or “lesbian” have already been married, quite legally—to members of the opposite sex. On the other hand, many who once identified as “gay” or “lesbian” have since abandoned that identity, overcome their same-sex attractions, and are currently married, legally, to members of the opposite sex. The reality is that so-called “sexual orientation” is a concept that is far too fluid to constitute a permanent barrier to participation in the institution of marriage.

The reason marriage is defined as the union of one man and one woman is not because of invidious discrimination against homosexuals. The public purpose of marriage is to bring together men and women for the purpose of reproducing the human race and keeping a mother and father together to cooperate in raising to maturity the children they produce. Because same-sex unions *never* serve this purpose, there is no logical reason to place them under the umbrella of “marriage.” The fact that homosexuals are uninterested in the type of relationship that society, quite rationally, encourages through marriage does not mean that homosexuals have been wronged. In a sense, it is homosexuals who discriminate against marriage, not marriage that discriminates against homosexuals.

Finally, I would note that even if you believe that the historic and natural definition of marriage as the union of man and woman “discriminates” on the basis of “sexual orientation” (as I have argued it does not), that still is not sufficient reason to bar a referendum on this issue. Same-sex “marriage” is not a longstanding right under the Human Rights Act, but a complete novelty being pressed upon the District by the Council. A successful referendum would not roll back any rights previously recognized under the Human Rights Act. It would, instead, maintain the status quo that has prevailed under the Human Rights Act for 32 years. To say that the people have no right to thus maintain the status quo would be a bizarre catch-22 that makes a mockery of democracy.

I urge you to allow a referendum on Bill 18-482.