



# American Civil Liberties Union of the National Capital Area

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July 10, 2006

Hon. Robert J. Spagnoletti  
Attorney General, District of Columbia  
John A. Wilson Building, Suite 409  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear General Spagnoletti:

We write to call to your attention a section of proposed regulations recently published by the D.C. Office of Human Rights and the D.C. Commission on Human Rights that raise a serious constitutional question.

As published in the D.C. Register of June 9, 2006 (at page 4575), proposed section 808.2 of Title 4, DCMR, would provide that certain specified behaviors, consisting mostly of pure speech, will constitute “presumptive evidence of unlawful harassment and hostile environment.”

In our comments to the Office of Human Rights and the Commission on Human Rights, submitted today, we have explained in detail why we believe this proposed provision is inappropriate and, more importantly, unconstitutional. A copy of our comments is enclosed for your attention; the portion addressing this provision is on pages 4-6.

Briefly, as Judge (now Justice) Samuel Alito wrote in striking down a college anti-harassment policy, “[t]here is no categorical ‘harassment exception’ to the First Amendment’s free speech clause.” *Saxe v. State College Area School District*, 240 F.3d 200, 204 (3rd Cir. 2001).

We hope you will advise the Office of Human Rights and the Commission on Human Rights that this provision should not be adopted in the form in which it was proposed. Our comments also include a suggested revised version of this section that would be consistent with the law.

Sincerely yours,

/s/

Stephen M. Block  
Legislative Counsel

/s/

Arthur B. Spitzer  
Legal Director