


**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON PUBLIC SAFETY AND THE JUDICIARY
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW 20004

TO: All Councilmembers
FROM: Councilmember Phil Mendelson, 
Chairman, Committee on Public Safety and the Judiciary
DATE: November 10, 2009
SUBJECT: Report on Bill 18-482, "Religious Freedom and Civil Marriage Equality Amendment Act of 2009"

The Committee on Public Safety and the Judiciary, to which Bill 18-482, "Religious Freedom and Civil Marriage Equality Amendment Act of 2009" was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

Bill 18-482, the Religious Freedom and Civil Marriage Equality Amendment Act of 2009, is the culmination of the District of Columbia's long pursuit of equality for same-sex couples in the law. The District, resolute in its conviction to provide equal rights and equal dignity to all residents, has, through domestic partnership laws, made parallel the rights and responsibilities of same-sex couples to those of opposite-sex spouses. True equality, however, is not obtained until same-sex couples are afforded the same rights, the same responsibilities, and are included in the same, single system of law for all. Bill 18-482, by affirmatively stating in the law that same-sex couples can legally refer to one another as "married," realizes this ideal of true equality sought after in the District.

The Committee believes that it is impermissible to continue requiring gay and lesbian individuals to operate as a separate, purportedly equal, class of citizens in the District. This legislation will remedy that inequity. In recognizing same-sex marriage in the District, Bill 18-

482 does not redefine any concept in the law (indeed, the Committee maintains same-sex marriage is already permitted under District law), as nowhere in our Code is the institution of marriage reserved to opposite-sex couples. Rather, Bill 18-482 removes the custom, or practice, that marriage is only between a man and a woman. This simple legislative act puts in the law what is already in the law: that the right of marriage applies fully to all in the District.

At the same time, Bill 18-482 preserves religious freedom. While the Committee believes without doubt or reservation that the civil right of marriage should be enjoyed by same-sex couples, it acknowledges that this view is not universally held. In particular, certain religious institutions may have different beliefs on the concept of marriage. Bill 18-482 accommodates the sincerely held objections of such religious leaders and organizations with regard to the solemnization or celebration of same-sex marriages. Provisions in this legislation ensure religious freedom by clearly stating that no religious organization will be required to celebrate marriage for a same-sex couple where doing so violates the tenets of their religious faith.

Bill 18-482 also enhances religious freedom by giving religious organizations the *right* to solemnize same-sex marriages. The Committee received extensive testimony from religious leaders who argued that their inability to marry same-sex couples hampered their ability to fully practice their faith. For instance, Dean Snyder, Senior Pastor of Foundry United Methodist Church in DC, in arguing for the right to allow his church to marry same sex couples, stated that:

[i]f there are religions that choose to discriminate against gay and lesbian people, that may be their right. But we should not use the law to *force* those clergy who believe that God blesses same-sex marriage to discriminate.¹

In the same way, the freedom to marry, or not to marry, is an individual choice reflecting one person's commitment to another. By excluding certain individuals from this institution, 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.

Marriage as a Basic Civil Right

If we are all created equal, then gays and lesbians are entitled to the same rights and privileges, the same fundamental freedoms, mandated for all individuals. Access to equal treatment under the law inevitably includes the freedom to marry. U.S. Supreme Court Chief Justice Earl Warren, in a unanimous 1967 decision striking down Virginia's anti-miscegenation law, wrote: "[t]he freedom to marry has long been one of the vital personal rights essential to the

¹ *Bill 18-482, Religious Freedom and Civil Marriage Equality Amendment Act of 2009: Hearing Before the DC Council Committee on Public Safety and the Judiciary*, Oct. 26, 2009, at 2 (written testimony of Rev. Dean J. Snyder, Senior Pastor, Foundry United Methodist Church).

orderly pursuit of happiness by free men.”² Marriage, Warren continued, is “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”³

Fairness demands that gays and lesbians are treated equally before the law and permitted access to the universal entitlements of citizenship. Such entitlements, says NAACP Chairman Julian Bond, are the definition of a civil right. In a speech before members of the lesbian, gay, bisexual, and transgender (LGBT), March 2009, he stated:

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.⁴

In a recent op-ed in the *Washington Post*, Mr. Bond repeated this call for equality and argued that “[w]e can no longer pretend that civil rights do not include rights for lesbian, gay, bisexual and transgender Americans.”⁵

Several civil rights leaders from the 1960s have likewise expressed strong support for marriage equality. Coretta Scott King voiced her support for same-sex marriage in 2004 while denouncing a proposed constitutional amendment that would have banned it.⁶ Likewise, Georgia Congressman John Lewis wrote in an op-ed in the *Boston Globe* that:

[i]t 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.⁷

² *Loving v. Virginia*, 388 U.S. 1, 10 (1967).

³ *Id.* at 11 (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1992)).

⁴ Chris Johnson, *NAACP National Chairman Julian Bond: It isn't 'special' to be free from discrimination*, HRC Back Story, Mar. 16, 2009, <http://www.hrcbackstory.org/2009/03/julianbond/> (quoting from Julian Bond speech before the 2009 Creating Change Conference).

⁵ Julian Bond, Op-Ed., *Rights still to be won*, WASH. POST., Oct. 9, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/08/AR2009100803292.html> (last visited Nov. 7, 2009). In the same piece, Mr. Bond remarks: “[f]limsy justifications for anti-LGBT bias are giving way to evidence that society is strengthened, not weakened, when LGBT people are given equal protection under the law. Where they are free to marry those they love, the sky has not fallen.” *Id.*

⁶ *Coretta Scott King gives her support to gay marriage*, USA TODAY, Mar. 24, 2004, available at http://www.usatoday.com/news/nation/2004-03-24-king-marriage_x.htm (last visited Nov. 8, 2009) (in a speech before the Richard Stockton College in Pomona, Ms. King stated: “[g]ay and lesbian people have families, and their families should have legal protection, whether by marriage or civil union. A constitutional amendment banning same-sex marriage is a form of gay bashing and it would do nothing at all to protect traditional marriages.”)

⁷ John Lewis, Op-Ed., *At a crossroads on gay unions*, THE BOSTON GLOBE, Oct. 25, 2003, available at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2003/10/25/at_a_crossroads_on_gay_unions/ (last visited Nov. 8, 2009).

This call to end the discrimination against gays and lesbians, and to provide equal access to marriage has also been given by Mildred Loving. A person with first-hand experience challenging discriminatory marriage laws, Ms. Loving stated in a speech on the 40th anniversary of the Supreme Court decision that bears her name,⁸ her belief that:

all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others. Especially if it denies people's civil rights.⁹

The Committee received similar statements of support for marriage equality from witness after witness during two days of public hearings. From these statements, whether delivered by an individual hoping to one day find their better half, or by a couple decades into a relationship and consumed with the responsibilities of raising children, it is clear that marriage *means* something. It means more than what we can delineate in words or encompass in our laws. It is better defined by those two people in an intimate relationship in how they are committed to each other. It envelops not just the relationship of spouses, but their broader family and how they, and their family, are perceived and associate with society. This relationship, then, is fundamental.

To refuse this civil right to same-sex couples is an affront to constitutional principles proclaiming equality for all, and it labels these couples and their families as somehow different. The District has rightfully extended the rights and responsibilities associated with the definition of family to same-sex couples through the domestic partnership law, making such familial relationships equal, all but in name, to that shared by opposite-sex couples. The relationship between same-sex couples, however, is just as real a relationship, and the family on which the relationship is founded is just as real. Perhaps because of growing recognition of this, statements such as the following were echoed repeatedly in testimony on Bill 18-482:

I am convinced that the key to a strong family is not the gender of the parents, but rather the love, commitment, and faithfulness they manifest toward each other and where applicable, toward their children.¹⁰

If, then, our laws and policies dictate that same-sex couples “qualify as a family for certain situations, logic dictates that same-sex couples have the right to consummate that familial relationship with marriage.”¹¹ In addition to the extraordinary number of tangible benefits that extend from marital status,¹² marriage also provides numerous intangible benefits to spouses and

⁸ Loving, *supra* note 2.

⁹ Mildred Loving, “Loving for All,” Prepared for Delivery on June 12, 2007, the 40th Anniversary of the *Loving v Virginia* Announcement, available at http://www.freedomtomarry.org/pdfs/mildred_loving-statement.pdf (last visited Nov. 7, 2009).

¹⁰ Bill 18-482, *Religious Freedom and Civil Marriage Equality Amendment Act of 2009: Hearing Before the DC Council Committee on Public Safety and the Judiciary*, Oct. 26, 2009, at 2 (written testimony of Rev. Dennis W. Wiley, PhD, Covenant Baptist Church, and co-chair, DC Clergy United for Marriage Equality).

¹¹ Kevin Aloysius Zambowicz, “*To Love and Honor All the Days of Your Life*”: *A Constitutional Right to Same-Sex Marriage?*, 43 CATH. U.L. REV. 907, 928 (1994).

¹² By way of example, the 1995 *Dean* decision lists approximately 72 provisions in the D.C. Code conferring rights upon married couples. *Dean v. District of Columbia*, 653 A.2d 307, 323 (D.C. App. 1995) (at note 19). In 2003, a

