



COUNCIL OF THE DISTRICT OF COLUMBIA
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TESTIMONY

**Proposed Referendum Concerning the Jury & Marriage Amendment Act of 2009
June 10, 2009**

Good morning. I am Phil Mendelson, an At-Large Member of the Council of the District of Columbia. I am the author of the Jury & Marriage Amendment Act of 2009 and, more specifically, the amendment which now comprises section 3 of the Act. I am here to state that the proposed measure is not a proper subject for referendum in the District of Columbia.

First, I want to speak to the Council's process in adopting the legislation at issue. Although our process is not directly pertinent to the question of whether the measure is a proper subject for referendum, opponents to the Act have complained that the legislation was "rushed through" without opportunity for public comment. In fact, however, the legislation was not rushed, and we did hear from the public, and what we heard was very little opposition.

Section 3 of the Jury & Marriage Amendment Act is actually a clarification of existing law. Existing law has given the Mayor authority to recognize as same-sex marriages here, same-sex marriages from other jurisdictions. However, late last year, as the Committee I chair (Committee on Public Safety and the Judiciary) was working on the "Domestic Partnership Judicial Determination of Parentage Act of 2008" (Bill 17-727), I learned that the Mayor was balking at exercising this authority. We attempted to address this in the Parentage bill, but subsequently removed the language from that bill and put it in what was then called the "Disclosure to the United States District Court Amendment Act of 2009" (Bill 18-10). Both bills moved simultaneously: marked-up March 10th, Committee of the Whole March 17th, first reading April 7th, and final reading May 5th. During that time – almost two months – there was ample publicity about the legislation.

The second point I want to make is that the proposed referendum measure would have the effect, if adopted, of authorizing discrimination prohibited by the D.C. Human Rights Act. I say this for several reasons.

Same-sex marriages have become a reality in this country. There are 18,000 same-sex marriages under California law. Same sex marriages are now legal in the states of Iowa, Connecticut, Massachusetts, New Hampshire, and Vermont. The issue of permitting them is pending in Maine and several other states. The purpose of the referendum, however, would be to state that a legitimate marriage elsewhere is not a marriage here if it involves the same sex. In other words, because of a couple's sexual orientation, their otherwise legitimate marriage would be something less here. Rights would be denied to which they are otherwise entitled as a married couple under state or District law. That would be discriminatory, and it would be based on sexual orientation, and it is in violation of our Human Rights Act.

District public policy as embodied in our Human Rights Act has significantly evolved and broadened in recent years. In 1995 a same-sex couple could be denied the right to marry in the District. Since that time, however, the Council has revised almost the entire D.C. Code regarding family law to make it gender neutral, and the Council has expanded the rights of same-sex couples exponentially under our domestic partnership law. In 1995 nobody in the United States could marry if they were of the same sex, but today they can, and tens of thousands have. Thus, what could not be discrimination in 1995 based on sexual orientation, can be discrimination today. And it is, if we deny recognition to marriages legitimately entered into elsewhere.

Finally, I want to make a very simple argument based on fairness. The right to enter into a relationship, to marry, is a basic personal right. As former Vice President Dick Cheney recently said in a speech at the National Press Club, "I think freedom means freedom for everyone. As many of you know, one of my daughters is gay and it is something we have lived with for a long time in our family. I think people ought to be free to enter into any kind of union they wish. Any kind of arrangement they wish."

We are talking about a civil right. And civil rights should not be subject to referendum. Because of that, and because of our own, progressive Human Rights Act, the measure before you is not a proper subject for referendum.

Thank you for consideration of my views.