

ARCHDIOCESE OF WASHINGTON

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November 10, 2009

Via electronic delivery to:

Honorable Phil Mendelson
Chairman, Committee on Public Safety and the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Chairman Mendelson and Members of the Committee:

On behalf of the Archdiocese of Washington, I am writing in response to the Committee on Public Safety and the Judiciary's meeting today regarding the markup of the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 (Bill 18-0482). After carefully listening to the Committee's discussion, we are concerned that there are some serious misconceptions about how the Committee Print's proposed exemption language will affect religious institutions and individuals in the District of Columbia.

First, it was claimed today that the exemption language contained in Section (e) of the Committee Print of the Bill is *broader* than the language proposed in the original bill. In particular, a statement was made that by removing the original language which excluded religious organizations offering their services to the general public from the exemption, the language was broadened. On the contrary, the newly proposed exemption is actually much narrower than the original language proposed. This is apparent from a comparison of the bill's earlier language and the revision approved today. For convenience of comparison, the original language is attached, with the Committee Print's revisions noted.

The revised language does little more than restate protections already guaranteed to religious organizations under the U.S. Constitution. The first component of the exemption, regarding "solemnization or celebration" of same-sex marriage, only exempts religious organizations from assisting in a same-sex marriage ceremony itself. Also, while the prior bill exempted a religious organization from any activities related to the promotion of same sex marriage, the Committee's revision includes new language limiting the scope of the term "promotion" to only those activities considered "religious programs, counseling, courses, or retreats." This revision effectively restricts the extent of the exemption previously included in the bill. Both components of the exemption simply affirm existing First Amendment protections for religious institutions under the Free Exercise clause.

Most importantly, the revised language does not permit Catholic Charities and other religious service organizations to freely function as religious entities serving the needs of District

residents. Catholic Charities and forty Catholic parishes in the District of Columbia provide many more services to residents of this city that reach far beyond “religious programs, counseling, courses, or retreats” related to marriage. In our statement submitted to Council on October 26, we identified the outreach and services provided to the neediest residents regardless of faith. All of those services will be adversely impacted if the exemption language remains so narrow.

In particular, an exemption this narrow leaves religious institutions open to civil suit and/or deprivation of governmental benefits for refusing to recognize the equivalence of same-sex marriage and traditional marriage in a host of settings in which, if the institution were to provide equivalent recognition, it would breach its own fundamental beliefs. To take only a few examples, the committee print language appears to leave religious institutions susceptible to legal action for:

- a religious institution’s refusal, on the basis of sincere religious belief, to provide a medical benefits plan for employees in which spousal medical benefits are provided to the same-sex marriage partner of a gay or lesbian employee;
- a religiously affiliated social services provider’s refusal, on the basis of sincere religious belief, to facilitate an adoption or foster care by a same-sex couple;
- a local religious community’s refusal to make its hall available for events inconsistent with the community’s sincere religious beliefs.

In each of these cases, the religious institution may face the threat of (1) civil lawsuits by individuals or the District itself under other provisions of District law (e.g., the D.C. Human Rights Act); (2) withdrawal of governmental funds currently provided (for example, to support the social services provided by Catholic Charities); and (3) the denial of licenses or other forms of governmental certification needed to provide services.

Second, the Committee again refused to provide any protection for the rights of religious individuals whose sincere religious beliefs, not anti-gay animus, require them to step aside from participating in the solemnization or celebration of a same-sex marriage. In fact, today’s characterization of an individual’s religious belief about the meaning of marriage as a “discriminatory impulse” or “instinct” reflects a disquieting lack of respect for the fundamental, constitutionally guaranteed right of an individual to practice his or her religion, and even for religion itself.


The right of the conscientious objector is well established and respected in other contexts. Doctors who hold sincere religious beliefs that abortion is immoral generally do not have to perform abortions. Religious individuals who sincerely believe in absolute pacifism may not be required to serve in combat. Although the Committee has expressed concern that bigots may improperly claim to hold religious beliefs as a veil for discriminatory practices, a broad body of Supreme Court cases have firmly established a mechanism for preventing such abuses of the law. The Committee’s insinuations that religious beliefs about the meaning of marriage are somehow necessarily of dubious sincerity run far afoul of the principles that these cases entrench. Provision of an exemption for individual conscientious objectors in this bill would not create an “invitation” to discriminate. The right of the U.S. citizen to practice his or her religion has existed since our nation’s founding.

Furthermore, as presented in our written statement to the Council on October 26, the Religious Freedom Restoration Act (RFRA) and its controlling interpretive case law underscore individuals' right to practice their religion by requiring "the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—*the particular claimant whose sincere exercise of religion is being substantially burdened.*" *Gonzales v. Centro Espirita*, 546 U.S. 418, 420 (2006) (emphasis added). Under RFRA the District government may only burden an individual's practice of his or her religion in the "least restrictive means" possible. The outright prohibition of the observance of a sincerely held religious belief about marriage cannot possibly be said to be the least restrictive means in this case.

Though the proponents of this bill frame the issue as a clear-cut matter of equality and civil rights, it must be seen in this context as a task in balancing competing interests: the interest of the homosexual community to be able to marry freely and the interest of the religious community to be able to practice religion freely. Although the D.C. Human Rights Act is often cited in support of this bill, the Committee neglects to mention that the same Act also prohibits discrimination on the basis of religion. An exemption drawn with both interests in mind is absolutely required under constitutional and statutory authority. It would preserve individuals' religious liberty and protect religious organizations' ability to provide services in a manner that does not compromise their religious teachings and beliefs. Moreover, an appropriate exemption would avoid costly litigation and minimize adverse impact upon the community.

The Archdiocese opposes the redefinition of marriage in the District of Columbia. However, if the Council moves forward with its redefinition, we respectfully urge that religious individuals and organizations be afforded the same protections from discrimination and restrictions on liberties. The exemption language contained in the Committee Print is far too narrow, and must be expanded to include appropriate safeguards to protect religious freedom and to preserve the ability of Catholic Charities and other service providers to continue to serve the growing and unmet needs of the residents of the District.

Sincerely,



Jane G. Belford
Chancellor

Copies to: Committee Members
Enclosure

Attachment 1:

[Section 1288]

“(e) Notwithstanding any other provision of law, a religious ~~organization, association, or~~ society, or a nonprofit organization which is operated, supervised, or controlled by or in conjunction with a religious ~~organization, association, or~~ society, shall not be required to provide services, accommodations, facilities, or goods for a purpose related to the solemnization or celebration of a ~~marriage~~ *same-sex marriage*, or the promotion of ~~marriage~~ *same-sex marriage through religious programs, counseling, courses, or retreats*, that is in violation of the ~~entity’s religious~~ *religious society’s* beliefs, ~~unless the entity makes such services, accommodations, or goods available for purchase, rental or use to members of the general public.~~ *Any* A refusal to provide services, accommodations, facilities, or goods in accordance with this ~~section~~ *subsection* shall not create any civil claim or cause of action, or result in ~~any a~~ District action to penalize or withhold benefits from such ~~entity, unless such entity makes such services, accommodations, facilities, or goods available for purchase, rental, or use to members of the general public~~ *the religious society or nonprofit organization which is operated, supervised, or controlled by or in conjunction with a religious society.*”

Key:

Italicized: Revised language added in the Committee Print.

~~Struck:~~ Language in the original bill, but deleted in the Committee Print.