

**Testimony Presented by Thomas S. Williamson, Jr.
Special Board Meeting of the District of Columbia Board of Elections and Ethics
(January 27, 2010)**

I. Introduction

My name is Tom Williamson and I am an attorney with the law firm of Covington & Burling. I am here today on behalf of our clients whose lives, relationships, and rights are the target of this discriminatory referendum, and we thank the Board for the opportunity to testify at this hearing.

For the third time in less than a year, the proponents ask this Board to put the civil rights of same-sex couples on the ballot for a popular vote. For the third time, this Board should deny their request. The reason is simple and consistent with the District of Columbia's long-standing commitment to fairness and basic civil rights for *all* its residents and citizens.

The Supreme Court recognized long ago in *Loving v. Virginia*, 388 U.S. 1 (1967), that marriage is a fundamental right. The proponents seek a referendum that would authorize discrimination on the basis of sexual orientation by denying same-sex couples access to this fundamental right. Such a referendum is improper because D.C. law does not permit ballot initiatives that seek to place the fundamental civil rights of vulnerable minorities in the hands of the majority for a popular vote.

II. The Referendum's Impact on Our Clients

A. *Reginald Stanley and Rocky Galloway*

Let me first talk about our individual clients, Reginald Stanley and Rocky Galloway. The two of them have been in a committed relationship for about six years and have been registered as domestic partners in the District of Columbia for nearly four years. Together, they raise two thirteen-month-old twin daughters. For the benefit of themselves and their children, Reggie and Rocky intend to marry in the District after the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 becomes law.

Reggie and Rocky wish to marry for the same reasons opposite-sex couples do. They want to have all of the marital rights, privileges, and responsibilities established by the D.C. Code. They want their two children to have the protections and stature afforded children of married couples. They want to have their relationship granted the same legal recognition and status under D.C. law as that of opposite-sex couples.

The Civil Marriage Equality Act heralded an end to an era of government-sanctioned discrimination against same-sex couples and sent the message that the District of Columbia is committed to full equality for the LGBT community. The proposed referendum, if passed, would undo these protections and would give discrimination against same-sex couples the force of D.C. law.

The proposed referendum would deny Reggie and Rocky and other same-sex couples the right to marry in the District solely because of their sexual orientation. Their union and their family will be deemed unequal under D.C. law. This disparate treatment is discriminatory and is prohibited by the D.C. Human Rights Act.

It has been suggested that couples like Reggie and Rocky do not need civil marriage because D.C. has a robust set of domestic partnership laws. But that argument lacks merit.

As has been observed by the California Supreme Court, “The exclusion of same-sex couples from the designation of marriage works a real and appreciable harm upon same-sex couples and their children.” *In re Marriage Cases*, P.3d 384, 452 (Cal. 2008). This is because “marriage” is widely and readily understood as a term that bestows positive community approval on the family relationship. The term domestic-partnership is well intended, but, speaking candidly, it is a novel, legal concept that does not inspire the same degree of respect and understanding as the term marriage. For example, young children in school may occasionally be asked about the marital status of their parents. If their parents are same-sex parents, will it be fair and equal for those children to have to say my parents are not married, but they are legally sanctioned as “domestic partners”?

Perhaps an analogy in the heterosexual context would make the point as well, do any of us think the proponents of laws that prohibited interracial marriage in the 1960’s would have persuaded the Supreme Court in *Loving v. Virginia* if they had argued that blacks and whites could *not* refer to themselves as married, but they could have all the legal rights of marriage so long as they were satisfied to call their relationships “transracial unions?”

In addition, we have a concern that excluding same-sex couples from the marriage designation may not adequately protect their rights when those couples may be traveling in a jurisdiction where domestic partnership laws do not exist or are not recognized. If a same-sex couple had a serious accident in such a jurisdiction, one partner might be excluded from the operating recovery room because the couple was not “married” in accordance with that other jurisdiction’s laws. A D.C. marriage license, however, would protect couples like Reggie and Rocky both inside and outside the District.

B. Campaign for All D.C. Families

We also represent the Campaign for All D.C. Families, a coalition of community organizations who stand in support of marriage equality for all D.C. residents.

These groups strive to end discrimination against the LGBT community and to improve the lives of LGBT individuals by advocating for equal rights at the federal and state levels. For decades, marriage equality has been among these organizations’ essential goals.

For the Campaign, attaining equal access to the fundamental right of marriage is a key element in the larger fight against discrimination.

C. D.C. Clergy United

We also represent D.C. Clergy United. This is an interfaith organization comprised of religious leaders from the Christian, Jewish, and Islamic traditions who are committed to the promotion of interfaith dialogue and social justice, including marriage equality. More than 100 local clergy *from all eight wards* have signed this group's declaration to profess their support for marriage equality for same-sex couples in the District.

D.C. Clergy United seeks to protect the human rights and human dignity of all persons of all faiths and extend religious freedom within the District of Columbia. As religious leaders in the community, D.C. Clergy United has a strong interest in protecting the full range of marriage rights of their parishioners and congregation members and the religious bonds these marriages represent.

III. Conclusion

As I stated at the outset, this is the proponents' third attempt to subject the basic civil rights of same-sex couples to a popular vote. Twice, the Board correctly concluded that these measures are discriminatory and not a proper subject for the ballot in D.C. Twice, the Superior Court affirmed the Board's decision. This third time is no different.

Like the rejected referendum on the Jury and Marriage Amendment Act and like the rejected Marriage Initiative of 2009 that sought to define marriage in D.C. as the union of one man and one woman, the proposed referendum would authorize discrimination in violation of the D.C. Human Rights Act.

Because neither a referendum nor an initiative can discriminate in violation of the Human Rights Act, the proposed referendum is not a proper subject for popular vote in the District.

Thank you, that concludes my statement.

Submitted on behalf of Reginald Stanley,
Rocky Galloway, Campaign for All D.C. Families,
and D.C. Clergy United by:

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