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Testimony before the D.C. Council on Marriage Equality & Domestic Partnerships

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AMERICAN UNIVERSITY

W A S H I N G T O N , D C

Testimony of Professor Nancy D. Polikoff

in support of B18-482 (with amendment):

Religious Freedom & Civil Marriage Equality Amendment of 2009

Before the District of Columbia City Council

Committee on Public Safety and the Judiciary

October 26, 2009

Good afternoon. My name is Nancy Polikoff. I am Professor of Law at American University Washington College of Law, where I teach Family Law and Sexuality and the Law. I graduated from Georgetown Law Center in 1975 and have worked on family law issues affecting gay and lesbian couples, parents, and their children in the District of Columbia for more than 30 years. In 1995, I was successful appellate counsel in the case that established the rights of unmarried same- and different-sex couples to adopt children in DC, and I have been involved with this Committee's work on domestic partnerships and on de facto parentage. I reside in Ward 3.

I support legislation granting equality to same-sex couples by allowing them access to civil marriage. Many witnesses today and

next week also support such equality, and I am happy to be in their company.

The primary purpose of my testimony today, however, is to urge this Committee to remove from B18-482 the provision that eliminates, effective January 1, 2011, the legal status of domestic partnerships in the District of Columbia.

From its inception in 1992, the status of domestic partnership in DC was about recognizing family relationships other than marriage. Unlike some jurisdictions, it was not a status granted only to same-sex couples and only because of their exclusion from marriage. Not only can different-sex unmarried couples register, but two people not in a romantic couple, including relatives, can register if they live together in a "committed, familial relationship." Availability of marriage for same-sex couples, as a statement of the equal value of gay and straight relationships, does not diminish the appropriateness of providing a legal status to those who do not marry.

In fact, the initial push for domestic partnership in the early 1980's was about providing an alternative to marriage, so that marriage would not be the only mechanism for allocating rights and responsibilities. The first private employer to provide domestic partner benefits to employees was the *Village Voice* newspaper in 1982, and its status included gay and straight couples. The first public

recognition of domestic partners was in Berkeley and West Hollywood in 1985; both covered gay and straight partners.

Also in the 1980's, before the District of Columbia enacted domestic partnership, the city of Madison, Wisconsin demonstrated the importance of thinking beyond "couples" when defining family. It created domestic partnership for any two people "in a relationship of mutual support, caring, and commitment [who] intend to remain in such a relationship in the immediate future....Mutual support means that the domestic partners contribute mutually to the maintenance and support of the domestic partnership throughout its existence." The two people must live together as a "single, nonprofit housekeeping unit, whose relationship is of a distinct domestic character," and the relationship must not be "merely temporary, social, political, commercial, or economic in nature."

Currently, California, Maine, Nevada, New Jersey and Washington allow at least some different-sex couples to register as domestic partners. Colorado allows any two unmarried persons to register as designated beneficiaries. Hawaii allows two people unable to marry to register as reciprocal beneficiaries.

As I am sure this Committee is aware, the DC Department of Health last week promulgated proposed regulations enumerating what relationships from other jurisdictions will be treated as District of

Columbia domestic partnerships. All the above states except Maine, including Colorado and Hawaii, are on the list. If B18-482 becomes law as written, we will face the anomalous situation, for example, that a non-couple primary relationship that registers as designated beneficiaries in Colorado will be recognized as domestic partners in the District of Columbia but if those same two people lived in the District of Columbia they would be unable to protect their relationship by registering for a legal status here.

Once DC authorizes marriage for same-sex couples, it will be appropriate to reevaluate DC relationship recognition law. That work must include considering the needs of the wide range of family relationships that exist in this city – the very motivation for instituting domestic partnership in 1992. This is a critical undertaking, and we have numerous models to consider.

Let me give you just one example. The first substantial benefit granted to domestic partners in this city was the ability of a DC government employee to include a domestic partner on his or her employee benefits, including health insurance. Today, Salt Lake City, Utah public employees can cover on their benefits an “adult designee” and that person’s children. The employee and the adult designee must have lived together for more than year, must intend to continue living together, and must be economically dependent or interdependent,

according to specific criteria. The City Council members who enacted this law articulated that they were recognizing nontraditional families and support systems, that they were allowing unmarried employees to provide for a primary family member, and that true equality recognizes the needs and living situations of all employees.

This Council could embark on such a reevaluation now, as part of this legislation. I believe the better course of action, however, is to leave our domestic partnership scheme intact until marriage equality is in place. At that point, I will wholeheartedly support, and gladly participate in, the Council's careful determination of the needs of the wide range of relationships that make up the families of the District of Columbia.

There is an additional reason why DC should maintain domestic partnerships. The vast majority of states bar recognition of same-sex marriages. Many of those state statutes and constitutional provisions, however, are silent on the question of recognizing domestic partnerships and civil unions from elsewhere. Some of them (e.g., Nevada, Wisconsin) prohibit same-sex marriage but provide *for* domestic partnerships. In this time of significant interstate variation and uncertainty, a same-sex couple in DC needs the option of choosing a legal status that might protect the couple and their children in more jurisdictions, or in a specific jurisdiction important to that couple.

I am happy to assist this Committee in any way I can as it continues its deliberations on B18-482.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy D. Polikoff". The signature is fluid and cursive, with the first name "Nancy" being the most prominent.

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