

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 22, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: ADDENDUM TO THE PROPOSED CITY LEGISLATIVE PACKAGE FOR THE 2005 GENERAL ASSEMBLY SESSION, REGARDING THE AFFIRMATION OF MARRIAGE ACT (COUNCILMAN SMEDBERG)

---

**ISSUE:** Addendum to the proposed City Legislative Package for the 2005 General Assembly Session.

**RECOMMENDATION:** That City Council incorporate into the proposed 2005 Legislative Package an additional item (2.O), which seeks to have the City’s Legislative Delegation support or introduce legislation that would modify or repeal Virginia’s Affirmation of Marriage Act. If Council concurs with this recommendation, the language for adoption of the 2005 Legislative Package will be as follows:

That City Council adopt items 1.A through 1.I, 2.A. through 2.O, and 3.A. through 3.D as positions in the City’s Legislative Package for the 2005 General Assembly Session.

**DISCUSSION:** The 2004 General Assembly enacted legislation titled The Affirmation of Marriage Act (Chapter 983, 2004 Acts of Assembly). This Act states that:

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

Although the patron of the legislation (Delegate Bob Marshall) portrayed it as a statute aimed at ensuring that Virginia is not required to recognize civil unions that were legally entered into in other states, many others fear that it will have other significant, far-reaching effects. Governor Warner unsuccessfully sought to amend the legislation, expressing “grave doubts about the constitutionality of [its] broad wording, and [his belief] that it could have a host of unintended consequences.” Among the possible unintended consequences he cited were the voiding of existing contractual rights, the prohibition of certain contracts between two people of the same sex (regardless of their sexual orientation), the inability of business partners of the same gender to enter into a partnership agreement outlining the division of property if the partnership dissolves, and the voiding of medical directives designating a close friend of the same sex to make necessary medical decisions.

Because of these uncertainties, as well as the discriminatory nature of the law, Councilman Smedberg recommends that the City support any efforts undertaken in the 2005 Session to repeal it, or to modify it to address its opponents' concerns. Staff concurs with Councilman Smedberg's recommendation.

Arlington County and the City of Charlottesville have indicated that they will have similar proposals in their legislative packages.

**STAFF:**

Bernard Caton, Legislative Director

**ATTACHMENT:**

Attachment – The Affirmation of Marriage Act (Chapter 983, 2004 Acts of Assembly)

**Attachment 1**

**CHAPTER 983**

*An Act to amend the Code of Virginia by adding a section numbered 20-45.3, relating to the Affirmation of Marriage Act for the Commonwealth of Virginia.*

[H 751]

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 20-45.3 as follows:

*§ 20-45.3. Civil unions between persons of same sex.*

*A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.*