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|  | 1. Modise Rex Seemela Chairman of the Board  Seventh Day Adventist Church (NPC) represent8ing **11 Church organisations** across provinces. 2. George Vumile Mosokini Capacity: Senior Pastor Shekinah Blaze Outreach International 3. FELLOWSHIP OF COMMUNITY CHURCHES IVOR TEMLETT Capacity: Senior Pastor / Chairman 4. Dr Johnny Slabbert Christian Family Church International Johannesburg represents over 160,000 members in attendance. 5. Marray Hurd Pastor at Face to Face Church**120 Members Jeffreys Bay** 6. Christian Family Church International Mbombela Ps Percy Hunter Senior Pastor estimated  **250 Members** 7. Sheldon Kidwell Lead Elder Bay City Church Muizemberg estimated **500 members** 8. Linda-Lee Senior Pastor Christian FAMILY Church Brakpan 1**47 Members** 9. Bongani Mkhwanazi Director Healing Centre Ministries Ermelo 10. Ps Andrew Walton Chief Administrative Officer New Beginnings Christian Family Church 11. P A de Kock Pastor/Director Klerksdorp Christian Academy / Word of Life Centre approximately **420+** adherents 12. Elmare van Wyk 13. Ps. Frederick George Downing Snr. Pastor Christian Family Church International **50 congregants** 14. Pastor Danny Carmichael-Green Bay Christian Family Church, Cape Town, **8000 Congregants** 15. Patrick Masuka Senior Pastor Christian Family Church Int'l. Valdezia 16. Pastor Theresa Shadi Ntshegang Senior and founding pastor Christian Family Church Damonsville 17. Petro Wagner 18. Warren Graham Senior Pastor Christian Family Church Emalahleni members in regular attendance of over **500** 19. Matome Matladi Senior Pastor Lighthouse Christian Family Church total members around **500** 20. Harry Beyleveld, Chuch Secretary, Meadowridge Baptist Church around **1500 members** 21. Pastor Jonathan Mare Marantha Community Church approximately **6000** congregant in Kempton Park 22. Karen Victor Director CE Church (NPC): approximately **2 500** members, Long Street, Cape Town. 23. Paster Odette Slabbert New Beginnings Christian Family Church Aprox **70 members** 24. Mrs.\_J Van Der Loo 25. M J Van der Loo 26. Pastor Ivan Slinger Senior Pastor Christian Family Church Int. Graaff-Reinet 27. Adv. W Kingsley Reach Summerstrand Church 28. Christopher du Plessis New Beginnings House 1**7 Members** 29. Antonie Gericke 30. Pastor Thulani Mamarigane Christian Family Church International Soweto 31. Pastor Wellington Dhlamini Trinity Christian Family Church International Amanzimtoti, regular members of **over 600**. 32. Pastors Elisha & Abigail Shishonge Kairos Christian Family Church International- Kyalami. **250 members** 33. Megain Marais   As a FAITH-BASED ORGANISATION, We believe that every human being (regardless of race, gender, sexual orientation or any other characteristic) is created in the image of God and as such, has intrinsic dignity and worth. Because God gives dignity and worth to all people, as human beings we ought to do the same.  We further esteem and affirm the constitutional promise that “*South Africa belongs to all who live in it, united in our diversity*” (Preamble to the Constitution).  As such, we commend the Home Affairs Parliamentary Portfolio Committee for what we believe to be a *bona fid*e effort to ensure that the fundamental rights, and human dignity, of same-sex couples are respected and protected by the State.  We are concerned however that **the Bill violates the constitutional rights (to religious freedom, and dignity) of those State-employed marriage officers who, because of their religious convictions and beliefs, do not see their way open to solemnize same-sex marriages, but who will now be forced to do so - or suffer the consequences**.  While we accept that there may be a legitimate problem that the Bill seeks to address (namely the difficulty same-sex couples experience, at some Department of Home Affairs offices, to have their same-sex marriage solemnized), we do not agree that the solution is the removal of the conscientious objections clause from the Civil Union Act, 2006 and propose that **there are viable practical alternatives that should be explored and implemented instead**.  **COMMENTS RELATING TO THE SUBSTANCE OF THE BILL:**  While it is correct that the Constitution guarantees the right not to be unfairly discriminated against on the ground of sexual orientation, the Constitution equally guarantees the right not to be unfairly discriminated against on the grounds of religion, conscience and belief (s 9(3)). In addition, the Constitution guarantees every person (regardless of their occupation, or whom they are employed by) the right to freedom of conscience, religion, thought, belief and opinion (s 15), which includes the right to practise what it is one believes.  In terms of the Constitution, the State has an obligation to respect, protect, promote and fulfil all the rights in the Bill of Rights, including therefore the right not to be unfairly discriminated against on grounds of belief and the right to freedom of religion, belief and opinion.  Instead of respecting, protecting, promoting and fulfilling these rights however, the State will be violating the constitutional rights of State-employed marriage officers who have a conscientious objection to solemnizing (and therefore endorsing) same-sex marriage, if the Bill were to be adopted and the conscientious objection clause removed from the Civil Union Act, 2006.  No one should have to choose between obeying their faith (and potentially suffering eternal consequences if they do not), or obeying the law (and potentially losing their job if they do not), and it would be unconscionable for the State to place its employees before this choice.  **State-employed marriage officers do not leave their fundamental rights behind, or sign a waiver to them, when they take up their office as civil servants. Nor do they leave their religious convictions at home when they step foot out of the door in the morning – they take it *with* them into public life. This has also been confirmed by the Constitutional Court. (See for e.g. the *Christian Education case*, 2000 and the *Fourie* case, 2005).**  **While it is correct that no fundamental right is absolute and can be limited (by another fundamental right), s 36 of the Constitution requires that any limitation needs to be reasonable and justifiable taking into account, amongst other things, whether there are less restrictive means to achieve the (same) purpose.**  In this instance, there are viable practical alternatives that can be explored and implemented by the Department of Home Affairs, and that will avoid the State violating the constitutional rights of State-employed marriage officers while at the same time addressing the problem that same-sex couples are apparently experiencing in some geographical areas in having their marriage solemnized.  **So, for example, as with judicial officers who go on circuit (court) even to the most rural areas to ensure access to justice, State-employed marriage officers who do not have a conscientious objection to solemnizing same-sex marriages, can be sent on circuit** **to the various Home Affairs offices to assist same-sex couples.**  **COMMENTS RELATING TO PROCEDURE:**  We do not agree that it is not necessary for the Bill to be referred to the National Council of Provinces (NCOP) and/or the National House of Traditional Leaders, and submit that it is imperative that the Bill be referred to both these forums whose constituencies have a direct interest in the Bill.  **CONCLUSION:**  In view of the constitutional objections above, we **strongly appeal to Parliament to reject the Bill.**  Please keep us informed of future developments, and invite us to any opportunities for further discussion in relation to this issue. In particular we would appreciate your feedback with regard to the outcome and the date on which the matter will serve before the National Assembly (if at all).  We trust that you find these submissions useful. Should you have any questions, please do not hesitate to contact us.  Yours faithfully, |
|  | **No "separate but equal" legislation**  The legal structure for Apartheid and other systems of racial segregation was based on the dubious legal doctrine of "separate but equal".  Although the constitution of South Africa and the post-Apartheid moral structure of our society expressly and implicitly rejects discrimination and segregation, the Civil Union Act of 2006 (Act No. 17 of 2006) reintroduces the principle of separate but equal legislation for sub-sections of the South African population. Gay and lesbian South Africans are expressly prohibited from entering into marriage under the Marriage Act, 1961 (Act No. 25 of 1961) (‘‘Marriage Act’’) and, instead of changing this unfair law, Parliament saw fit to pass a "separate but equal" law for gay and lesbian marriages. The marriage contracted under the Civil Union Act, which "extends recognition of marriage rights to same-sex partners", is only equal to marriage under the Marriage Act, although it is not even called marriage but is termed a civil partnership known as a civil union.  The current attempt to revise the Civil Union Act (the Civil Union Amendment Bill, 2018) simply perpetuates this intolerable situation. Why are there two laws, with one reserved for heterosexual marriage and one for homosexual "civil unions"? Especially given the horrific history of discrimination in South Africa, Parliament should be ashamed of maintaining such blatant discrimination, which is only justifiable on the Apartheid logic of "separate but equal".  Instead of attempting to reform the discriminatory "separate but equal" Civil Union Act, **Parliament should scrap the Civil Union Act in its entirety and amend the Marriage Act to be gender neutral and thus fully equal and non-discriminatory and open to the marriage of two people, homosexual or heterosexual.** There is no conceivable reason why separate legislation is necessary for homosexual and heterosexual people. Thomas Oliver |
|  | I am a concerned citizen. Religious freedom for every citizen in our nation is demanded as a basic human right.  Our Government has done enough damage to our nation already. Please start making wise choices, that blesses our nation, so that we can prosper!  The call for comments on the (revised) CIVIL UNION AMENDMENT BILL is now open. To view a copy of the Bill click here to go through to our document library and follow the path: Civil Union Amendment Bill » Revised Civil Union Amendment Bill 2018  The Bill will have serious repercussions on State-employees’ right to religious freedom, because a State-employed marriage officer will not be allowed to object (on grounds of conscience/religion/belief) to solemnising same-sex weddings. If this becomes law, it will set a very dangerous precedent for further erosion of our religious rights and freedoms."  Karin Plaatjies |
|  | A law like this would be similar to what happened in the early 2000's when medical doctors were not allowed to refuse to perform abortions if it was against their religious/moral beliefs. In the same way it denied these doctors rights to their personal convictions, a law like this would also deny religious freedom.  In the case of abortion laws, it was changed so that doctors could refer patients where they could get the necessary service. In the same way, pastors should be allowed to refer if they are unwilling to perform same-sex marriage on the base of their personal religious conviction. This shows respect to both parties.  Sharon Guy |
|  | There is no doubt that this amendment constitutes a serious diminution of the rights to freedom of religion and opinion. While recognizing that the present Act does give leeway to persons of ulterior motives applying for exemption from presiding at same-sex marriages, it seems a gross overkill to deal with the situation by seriously diminishing long-fought- for and fundamental human rights - and internationally recognized to be so. I stand AGAINST this amendment.  Rollo Philip John Le Feuvre |
|  | I object to this Bill on the grounds that it violates our constitutional rights of religious freedom and dignity.  Carine White. |
|  | It has come to my attention that the Government intends to propose to Parliament an amendment to  Same-Sex Marriages legislation so as to remove the democratic right of State employed marriage officers to refuse, on conscientious grounds  to officiate at Same-Sex marriages.  Religious freedom is one of the main components of democracy.  The ruling party claims (as I understand it) to stand for democracy, and therefore for democratic rights of which freedom of conscience is one.  With respect, if the information I have received is correct, the ruling party is acting in violation of its own standards – and certainly in violation  of the standards of the political party I support..    (Rev. Dr) Michael J Higgs |
|  | **Sir, as a former lesbian whose life changed after 15 years as a homosexual. Please do not unfairly force  Home Affairs officials to recognize or affirm same-sex marriages. This is not showing tolerance to religious folk whether they are Muslim, Christian or Hindu for that matter.**  Their constitutional right to freedom of speech, religion and expression should not be violated for the sake of making same-sex couples feel welcome. Same-sex couples should accept and respect the beliefs of others and not force them to celebrate their choices. Same goes for religious folk, they should also respect and accept the choice of same-sex couples.  EJ Lombard |
|  | The proposed amendment to the Civil Union Act refers. I understand that if passed into law, it will compel State Employees who are Marriage Officers to perform Same Sex Unions.  I urge Parliament NOT to approve this amendment because it will be a direct negation of our Constitutional right (15 [1]) to “freedom of conscience, religion, thought, belief or opinion”. For a Christian to perform a same-sex union as a MARRIAGE officer would mean s/he must go against her/his “Conscience, Religion, Thought, Belief and Opinion” – all five categories.  1. A CHRISTian is someone who by definition submits to Jesus CHRIST as Lord. He and his teachings carry more weight than any other authority.  2. Regarding “Marriage” Our Lord Jesus Christ taught (in the Gospel of Matthew 19:4-6) “At the beginning the Creator ‘made them male and female’ and said ‘For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh.” There is no ambiguity in this definition of marriage that allows a man and man or a woman and woman to be “married”. For any Christian to perform such a ‘marriage’, s/he must first choose to reject the divine authority of Jesus Christ’s teaching, and substitute it with a human authority that teaches otherwise. Yes, I concede that some churches have made this substitution and will ‘marry’ same-sex couples. But the norm set by Jesus I simple and clear: In his book, only heterosexual couples may marry.  3. Some parliamentarians may cite the SA Constitution clause 9 [3] prohibiting discrimination on grounds of … sexual orientation. The current law enabling CIVIL UNIONS caters for this with wisdom. It does not discriminate against homosexuals. A Civil Union is legally similar to Marriage, but is not Marriage per se. It is a legal contract that provides the same legal benefits, but is not a Marriage. I am not saying you must ban Civil Unions. I am saying you must not force civil servants to conduct them against their conscience/beliefs. There will always be those civil servants who are willing to conduct same-sex unions, so no-one will be disadvantaged.  4. A sexual union between man and woman usually results in a baby … the propagation of the human race. A same-sex sexual union has never yet produced one baby. So the Civil Union between two people of the same sex has this one major deficiency: it can never propagate the human race, which heterosexual marriage normally does.  5. “Sexual Orientation” is not the only relevant category against which you may not discriminate. Clause 9 [3] also prohibits discrimination on the basis of “religion, conscience, belief and culture”. Same-sex ‘marriage’ also fits these four categories.  6. In this respect, there is agreement between both Christians who believe in God and Evolutionists who do not. Christians base their “Conscience, Religion, Thought, Belief and Opinion” on the Creation mandate (Genesis 2:24) cited by the Lord Jesus Christ (as above). Evolutionists base their “Thought, Belief and Opinion” on the Natural Selection teaching which postulates that only those features which encourage procreation of the species will survive in the long term.  7. **Furthermore, African traditional Religion, Judaism, Islam, Hinduism – and other religions all teach the need for Heterosexual Marriage and the procreation of children. In African tradition, a stigma attaches to a Marriage that does not produce children. In many cultures/religions a childless man often takes another wife to ensure children are born.**  8. **To dismiss a State marriage officer on the basis of her/his belief that same-sex ‘marriage’ is unnatural or wrong also transgresses Clause 22 of the Constitution which says ‘every citizen has a right to choose their occupation freely’.** The proposed amendment to the Civil Union Act will remove this ‘freedom of occupation’ choice.  For these cogent reasons, please do not allow Parliament to be bullied into enforcing a new law that contravenes the Constitution. Yours sincerely, Hugh G Wetmore |
|  | Making a comment on this I'd love to start by saying, **marriage was initiated by God Himself. I believe that this bill has come to destroy the whole concept of family and society, it is unfair for any child to be raised by in a home where there is no mother or father(both male parents or even both female parents).** I ask that you atleast consider the kind of society we want to build for the future generation and what will happen in families should this be signed into law.  Thank you for the platform to raise my opinion. Khuselwa Mnyanda |
|  | This email is a written request to please reconsider the new Civil Union Amendment Bill, which compels state marriage officers to solemnise same-sex weddings regardless of their religious convictions You cannot justify trying to rectify one group’s rights over the rights of another group, which is what this bill will do if you force people who believe this to be wrong to go against their conscience and perform same-sex marriages.  Since Christians believe that marriage should be between one man and one woman, one cannot compare them marrying opposite sex couples who are atheists or Muslim, etc. to same-sex couples, since the criteria is the SEX of the couple before them and not what that couple believes. If you go ahead with the bill and force them to marry same-sex couples their rights are being violated, whereas the same-sex couple can always find someone who has no such objection to marry them.  Please do not go ahead with this bill.  Melody Tregear |
|  | I am a believer in Jesus Christ and practice Christianity.  I object the Civil Union Amendment Bill (B11 - 2018) that is before Parliament.  I am concerned that the Bill violates constitutional rights to (religious freedom and dignity) of state employed marriage-officers who, because of their religious convictions and beliefs, do not see their way open to solemnize same sex marriages and will now be forced to do so.  I therefore strongly appeal to parliament to reject the bill. Viola Steenkamp |
|  | I would like to request that this bill not be amended to enforce marriage officers to solemnise same-sex marriages. If I agreed to this I would be acting against my conscience. While I fully agree that the rights of these individuals should be defended, these same rights should equally apply to Marriage officers who object.  In the **Minister of Home Affairs vs Fourie (2005), Judge Sachs implicitly stated that the conscience of state employed marriage officers should be protected f**rom being forced to conduct same-sex marriages. May this continue to be our standard. Mark Wesson Mercy Vineyard Church |
|  | I would like to state my objections to Marriage officers not being able to decide who they will perform marriage ceremonies for....this is unconstitutional as it infringes on our Right to uphold our religous beliefs.... S.Oliver |
|  | I refer to the invitation for written submissions on the Civil Union Amendment Bill [B11 - 2018] (“the Bill”) and the Memorandum on its Objects, and make the following submissions in this regard.  As a citizen of this nation I, believe that every human being regardless of race, gender, sexual orientation or any other characteristic has intrinsic dignity and worth. I further esteem and affirm the constitutional promise that “South Africa belongs to all who live in it, united in our diversity”  I am concerned however that the Bill violates the constitutional rights (to religious freedom, and dignity) of marriage officers who, because of their religious convictions and beliefs, do not see their way open to solemnize same-sex marriages, but who will now be forced to do so – or suffer the consequences.  The Constitution guarantees every person (regardless of their occupation, or whom they are employed by) the right to freedom of conscience, religion, thought, belief and opinion, which includes the right to practise what one believes. In terms of the Constitution, the State has an obligation to respect, protect, promote and fulfil all the rights in the Bill of Rights, including therefore the right not to be unfairly discriminated against on grounds of belief and the right to freedom of religion, belief and opinion. Instead of respecting, protecting, promoting and fulfilling these rights however, the State will be violating the constitutional rights of State-employed marriage officers who have a conscientious objection to solemnizing (and therefore endorsing) same-sex marriage, if the Bill were to be adopted and the conscientious objection clause removed from the Civil Union Act, 2006**. No one should have to choose between obeying their faith (and potentially suffering eternal consequences if they do not), or obeying the law (and potentially losing their job if they do not), and it would be unconscionable for the State to place employees before this choice.**  I strongly appeal to Parliament to reject the Bill. Vanessa Klopper |
|  | Please accept this email as my express objection to the passing of the amendment to the above act.  If it is passed, it will remove the right of “state employed Marriage Officers” to refuse to perform a same sex marriage  My objection is based on the fact that the constitution of South Africa protects ALL from discrimination .  That in the exercise of ones right to sexual orientation, the religious beliefs of another should not be discriminated against and there compelling an office to perform a marriage ceremony of two same sex individuals counter to their own religious beliefs is a gross violation.  Trust that my objection will be duly noted and added to the count of objections. Lezell Peter |
|  | Please can you have it recorded that I have strong objections with the proposed changes to this billy  I believe we entering into a dangerous please when we force on people who serve others a practice that goes against their convictions  In addition to this Any proposed legislation which restricts the religious freedom of individuals is, in our view, unconstitutional.  John Abrahamse |
|  | I wish to object in the strongest term possible for the amendment of the Civil Union Bill . This bill will force Marriage Officers to conduct same sex marriages.  This goes against my conscience. I represent a lot of people who feel the same way.  Pastor Rennie |
|  | 1 We refer to the abovementioned matter, specifically to the invitation issued by the Portfolio Committee on Home Affairs (“the Committee”), calling for public comments in respect of the Civil Union Amendment Bill [B11-2018] (“the Bill”).  2 **Cause for Justice (“CFJ”)** hereby wants to thank the Committee for the opportunity to present these written submissions and to participate in the law-making process.  BACKGROUND TO CAUSE FOR JUSTICE  3 **CFJ is a non-profit human rights and public interest organisation** founded in 2013 to advance constitutional justice in South Africa, primarily through participation in the legislative process and governmental decision-making structures, litigation and through creating public awareness on matters of public importance.  4 All five of CFJ’s core values give it a particular interest in the Bill, namely (1) the responsible exercise of freedom, (2) protection and promotion of human dignity / worth, (3) protection of the vulnerable in society (social justice), (4) ensuring accountable government action and (5) protecting the institutional authority of the family against undue encroachment from outside forces.  5 CFJ’s involvement in matters pertaining to the protection and promotion of religious freedom date back to September 2014 when the “Organisasie vir Godsdienstige-Onderrig en Demokrasie”1 instituted legal proceedings in the Johannesburg High Court against six public schools. CFJ joined the proceedings as amicus curiae (friend of the court). CFJ’s contributions to the resolution of the constitutional questions included that a school system that tolerates diversity of religious practices and views should be favoured against a system that is essentially secular, denying all but agnostic or atheistic views in the life of a public school, since the South African constitutional order allows for the state to support and promote a variety of religious and irreligious views fairly and equitably. While CFJ acknowledged in its legal papers that accommodating religion in schools in a manner that ensures that the dignity and beliefs of all involved is respected, may at times not be an easy task, the answer cannot be to jettison religion – and along with it the enriching role that religious belief and practice play within the South African public sphere.  6 CFJ initially submitted written submissions in respect of a Draft Bill before introduction into the National Assembly to the Speaker and to Ms D Carter, MP, on 26 April 2018. The submissions hereby delivered to the Committee include our original submissions and also amplify those earlier submissions with further insights gained since April 2018.  STRUCTURE OF SUBMISSIONS  7 Our submissions are structured under the following headings:  A The facts  B The law - Constitutional rights analysis  C Application of the law to the facts  D A practical solution  E Conclusion  A THE FACTS  8 Same sex couples can have their relationships solemnised as a civil union in terms of the Civil Union Act (“the Act”).2  9 The Act provides marriage officers who are employed by the Department of Home Affairs (“DHA”) with the right to object to solemnising civil unions of same sex couples on the basis of their conscience, religion or belief (referred to as a “conscientious objection”).  10 Section 6 of the Act, the ‘conscientious objection clause’ it may be called, reads:  A marriage officer, other than a marriage officer referred to in section 5, may in writing inform the Minister that he or she objects on the ground of conscience, religion and belief to solemnising a civil union between persons of the same sex, whereupon that marriage officer shall not be compelled to solemnise such civil union.  11 Due to the exercise of the right of conscientious objection by marriage officers who are employed by the state and their current geographical deployment, same sex couples are not able to have their civil unions solemnised at each and every Home Affairs Offices (“HAO”) in South Africa.  Supply of services – HOA and Marriage Officers (non-conscientious objectors)  12 According the data at our disposal,3 there are 382 HAO in South Africa, of which 106 offices (or 27.8%) have marriage officers who are willing to solemnise civil unions between same sex couples. Therefore, civil unions between same sex couples cannot be solemnised at 276 offices (or 72.2%). These percentages, however, do not take into account the percentage distribution of where marriages and civil unions are solemnised and the ease with which a couple may be able to obtain the same services due to the proximity of an HAO which is able to solemnise civil unions. The aforementioned percentages accordingly are not a fair reflection of the extent to which same sex couples are in fact currently being denied services by the state. Because of the practical solutions we propose later herein, the aforementioned lack of clarity on the extent of the issue, however becomes practically irrelevant.  13 In addition and more significantly, the latest known head count of marriage officers in the employ of the state shows that 62.74% are willing and able to solemnise civil unions. A clear minority of 37,26% are conscientious objectors.4  Demand for services – Civil Unions compared to Civil Marriages  14 According to Statistics South Africa,5 in 2013 a total of 158 642 civil marriages were registered at the Department of Home Affairs (“DHA”), making the 2013 crude civil marriage rate 3,0 per 1 000 estimated resident population.6 In 2015 at total of 138 627 civil marriages were registered, making the crude civil marriage rate 2,5 per 1 000 estimated resident population.7  15 In the 2013, a total of 993 civil unions were registered, making the 2013 crude civil union rate 0,02 per 1 000 estimated resident population.8 In the 2015, a total of 1 185 civil unions were registered, making the 2015 crude civil union rate 0,02 per 1 000 estimated resident population.9  16 A combined total of 159 635 civil marriages and civil unions were registered in 2013, of which 99.4% were civil marriages and 0.6% were civil unions. A combined total of 139 812 civil marriages and civil unions were registered in 2015, of which 99.2% were civil marriages and 0.8% were civil unions.  17 In 2013, the highest number of civil unions (nearly 73.6%) were registered in Gauteng (411 or 41.4%) and the Western Cape (320 or 32.2%). In 2015, the highest number of civil unions (nearly 66.6%) were registered in Gauteng (443 or 37.4%) and the Western Cape (346 or 29.2%). In Gauteng 64.6% of HAO have marriage officers willing to register civil unions between same sex couples. In the Western Cape, 35.7% of HAO have marriage officers willing to register civil unions between same sex couples.  FACTUAL CONCLUSION #1: RELATIVE OVERSUPPLY OF MARRIAGE OFFICERS WHO ARE NOT CONSCIENTIOUS OBJECTORS IN COMPARISON TO DEMAND FOR CIVIL UNIONS REGISTRATION  18 **What these statistics bear out is that irrespective of the true extent of the issue (lack of service delivery to same sex couples), the DHA is able to deliver the services at 27.8% of its HAO - in answer to a need of less than 1%.**  **19 From a staff complement of 1130 marriage officers, 709 (or 62.74%) of marriage officers are willing to register same sex civil unions in answer to a need of less than 1%. The DHA currently has a significant over-supply of marriage officers who are willing to register same sex marriages.**  Any lack of service delivery to same sex couples is not the result of a shortage of marriage officers who are willing and able to perform the functions to enable the state to deliver such services.  FACTUAL CONCLUSION #2: THE TRUE CAUSE OF THE PROBLEM IS GEOGRAPHICAL, PLANNING AND/OR BUDGETARY IN NATURE  20 Even before considering the status of the law, there is an early indication that the status of the law is not the real or true cause of the issue. The true cause(s) seems to be geographical, planning and/or budgetary in nature.  B THE LAW - CONSTITUTIONAL RIGHTS ANALYSIS  RIGHTS OF SAME SEX COUPLES  21 In terms of the Constitution,10 same sex couples who want to solemnise a civil union, have (amongst others) the right to equality and non-discrimination,11 and the right to human dignity.12  22 Same sex couples are equal before the law and have the right to equal protection and benefit, including the full and equal enjoyment of all rights and freedoms, of the law. The state may not unfairly discriminate directly or indirectly against same sex couples on the basis of their sexual orientation. Such discrimination is presumed unfair unless proven to be fair.  23 Sexual orientation is a constitutive part of any person’s identity and therefore his/her human dignity. Discriminating against a person on the basis of their sexual orientation infringes on their human dignity. Therefore, not providing same sex couples with the public service of solemnising civil unions at all HAO infringes the right to human dignity of same sex couples.  10 Constitution of the Republic of South Africa, 1996 (“the Constitution”).  11 In terms of s 9 of the Constitution:  (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.  (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.  (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.  (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.  (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.  24 For the same reason, such same sex couples’ right to full and equal enjoyment of all rights afforded by law is also infringed.  25 The right to non-discrimination of same sex couples, is further protected by the Promotion of Equality and Prevention of Unfair Discrimination Act (“PEPUDA”).13 By applying PEPUDA to the current factual circumstances, same sex couples should not be discriminated against unfairly by the State.14 When a person is discriminated against on a prohibited ground, the discrimination is presumed to be unfair, unless it is proved to be fair.  26 Not all discrimination, even discrimination on the basis of a prohibited ground, is however necessarily unfair. PEPUDA provides criteria for determining whether discrimination is fair or unfair.15 Discrimination will not be unfair where, for example, it can be shown that the discrimination serves a legitimate purpose.  RIGHTS OF MARRIAGE OFFICERS  27 In terms of the Constitution, marriage officers who object to solemnise civil unions between same sex couples, amongst others have the right to freedom of religion, belief and opinion,16 and the right to human dignity.  28 Both sexual orientation, conscience and religious conviction, including the expression thereof and living in accordance therewith, are constitutive of identity and therefore intrinsically linked to human dignity. Same sex couples who want their civil unions to be solemnised and marriage officers who conscientiously object to themselves solemnising such unions, are equal in dignity and equal before the law.  29 While there are **some who may rightly be called religious bigots, there are also sincere conscientious objectors. It must be accepted that marriage officers who are conscientious objectors are not motivated by a desire to prejudice or harass others on the basis of their sexual orientation,** but rather by a desire to live in accordance with their conscience and/or sincerely held beliefs regarding intimate partner relationships, marriage and family. If the law (by denying conscientious objection) or the State (by refusing to employ conscientious objectors) were to discriminate against such marriage officers by preventing them to act in accordance with their conscience and/or sincerely held convictions, it would infringe their freedom of religion, belief and opinion, and human dignity at a fundamental level.  LIMITATION OF RIGHTS  30 **The rights in the Bill of Rights may be limited in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.17 The limitation of rights entails a balancing exercise of which the purpose is to maximise the promotion, protection and enjoyment of the rights of all persons in a fair manner. Therefore, the least restrictive manner to limit rights, is to be preferred.**  31 The Civil Union Act is a law of general application. The right of same sex couples to have civil unions solemnised may be limited, if the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom (as provided in the limitations clause).  32 The Civil Union Act grants same sex couples the right to have civil unions solemnised. The Civil Union Act also grants marriage officers the right to conscientious objection. The right to conscientious objection does not extinguish the rights of same sex couples, nor does it necessarily limit such right. It is however accepted that the right to conscientious objection has the potential to limit same sex couples’ right to equal services. Whether there is a real limitation/infringement, will depend on the facts, and the status of the law would not necessarily be the cause of any limitation/infringement.  33 It is clear that in a hypothetical society where there are no persons who are or will ever be willing to solemnise civil unions, a law of general application containing a conscientious objection exemption would infringe/limit same sex couples’ right to full and equal enjoyment of all rights afforded by law. This is obviously not the state of play in South Africa; there are HAO where civil unions between same sex couples can be solemnised.  17 S 36 of the Constitution (the “limitations clause”), reads:  (1) The rights in the Bill of Rights may be limited in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:  (a) the nature of the right;  (b) the importance of the purpose of the limitation;  (c) the nature and extent of the limitation;  (d) the relation between the limitation and its purpose; and  (e) less restrictive means to achieve the purpose.  (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any entrenched right in the Bill of Rights.  C APPLICATION OF THE LAW TO THE FACTS  34 As noted above, the constitutional rights of same sex couples who want to solemnise civil unions and marriage officers who conscientiously object to the solemnising such unions on the basis of their conscience and/or sincerely held beliefs, may come into conflict in certain factual scenarios.  35 Although it is clear that same sex couples’ right to have their civil unions solemnised at any HAO of their choice is being infringed at present, in our opinion the fact that the law provides for a conscientious objection for marriage officers employed by the state, is not the cause of such infringement. There is still a large over-supply of marriage officers/HAO able to solemnise civil unions, when comparing demand with supply.  36 The true cause is therefore not the alleged unconstitutionality of the law, but the geographic distribution/deployment of marriage officers. If the status of the law is not the cause of the infringement/limitation of same sex couples’ rights, there can be no basis/rationale for amending the law. Especially not so if the proposed amendment would lead to the unreasonable and unjustifiable limitation of others’ (marriage officers employed by the state) rights.  37 If the proposed amendment (deletion of section 6 of the Act) is continued with in these circumstances, it would raise questions about a potential tyrannical invasion into constitutional freedoms that is not warranted by real world facts or the achievement of any legitimate purposes.  38 Despite the abovementioned, same sex couples currently cannot get their civil unions solemnised at all HAO, and because a conscientious objection exemption could in circumstances other than what is at play in South Africa at present, potentially be a cause of infringement of same sex couples’ rights, we conduct brief discrimination, accommodation and limitations analyses herein below.  39 At the outset, it should be acknowledged that the goal is and the best solution will be, one in which both the right of same sex couples to be provided with the public service of having civil unions solemnised and the right of marriage officers to object to solemnising same sex unions on the basis of their conscience and/or sincerely held beliefs, are balanced and preserved. This will be a win-win situation for all and is preferred above any other outcome.  CRITICAL CONSIDERATIONS: PROPER CONTEXT  40 The critical considerations in these analyses, and which provides the proper context to arrive at a constitutionally sound outcome in the circumstances, are the following:  40.1 The state –  40.1.1 May not discriminate unfairly based on a prohibited ground (section 9(3) of the Constitution);  40.2 Marriage officers in the employ of the state –  40.2.1 Are not the state (i.e. although the state must deliver services to all, that does not mean that every single person who works for the state must necessarily deliver each and every service to everyone);  40.2.2 May discriminate fairly, as provided in PEPUDA (section 9(4) of the Constitution);  40.2.3 May exercise their freedom of conscience, religion and/or belief in public and work life (section 15(1) of the Constitution) (which could be a justification for discrimination, i.e. making discrimination fair in terms of PEPUDA);  40.3 The state has an obligation to respect, protect, promote and fulfil the rights of both –  40.3.1 Same sex couples, to adequate service delivery; and  40.3.2 Marriage officers in its employ who are conscientious objectors.  (section 7(2) of the Constitution)  40.4 Accordingly, where it is possible for the state to deliver services to same sex couples, whilst also reasonably accommodating marriage officers’ right to conscientious objection, it is duty-bound by the Constitution to do so.  FAIR DISCRIMINATION  41 Section 9(3) of the Constitution lists grounds based on which a person may not be discriminated against unfairly. Sex, gender and sexual orientation are specifically listed grounds. Therefore, denying same sex couples the right to have civil unions solemnised at some HAO’s could constitute discrimination. However, the Constitution does not prohibit discrimination, but rather only unfair discrimination.18 According to Curry and De Waal,19 in order to determine whether discrimination is unfair, the impact of the discrimination on the persons discriminated against, has to be considered. Discrimination has an unfair impact when it infringes the fundamental human dignity of persons by subjecting them to differential treatment that is demeaning or hurtful.20  42 The Constitutional Court has identified certain factors to determine whether discrimination has an unfair impact.21 These factors have been adopted into (codified in) section 14(3) of PEPUDA.  43 When discrimination occurs on the basis of a listed ground, such as sexual orientation, it is presumed to be unfair. In this instance, the mere discrimination against same sex couples, whether on the basis of their sex, gender or sexual orientation would accordingly be presumed to be unfair, since these are listed grounds.  44 In terms of PEPUDA, to determine whether discrimination is unfair, the context of the discrimination, the section 14(3) factors, and whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity, have to be considered.22  45 In terms of section 14(3)(c) of PEPUDA, the position of homosexual persons in society and whether they belong to a group that suffers from patterns of disadvantage is an important consideration. Homosexual persons are a minority and, due to past prejudice, have not traditionally held positions of power in society and suffer from past patterns of discrimination/disadvantage. The nature of the discrimination is that same sex couples are denied certain services at a number of specific HAO where those same services are delivered to heterosexual couples. While there will no doubt be religious bigots in the ranks of marriage officers, there are also persons who want to live in accordance with their conscience and/or sincerely held beliefs. True conscientious objectors do not harbour a desire to harass or discriminate against homosexual persons.  46 However, the purpose of the discrimination is not to deprive same sex couples of their human dignity or to communicate a message that they or their relationships are inferior to other couples. In our opinion, the discrimination is without purpose, as there is already an over-supply of the services required by same sex couples. We submit that the real cause of the discrimination is accordingly lack of planning on the part of the DHA in addressing an issue which is purely geographic and budgetary in nature. In so far as there may be an underlying purpose which may be relevant to the cause of the discrimination, such purpose could be enunciated as – granting marriage officers, whose conscience and/or sincerely held beliefs are a fundamental part of their identity (and therefore human dignity), the right to conscientious objection. The underlying purpose is therefore the protection of the right to freedom of religion, belief and opinion of marriage officers, which we submit is a legitimate purpose and important societal goal.  47 When considering the number of HAO where all marriage officers have a conscientious objection to solemnising same sex civil unions (**276 out of 382 HAO), it is clear that being able to live in accordance with their religious beliefs is important to a large percentage of marriage officers. The locations of most HAO where all marriage officers are conscientious objectors, being rural Limpopo, Mpumalanga, KwaZulu-Natal and the Eastern Cape, also suggest that cultural beliefs regarding marriage, family and intimate partner relationships are important to many marriage officers**.  48 We are willing to accept that the discrimination experienced by same sex couples is unfair. In the circumstances however, we submit that the **unfairness of the discrimination does not reside in the granting of a right to conscientious objection to marriage officers. Rather, the cause of unfair discrimination is geographic and budgetary in nature, flowing from a lack of proper planning by the appropriate public authority**. If this could be rectified by employing an appropriate practical solution(s), the discrimination would disappear.  49 If after applying an appropriate solution, a residue of discrimination may remain, such remainder would in our view not constitute unfair discrimination, as its extent would be small, would be the least restrictive and disadvantageous means employed and would be the result of the State having taken reasonable steps in the circumstances to accommodate diversity.23 Such future adapted regime would recognise the equal human dignity of both same sex couples and marriage officers. Any residue of discrimination would not be totally restrictive as there will be HAO where marriage officers will solemnise same sex civil unions. Our suggested practical solution of roving marriage officers, will further restrict the discrimination against same sex couples. It must be noted that religion, conscience, belief and culture are all prohibited grounds on the basis of which discrimination is deemed prima facie unfair. Therefore, the fundamental rights of both same sex couples and marriage officers should be balanced in a way that best preserves, promotes and protects both.  50 Emphatically, it is not for the state to decide whether or not sexual orientation is more constitutive of the identity/human dignity of the same sex attracted person, than the conscience/religious convictions of the conscientious objector is to his/her identity/human dignity. To make such a call, would result in tyranny and fly in the face of an open and democratic society based on the values of human dignity, equality and freedom.  REASONABLE ACCOMMODATION  51 **South Africa is not a secular state. The Constitution welcomes religion in the public sphere.24 The State is obliged to reasonably accommodate the exercise of freedom of conscience, religion and/or belief of marriage officers who object the solemnising same sex civil unions.**  52 In order to determine whether it is reasonable to accommodate the right to conscientious objection of marriage officers, the cost (hardship) of conscientious objection to the DHA should be weighed against importance of being able to do their work in accordance with their conscience and/or religious convictions and the cost to marriage officers with conscientious objections of not being able to exercise a conscientious objection in law.  53 The cost to the DHA of delivering services to same sex couples on an equal basis with heterosexual couples, with a work force that includes conscientious objectors, will depend on the practical solution(s) chosen to address the current lack of service delivery at HAO in certain geographical areas. No matter the specific practical solution (or combination of practical solutions) employed, same sex couples will in no circumstance be completely deprived of their rights, but may experience some logistical complications or delay in the exercise of their rights.  54 For true conscientious objectors, their conscience and/or religious belief regarding intimate partner relationships, marriage and the family is foundational to their existence and an important constitutive factor of their identity (human dignity).The cost to marriage officers of forfeiting the right to conscientious objection, will be the complete deprivation of the ability to live and act in accordance with their sincerely held religious beliefs in executing their work functions. This is an infringement of their rights to freedom of religion, belief and opinion, and human dignity and equality. The rights and conscience of these marriage officers may potentially be violated repeatedly and at no notice, at each instance when they are required to solemnise civil unions between same sex couples.  55 In the case of MEC for Education, KwaZulu-Natal v Pillay,25 the Constitutional Court held that diversity should be reasonably accommodated.26 It is important for religious groups to be able to freely express (and act in accordance) with their religious beliefs and identity.27 The Court recognised that some practices are inseparable from a person’s religion.28 Such practices and the ability of religious persons to live and act in accordance with their religion deserves protection.29 Religion should be affirmed and reasonably accommodated, and meaningful steps need to be taken in order to achieve this purpose.30  56 The granting of the right to conscientious objection to marriage officers is a reasonable accommodation of their conscience, religion and/or beliefs in the work place. To not grant this right to marriage officers, would unfairly discriminate against them on the basis of their conscience, religion, belief and/or culture and constitute an unreasonable and unjustifiable infringement of their right to freedom of religion, belief and opinion.  LIMITATIONS ANALYSIS  57 **As a result of the current geographic staffing deployment of marriage officers at HAO across the country by the DHA and the lack of measures to addres**s the lack in service delivery to some same sex couples requiring solemnising of their civil unions in certain geographic areas, the practical outworking or exercise of the conscientious objection exemption by marriage officers employed by the DHA (section 6 of the Act) infringes on the aforementioned same sex couples’ equality rights.  58 Once practical solutions are employed to address the lack in service delivery at all HAO, the infringement will disappear. In our opinion, section 6 of the Act was never meant to constitute or result in a limitation on the rights of same sex couples requiring solemnising of their civil unions. Its purpose is merely to preserve the right to freedom of conscience, religion, belief and opinion of marriage officers employed by the state.  59 Both these rights, the right to equal service delivery and the right to do work without infringing one’s conscience, religious convictions and/or beliefs, can co-exist if appropriate practical measures are adopted to address shortcomings in the current service delivery regime.  60 If section 6 of the Act were to be deleted, as is proposed, marriage officers with a conscientious objection will be given an untenable choice – to either violate their consciences through the work they do or to resign and face unemployment in order to avoid the violation of their consciences. Based on the aforementioned, a system without a legal right to conscientious objection would be unconstitutional, as it would be an unreasonable and unjustifiable limitation of marriage officers’ freedom of conscience, religion and/or belief.  61 In our opinion, section 6 of the Act, together with appropriate practical solutions, would not result in a limitation of the rights of same sex couples requiring the solemnising of their civil unions. And even if after employing such appropriate solutions, a residue of infringement might remain, such residue/limitation would be reasonable and justifiable as the least restrictive means of achieving the purpose of section 6 of the Act, which is to enable marriage officers to do their jobs without having to violate their conscience in the process.  D A PRACTICAL SOLUTION  62 By implementing appropriate practical solutions, the DHA will be able to do away with the discrimination currently experienced by some same sex couples requiring the solemnising of their civil unions at certain HAO where the delivery of these services is currently lacking.  63 The solutions which the DHA may choose to employ in order to address the issue include, but is not limited to (any one or any combination of these solutions could be considered):  63.1 Making use of roving/visiting marriage officers to HAO where services currently are not being delivered;  63.2 Redeploying marriage officers who do not have conscientious objections to offices where services currently are not being delivered;  63.3 Swapping out marriage officers between offices where services are delivered and offices where services are not being delivered, i.e. relocating marriage officers in accordance with the geographic need.  64 We submit that one of the easiest ways of addressing the lack of services, is for the DHA to implement a system of roving marriage officers who on a regular basis31 attend at each HAO where all resident marriage officers conscientiously object to solemnising civil unions between same sex couples. This system will balance and maximise the enjoyment of constitutional rights by both same sex couples and marriage officers.  65 The DHA could, for example, **publish a schedule of days on which roving marriage officers attend specific HAO’s and may even provide a mechanism whereby same sex couples can make a special request for a roving marriage officer to attend at a specific HAO at an earlier date. Although it is possible that same sex couples might experience very slight delays in service delivery, they will be able to solemnise civil unions at the HAO of their choice and would not be deprived of their constitutional rights.**  66 If in future, the need for solemnising civil unions were to increase above the current levels (currently less than 1% of the total of all marriages and civil unions), the DHA could even consider reserving one post for a marriage officer who is not a conscientious objector at each HAO. This solution however, should not disadvantage marriage officers in their current posts, but when a post becomes available at a HAO where all marriage officers are conscientious objectors, to employ a person who specifically states that they do not object to solemnising same sex civil unions. Such a person should be free to, at a later stage, become a conscientious objector should they become an adherent to a religion or belief that marriage is the union between one man and one woman and wish to be exempted from solemnising same sex civil unions.  E CONCLUSION  67 **The Constitution requires that constitutional rights should be balanced in manner that is fair and maximises the enjoyment of the rights of all persons. In order to achieve this objective, the relatively simple and practical solution of providing roving marriage officers is to be preferred. This solution balances the potentially conflicting rights of same sex couples and marriage officers and maximises respect for and the protection/fulfilment of human dignity, equality and freedom of conscience, religion, belief and opinion of both groups.**  **68 Same sex couples will be able to exercise their right to have their civil unions solemnised, while the right to conscientious objection of marriage officers will be preserved and not permanently extinguished.**  69 We trust that the above submissions will be of assistance and look forward to your response thereto (if any) in due course.  70 We hereby also specifically request an opportunity to address the Committee in person by way of oral representations at the public hearings on the Bill.  **Cause for Justice**  **Liesl Stander (Preparer) and Ryan Smit (Reviewer) Legal Advisor: Law and Policy Director: Law and Policy**  1 Organisasie vir Godsdienste-Onderrig en Demokrasie v Laerskool Randhart and Others (29847/2014) [2017] ZAGPJHC 160; [2017] 3 All SA 943 (GJ); 2017 (6) SA 129 (GJ) (27 June 2017)  (http://saflii.org/za/cases/ZAGPJHC/2017/160.html).  2 Act 17 of 2006.  3 The data may be confirmed with the Department of Home Affairs.  4 On 15 August 2018, the Honourable Ms Deidre Carter, MP briefed the Portfolio Committee on Home Affairs on the Bill. In her own presentation, Ms Carter stated that:  “In a written reply to my enquiry the then Minister of Home Affairs advised in writing that of the then 1130 designated marriage officers in the employ of the state 421 had sought and been exempted from solemnizing same-sex couple marriages.”  (<https://pmg.org.za/files/180815CIVIL_UNION_ACT.pptx>)  12 S 10, Constitution: Everyone has inherent dignity and the right to have their dignity respected and protected.  13 Act 4 of 2000.  14 S 6 of PEPUDA. ‘Sex, gender and sexual orientation’ are specifically listed as ‘prohibited grounds’ based on which a person may not be unfairly discriminated against.  15 S 14 of PEPUDA.  16 In terms of s 15 of the Constitution.  18 Currie & J De Waal “The Bill of Rights Handbook” 6th Edition, 2013 Juta, at 222-223.  19 Ibid at 223.  20 Ibid.  21 Harksen v Lane NO 1998 (1) SA 300 (CC) at [52].  (http://www.saflii.org/za/cases/ZACC/1997/12.pdf).  22 S 14(2) of PEPUDA.  23 As contemplated in s 14(3) of PEPUDA.  24 S 15(2) of the Constitution.  Organisasie vir Godsdienste-Onderrig en Demokrasie v Laerskool Randhart and Others (29847/2014) [2017] ZAGPJHC 160; [2017] 3 All SA 943 (GJ); 2017 (6) SA 129 (GJ) (27 June 2017) at para [95] (http://saflii.org/za/cases/ZAGPJHC/2017/160.html).  MEC for Education, KwaZulu-Natal v Pillay 2008 (1) SA 474 (CC) at para [146] to [148].  (http://www.saflii.org/za/cases/ZACC/2007/21.pdf).  S v Lawrence 1997 (4) SA 1176 (CC) at [92] to [119].  (http://www.saflii.org/za/cases/ZACC/1997/11.pdf).  25 2008 (1) 474 (CC).  26 Ibid at para [65] and para [71] to [79].  27 Ibid at para [90] and para [106] to [107].  28 Ibid at para [62].  29 Ibid at para [61] to [64].  30 Ibid at para [71] to [79].  31 At the very least on a monthly basis, but preferably more frequently to minimise the delay in service delivery to same sex couples. |
|  | I would like to object to the Civil Union Amendment Bill as it is grossly unjust and undemocratic. So called ‘same sex marriage’ violates the definition of marriage recognized by all sane people in history including Africans. Winnie Mandela rightly stated that ‘homosex is not African’.Opinion polls by the Human Sciences Research Council found that more than 78% of adult South Africans found sexual relations between two adults of the same sex ‘always wrong’. This needs to be respected. F.G. Flanagan |
|  | 1. *Freedom of Religion South Africa (FOR SA)* previously, when the Bill was first published for comment (in March 2018), made submissions on the Bill which we again attach hereto for your reference. These previous submissions should be read as incorporated herein. 2. While we note the (mostly stylistic) amendments in the revised Bill (of September 2018), our concern that the Bill does not adequately protect the fundamental right to freedom of religion of State-employed marriage officers, remains unchanged. 3. In particular, we reiterate that there are practical solutions to what is evidently a practical problem, and that these should be preferred over the violation of State employees' fundamental human rights. 4. We would appreciate the **opportunit y to make verbal submissions** with regard to the Bill, if and when such opportunity presents itself .   Summa ry of submissions:   1. *Freedom of Religion South Africa ( FOR* SA) is a non-profit organisation working to protect and promote religious freedom in South Africa, and representing over 6 million people across denominations, churches and different faith groups. 2. *FOR* SA's interest in the Bill lies therein that it will not only affect, but effectively eradicate the religious freedom of State-em ployed marriage officers (including magistrates). 3. *FOR* SA's major concern is that the Bill departs from the framework, values and fundamental rights incorporated in the South African Constitution, and specifically infringes on the State's obligation to respect, protect, promote and fulfil (s 7(2)) the constitutional rights to:    1. Human dignity of all persons (s 10), including therefore State employees who have a conscientious objection to (solemnising a) same-sex marriage;    2. Freedom of religion, belief and opinion (s 15); and    3. Not (directly or indirectly) unfairly discriminate against any person on grounds of their religion, conscience or belief (s 9(3)). 4. This duty is also incumbent on the State in terms of international covenants 1 the Republic of South Africa is signatory to, or to which the Republic is bound in terms of customary international law.2 5. Section 6 of the Civil Union Act, 2006 (i.e. the *"conscientious obj ection clause')* specifically provides that State-employed marriage officers who - because of their conscience, religion and belief - do not see their way open to solemnize same-sex marriages, will not be forced to do so. 6. **This clause i s not a "legal blunder'' as has been argued by those in favour of removal of the *"conscientious objection clause':* but was specificall y written into the Act by Parliament following the recommendation of the Constitutional Court in *Minister of Home Affairs v Fourie'3* (the case that legalised same-sex unions in 2005), that:**   ***"the principle of reasonable accommodation could be applied by the state to ensure that civil marriage officers who had sincere religious objections to officiating at same sex marriages would not themselves be obliged to do so if this resulted in a violation of their conscience'.***   1. The effect of removing the *"conscientious objection clause'* from the Civil Union Act, would be that State-employed marriage officers would be forced - potentially against their conscience, religion and belief -to solemnise same-sex marriage, or face the consequences (including potential unfair discrimination claims, and/or dismissal from employment). 2. This is a severe infringement of their constitutional rights to dignity4 and religious freedom5, as they are effectively forced to choose between obeying their faith (with potential eternal consequences if they do not), and obeying the law (with punitive consequences if they do not)..!t is trite law that the State should . as far as possible. avoid placing persons in such an i nvidious position.6 3. As such, we respectfully submit, the removal of the *"conscientious objections clause'* could potentially see Parliament face another constitutional challenge in the event that the Bill is passed into law. 4. While we accept that there may be a legitimate problem that the Bill seeks to address (namely the difficulties that LGBT people are allegedly experiencing at some Home Affairs offices, particularly in rural areas, to have their same-sex marriages solemnized), we do not agree that the solution proposed by the Bill (namely the removal of the *"conscientious objection clause')* is the right solution. This is neither constitutional. nor necessarv. 5. We reiterate our recommendations that this is a practical problem (as opposed to a legislative one) calling for practical solutions, and that these practical solutions (which will address the problem, while at the same time keeping the right to religious freedom in tact) should be adopted before resorting to legislative amendments that will have a dire impact on fundamental rights:    1. Roving Marriage Officers:       1. The vast majority of State-employed marriage officers do not hold any objections to concluding same-sex marriages.7       2. As with judicial officers who go on circuit even to the most rural areas to ensure access to justice, these civil servants can be sent on circuit, to assist same-sex couples in getting married.       3. As stated by the Constitutional Court,   *"sometimes the community, whether it is the State... must take positive measures and possibly incur additional hardship or expense in order to allow all people to participate and enjoy all their rights equally."8*   * + 1. In the circumstances, budgetary constraints are, with respect, not an excuse and the additional expense may have to be specifically planned and catered for in the budget.     2. We have already pointed out that no empirical evidence has been put forward to substantiate the alleged "undue hardship" suffered by same-sex couples as a result of section 6 of the Act, or to explain the prevalence and/or extent of the alleged hardship.     3. In this regard, we respectfully point out that heterosexual couples too suffer a measure of "hardship" in having their heterosexual unions solemnized by State-employed marriage officers, in that they often (particularly in urban areas) have to wait weeks, if not months, in order to secure an appointment to have their union solemnized. They too may have to incur the time and expense of travelling to areas where there is a Home Affairs office who is able to assist them.     4. I t is submitted that having a dedicated State-em pl oyed marriage officer who can assist same-sex couples i n having their union solemnized . may even result i n them having their union solemnized much quicker than i n the case of many heterosexual couples who have to patiently wait their turn.   1. **Assi gnment of employees to specific offices:**   With better planning (as suggested by the Minister of Home Affairs), the State could also reasonably identify those marriage officers who have no conscientious objection, and ensure that at least one is placed in every Home Affairs office where marriages are solemnized.   * 1. **"Affirmative Action" to redress any imbalance in staffing needs:**      1. Finally, we submit that the State could, in order to address the practical difficulties that LGBT people are allegedly experiencing in some areas to have their same-sex unions solemnized, consider an approach similar to "affirmative action" (which is already recognised as a justice issue).      2. **What this would entail is, for those Home Affairs offices and/or geographical areas that have been identified as lacking sufficient marriage officers who are able to solemnize same-sex marriages, and in order to meet a specific need, give preference to applicants who are able to solemnize same-sex marriage.**   **Conclusion:**   1. In conclusion, where there are not enough marriage officers whose conscience allows them to solemnise same-sex unions, practical solutions should be considered. 2. The last thing Parliament should be consideri ng. with respect. is the violation of State emoloyees' rights to conscience. religion and belief . which it has a constitutional duty to respect. protect and promote.   We trust that you will find these submissions of assistance, and would appreciate your feedback with regard to any developments in this matter.  1 Freedom of religion is protected under the following international covenants: Article 18 of the Universal Declaration of Human Rights (UDHR); Article 18(1) of the International Covenant of Civil and Political Rights (ICCPR); and Article 8 of the African Charter on Human and Peoples' Rights (the "Banjul Charter") .  2 S 232 of the Constitution of the Republic of South Africa, 1996.  3 Minister of Home Affairs and Another v Fourie and Others; Lesbian and Gay Equality Project and Others v Minister of Home affairs and Others 2006 (1) SA 524 (CC).  4 S 1o of the Constitution of the Republic of South Africa, 1996.  5 S 15, read with s 9(3), of the Constitution of the Republic of South Africa, 1996.  6 Christian Education South Africa v Minister of Education 2000 (4) SA 757 ("Christian Educatiorl' ) at paras 35 to 36.  7 If media reports are anything to go by, it appears that 421 of the 1130 marriage officers inthe Department of Home Affairs' employ, have exercised their statutory right not to solemnize same-sex marriages.See for e.g. "Home affairs minister rejects call to amend discriminatory same-sex law" in Mail & Guardian on 19 July 2017 - https://ma.co.za/article/2017-07-18-home-affairs-mi nister-rejects-call-to-amend­ djscriminatory-same-sex-law .  8 MEC for Education: Kwazulu-Natal and Others v Pi/lay 2008 (1) SA 474 (CC) at para 73. |
|  | Thank you for the opportunity to comment on the proposed Civil Union Amendment Bill that is before our Parliament. I wish to make the following comments:  I applaud the Home Affairs Parliamentary Committee for allowing same sex couples to enjoy the same freedom that heterosexual couples enjoy, i.e. to seal their union under law. This is their constitutional right and privilege.  However, I strongly object to the proposal that State Employed Marriage Officers be forced to go against their individual conscience by marrying same-sex couples, if they object to this in their personal capacity. I believe that every South African should be able to act in a responsible, law-abiding manner that is in line with their own conscience and ethics. Conscientious objection to this should be allowed and protected under law.  By enforcing the proposed legislation, our Constitution (which allows freedom of thought, religious belief and opinion) will be violated.  I implore you to reconsider forcing Marriage Officers to act contrary to their conscience and religious beliefs. |
|  | I hereby file my complaint and object to the Civil Union Amendment Bill which aims to take away the right of me as a home affairs worker to conscientiously object to doing 'same-sex unions'.  I can’t agree to do things against my conscience and understanding of the Bible and what I believe.  I hope you will respect my human rights.  D E van der Spuy |
|  | **Destiny Alive Family Church** is an independent Christian Church situated at the RET Centre, Mokopane,Limpopo. We operate as a religious and educational institution. Our purposes include the conducting of a local Christian Church as well as the resourcing, equipping and training of individuals and families.  We believe that every human being is created in the image of God and therefore has intrinsic dignity and worth. The Constitution of the Republic of South Africa, 1996 recognises human dignity in section 1(a founding provision) and section 10. The Constitution also enshrines the right to freedom of consciences, religion,thought, belief and opinion in section 15 and provides that no person may be unfairly discriminated against on grounds including belief, religion, consciences, race, sexual orientation,etc. in section 9.  The Constitutional Court of South Africa has held that the right to freedom of religion and belief includes not being coerced or forced to deny or to act contrary to one's beliefs.1 **In our view the right to freedom of belief and right to human dignity cannot be separated . As Justice Sachs stated in Christian Education : "The right to believe or not to believe, and to act or not to act according to his or her beliefs or nonbeliefs, is one of the key ingredients of any person's dignity."**  Our concerns  We believe that it will be grave violation of human dignity and freedom of religion if the state were to force its employees to act contrary to their beliefs by taking away their right in section 6 of the Civil Union Act, 2006 not to be compelled to solemnise a civil union between persons of the same sex. We are concerned that the repeal of section 6 of the Civil Union Act will boil down to South Africans employed by the state as marriage officers being forced by the law to violate their fundamental and sincerely-held beliefs.  Conclusion  We therefore ask that Parliament reject the Bill in its current state in light of the constitutional objections . |
|  | I wish to object in the strongest terms possible for the amendment of the Civil Unions Bill that will force Marriage Officers to conduct same sex marriages against their conscience. I represent people who feel the same way, and I trust my objection to this amendment would be tabled. Please consider that our beliefs do not permit us from such practises. R pillay |
|  | Destiny Alive Family Church is an independent Christian Church situated at the RET Centre, Mokopane,Limpopo,0601. We operate as a religious and educational institution. Our purposes include the conducting of a local Christian Church as well as the resourcing, equipping and training of individuals and families.  We believe that every human being is created in the image of God and therefore has intrinsic dignity and worth. The Constitution of the Republic of South Africa, 1996 recognises human dignity in section 1(a founding provision) and section 10. The Constitution also enshrines the right to freedom of consciences, religion,thought, belief and opinion in  section 15 and provides that no person may be unfairly discriminated against on grounds including belief, religion, consciences, race, sexual orientation,etc. in section 9.  The Constitutional Court of South Africa has held that the right to freedom of religion and belief includes not being coerced or forced to deny or to act contrary to one's beliefs.1 In our view the right to freedom of belief and right to human dignity cannot be separated . As Justice Sachs stated in Christian Education : "The right to believe or not to believe, and to act or not to act according to his or her beliefs or nonbeliefs, is one of the key ingredients of any person's dignity."  Our concerns  We believe that it will be grave violation of human dignity and freedom of religion if the state were to force its employees to act contrary to their beliefs by taking away their right in section 6 of the Civil Union Act, 2006 not to be compelled to solemnise a civil union between persons of the same sex. We are concerned that the repeal of section 6 of the Civil Union Act will boil down to South Africans employed by the state as marriage officers being forced by the law to violate their fundamental and sincerely-held beliefs.  Conclusion  We therefore ask that Parliament reject the Bill in its current state in light of the constitutional objections . |
|  | I hereby wish to object to the repealing of Section 6 of this Bill on the grounds of conscience , religion , thought, belief and opinion. Yours Faithfully Pastor Gerald Cooper Faith Fellowship Church |
|  | I wish to object in the strongest tens possible for the amendment of the Civil Unions Bill that will force Marriage Officers to conduct same sex marriages against their conscience. I represent about 1000 people who feel the same way, and I trust my object to this amendment would be tabled.  J Moses |
|  | the way for further injustices down the road.  Miguel Rodo |
|  | The Evangelical Alliance of South Africa The Reverend Moss Nthla The Secretary General of the Evangelical Alliance of South Africa  1. INTRODUCTION  **The Evangelical Alliance of South Africa (TEASA) is a network representing 4 million evangelical Christians in South Africa**. TEASA is an associate member of the South African Council of Churches (SACC) and affiliated to the Association of Evangelicals in Africa, as well as to the World Evangelical Alliance, which is home to 650 million Christians worldwide.  I also make this submission also as a **patron of the Marriage Alliance of South Africa (MASA). MASA is a Christian association which was formed in 2005 to support and protect the institution of marriage in South Africa**. The organization, which **at its establishment represented around 20 million Christians in South Africa, was admitted as amicus curiae in Minister of Home Affairs and Another v Fourie and Another** (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005), which judgment lead to the enactment of the Civil Union Act 17 of 2006. MASA also made written and oral submissions to this Committee during its hearing on the Civil Union Bill [B26 – 2006] during October 2006.  Writer himself not only deposed to an affidavit in the abovementioned Constitutional Court case but also made submission on behalf of MASA to this Honourable Portfolio Committee during October 2006. It is therefor my respectful view that I have personal experience and have first-hand witnessed and participated in the development of the legislation and jurisprudence in this regard. I would therefor also request the opportunity for TEASA and MASA to jointly make verbal submissions regarding the Bill to the Committee, when the opportunity presents itself.  2. CONCERNS IDENTIFIED AND SUMMARY OF SUBMISSIONS  TEASA and MASA has properly considered the Bill and wish to summarise our concerns as follows:  2.1 SUBMISSIONS MADE IN DURING 2006 TO YOUR COMMITTEE  The Honourable Chairperson and Committee need to be reminded of the **tens of thousands of submissions made to your committee at public hearings across the country during 2006 by South Africans of all walks of life. We are of the respectful opinion that the Civil Union Act was consequently very thoroughly considered by Parliament before it was enacted and that Sections 5 and 6 were the product and the outcome of the many submissions by people of faith**. **A simple removal of Section 6 without further public hearings in all provinces will fly in the face of the said public participation in 2006** and will consequently certainly lack the required consultation with and the support of the people of South Africa.  2.2 MINISTER OF HOME AFFAIRS AND ANOTHER V FOURIE AND ANOTHER (CCT 60/04)  [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005)  What was extra-ordinary about the **Fourie judgment** was its deep concern for the protection of the interests of groups that were strongly contesting the issue of same sex marriage - that is, the **LGBTI groups on the one hand and the religious communities of our country on the other.** The judgment was at pains to reiterate the fact that what needs to be done is to ensure that ultimately, this matter is handled in a manner that engages in, what we have, for lack of a better term, stated as **“the balancing act”.**  The judgment notes **that both contesting groups are citizens of South Africa who are entitled to be protected by the Constitution. More importantly, the judgment calls for a legally justifiable sharing of the common space which is the public square:**  **“In the open and democratic society contemplated by the Constitution there must be mutually respectful co-existence between the secular and the sacred. The function of the Court is to recognise the sphere which each inhabits, not to force the one into the sphere of the other**. Provided there is no prejudice to the fundamental rights of any person or group, the law will legitimately acknowledge a diversity of strongly-held opinions on matters of great public controversy. ………  The hallmark of an open and democratic society is its capacity to accommodate and manage difference of intensely-held world views and lifestyles in a reasonable and fair manner. The objective of the Constitution is to allow different concepts about the nature of human existence to inhabit the same public realm, and to do so in a manner that is not mutually destructive and that at the same time enables government to function in a way that shows equal concern and respect for all…. (my emphasis)  With reference to the Amici Curiae (of which MASA was one) the Court states:  “Their arguments raise important issues concerning the relationship foreshadowed by the Constitution between the sacred and the secular. They underline **the fact that in the open and democratic society contemplated by the Constitution, although the rights of non-believers and minority faiths must be fully respected, the religious beliefs held by the great majority of South Africans must be taken seriously. As this Court pointed out in Christian Education, freedom of religion goes beyond protecting the inviolability of the individual conscience. For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. For millions in all walks of life, religion provides support and nurture and a framework for individual and social stability and growth. Religious belief has the capacity to awaken concepts of self-worth and human dignity which form the cornerstone of human rights.** Such belief affects the believer’s view of society and founds a distinction between right and wrong. It expresses itself in the affirmation and continuity of powerful traditions that frequently have an ancient character transcending historical epochs and national boundaries. For believers, then, what is at stake is not merely a question of convenience or comfort, but an intensely held sense about what constitutes the good and proper life and their place in creation. (my emphasis)  The Court goes on to say:  “In the open and democratic society contemplated by the Constitution there must be mutually respectful co-existence between the secular and the sacred. The function of the Court is to recognise the sphere which each inhabits, not to force the one into the sphere of the other. Provided there is no prejudice to the fundamental rights of any person or group, the law will legitimately acknowledge a diversity of strongly-held opinions on matters of great public controversy. I stress the qualification that there must be no prejudice to basic rights. Majoritarian opinion can often be harsh to minorities that exist outside the mainstream. It is precisely the function of the Constitution and the law to step in and counteract rather than reinforce unfair discrimination against a minority. The test, whether majoritarian or minoritarian positions are involved, must always be whether the measure under scrutiny promotes or retards the achievement of human dignity, equality and freedom.” (my emphasis)  We are of the respectful opinion that the removal of Section 6 of the Civil Union Act would indeed constitute the “prejudice to the fundamental rights” of the civil marriage officers which the Court stresses may not take place. It will no doubt be a grave infringement of the right to religious freedom, conscience and belief of civil marriage officers which is protected in Section 15 of the Constitution.  2.3 THE CONDITIONS OF EMPLOYMENT OF CIVIL MARRIAGE OFFICERS  Upon conclusion of the employment contract of civil marriage officers in their various positions of employment with the State, the requirement of **being compelled to solemnise same-sex marriage / civil union was not part of the terms and conditions of employment. By unilaterally changing the terms of employment the State as Employer would be committing an unfair labour practice**. It speaks for itself that this would **open the State as the Employer up to a deluge of litigation at the cost of the tax payer.**  3. OUR PROPOSAL  TEASA and MASA understand and appreciate the practical challenges experienced by same-sex couples given the reluctance of civil marriage officers to solemnize same-sex marriages and civil unions. Instead of removing the right of civil marriage officers to object as contemplated by the Amendment Bill, we propose that the Department of Home Affairs makes available “roving” marriage officers who are prepared to solemnise same-sex marriages or civil unions to visit the venues where there are no marriage officers available for this purpose. By facilitating such practical arrangements we are of the view that government will succeed in achieving what the Court refered to in the Fourie judgment: “The objective of the Constitution is to allow different concepts about the nature of human existence to inhabit the same public realm, and to do so in a manner that is not mutually destructive and that at the same time enables government to function in a way that shows equal concern and respect for all”.  4. The abovementioned is a summary of the submission which we would appreciate to make in a more complete manner given an opportunity to make oral submission to the Committee.  On behalf of The Evangelical Alliance of South Africa (TEASA) and the Marriage Alliance of South Africa (MASA):  THE REVEREND MOSS NTHLA  C/O MS TERESA CONRADIE  Maphalla Mokate Conradie Inc Attorneys, Pretoria |
|  | I would like to express my strong objection to the Amendments which will force those who, for religious reasons, feel unable to perform the marriage officer’s duty for same sex couples.  As a Baptist I have worked in the Cape Town Baptist Seminary for over 20 years training pastors and missionaries. These changes will go against freedom of conscience and I object to the removal of the conscientious objection clause of the Civil Union Act of 2006.  I indeed pray that you will reconsider this change which will have far reaching consequences for freedom of religion if passed.  Mrs Janine Ayrton |
|  | I'm making my submission on the proposed Civil Union Amendment Act (B11-2018) and commenting on the current Civil Union Act (Act 17 of 2006) because I feel that the Department of Home Affairs (DHA) is denying my freedom by denying me to have a civil union.  I feel that the Civil Union act in it's current form, especially section 6 of the act, enables Department of Home Affairs Officials and Marriage Officers to discriminate against same-sex couples by objecting to officiating, processing and registering their civil unions.  I have personally kept my civil union with my partner on hold for fear of facing objections from Department of Home Affairs officials or Marriage Officers who hide their toxic conservatism behind a piece of problematic legislation which would cause much awkwardness and resentment towards the DHA.  I believe that the proposed amendment will help to combat toxic conservatism within the Department of Home Affairs as it will leave no legal 'loopholes' for DHA officials and Marriage Officers to object to same sex civil unions.  When DHA officials and Marriage Officers object to same sex civil unions they cause same sex couples emotional trauma as well as great inconvenience by forcing the couples to look for an alternative DHA branch which is most likely much further away causing the couple to face unnecessary expenses.  This also creates the unnecessary impression that the DHA denies certain individuals access to it's services and that it is discriminatory and favours only certain groupings of individuals like cisgender heterosexual people.  If the proposed amendment to the Civil Union act is not recognised by the National Assembly then I foresee a future onslaught of litigation against the DHA which will eventually cause much tax payer money to be lost to unnecessary litigation costs. I am sure that the courts, especially the constitutional court, will be sympathetic towards the plight of same sex couples which will force the NA to amend the Civil Unions act. Either the National Assembly recognises the amendment at a lower cost or the government will have to face litigation at a much higher cost.  By amending the Civil Union Act, the DHA will most likely be forced to conscientise it's officials and Marriage Officers that denying Civil Unions to same sex couples is illegal and amounts to discrimination which will cause a shift in the thinking and attitudes DHA officials and Marriage Officers have towards same sex couples.  Section 6 of the Civil Union Act (Act No 17 of 2006) states that "6. A marriage officer, other than a marriage officer referred to in section 5. May in writing inform the Minister that he or she objects on the ground of conscience, religion and belief to solemnising a civil union between persons of the same sex. whereupon that marriage officer shall not be compelled to solemnise such civil union."  I disagree wholeheartedly with Section 6 of the Civil Union Act (Act No 17 of 2006) because despite Marriage Officers and DHA officials having a right to Freedom of Religion, Conscience or Belief any aspect of the practice of their Religion, Conscience or Belief which undermines a same-sex couple's right to a sexual orientation, dignity and their own Conscience or Belief cannot be deemed Constitutional and thus unlawful. If Marriage Officers and DHA officials have any aspect of the practice of their right to Freedom of Religion, Conscience or Belief which undermines a same-sex couple's right to a sexual orientation, dignity and their Conscience or Belief this cannot be practiced when professionally representing a Secular State let alone in a private capacity.  The Apartheid regime wrongfully used conscience, religion and belief as a vehicle to discriminate against persons based on especially race but also gender and sexual orientation via oppressive and draconian laws. The National Assembly should ensure that conscience, religion and belief should not be used again as a poor excuse to discriminate against another person based on their sexual orientation and gender. Conscience, religion and belief must be utilised to achieve a common good and not be weaponised to contribute to the suffering of a human being based on their internal sense of self and who they are attracted to.  The South African Government recognises customary marriages and recognises a person's right to a culture. This right to a culture is present in the same bill of rights which recognises conscience, religion and belief in equal standing with sexual orientation and gender. If the right to a culture, conscience, belief and religion is recognised by the DHA then it should recognise a person's right to a sexual orientation and gender with the same enthusiasm.  Thank you for this opportunity to make a submission.  Carla De Bouchet |
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