Proposal for a Mount Zion Congregational Position on the

2012 MN Ballot Proposition Concerning a Constitutional Marriage Amendment

Proposed Position: To urge our membership and the wider community to vote "No" on the 2012 ballot proposition "Shall the Minnesota Constitution be amended to provide that only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota?" This position would authorize our clergy and President to speak on Mount Zion's behalf on this issue and to join coalitions that will seek to defeat the proposition.

Rationale: The position of being against this constitutional amendment on marriage is about justice. Specifically it is about the unique historical phenomenon of the United States of America, and that in our country's history, amendments to the federal and state constitutions have always included more and more classes and groups of the population and not the opposite. This amendment would formally add discrimination to our Minnesota constitution. We, as Jews, are sensitive to injustices that arise from legalizing discrimination. While Jewish values, affirmed nationally by the Reform Movement, strongly support the full legal rights of same-gender couples, even voting "No" on this amendment would not give any marriage or union rights to same-gender couples. Thus, regardless of one's feelings about marriage, voting "no" means voting "no" to legalizing discrimination and "no" to favoring one religious view over another.

Background: In Minnesota, like most states in the country, there is a law called DOMA, Defense of Marriage Act, passed in 1997, that defines marriage as between one man and one woman. While there have been challenges to this law, it still stands. The question is why a constitutional amendment is being proposed now. Does the law not suffice? According to an article in William Mitchell Law Review (2007),[1] 44 states now have a DOMA law. 27 states have passed a constitutional amendment defining marriage as between a man and a woman. 16 states also ban state governments from creating civil unions or partnership benefits similar to marriage for same-sex couples."

From Rep. Steve Simon (DFL, 44A): "Here are the reasons people around the state are giving for same-sex marriages/against DOMAs:

- An amendment is not necessary and would only be writing discrimination into the Constitution.
- Gay marriage does not threaten straight marriage in any way.
- We do not have the right to discriminate out of fear.
- We pride ourselves on diversity.
- Settling for domestic partnerships instead of same-sex marriages is the same as saying you can only use the "back of the bus."
- Amending our Constitution threatens our Democracy.

Reasons given for traditional marriage and for supporting DOMAs:

[1] "CONSTITUTIONAL CONFUSION: THE CASE FOR THE MINNESOTA MARRIAGE AMENDMENT" by Teresa Stanton Collett, William Mitchell Law Review¨, 3/29/07.

- The union between one man and one woman is the most enduring human institution honored and encouraged in all cultures by every religious faith.
- After two centuries of American Jurisprudence and a Millennia of human experience, our government sanctions traditional marriage as the best way to protect, provide for, educate and nurture children.
- Marriage and its definition is a decision of the people – not to be left to the hands of activist judges."

Appendices:

1. For more background from the Reform Movement's Religious Action Center, see Appendix A.

2. For the Reform Movement's position against discrimination about people who are gay (since 1965) and against DOMA (since 1996), see Appendix B.
3. For Rabbi Spilker's recent testimony to the MN House and Senate committees on this issue, see Appendix C.

Procedure:

1. This proposal was discussed by the Executive Committee on June 1, 2011 and forwarded with its unanimous support to the Board of Directors' June meeting for discussion. (It should be noted that this support was based on conversation, not based on reading this report.)
2. At its June meeting, the Board voted unanimously to forward the proposal to the congregation for input. The Board will then vote on the proposal at its July meeting.

Appendix A: From Reform Movement's Religious Action Center

Legislative Summary: Family and Marriage Issues
Family Issues

Family issues dominate the current discourse over equal rights for LGBT Americans, specifically whether same-sex couples deserve the same rights and responsibilities afforded to heterosexual couples. According to a U.S. General Accounting Office report, more than 1,000 federal benefits are granted to heterosexual married couples, including: Social Security benefits upon the death of a partner, ability to petition for a partner to immigrate to the United States, the ability to take time off to care for an ill partner, and the ability to file joint tax returns as a married couple.

In states and where same-sex couples can enter into marriage and civil unions, they typically have access to most of the state benefits that opposite-sex couples enjoy. They are still ineligible, however, for the federal benefits granted to (opposite-sex) married couples. Additionally, numerous states have adopted constitutional amendments prohibiting same-sex marriage. For more information on specific states' laws, please click here.

Marriage Equality

A major victory for advocates of equal marriage rights for LGBT Americans came in November 2003, when the Massachusetts Supreme Judicial Court declared that the Massachusetts ban on same-sex marriage conflicted with the state's constitution. In Goodridge v. Dept. of Public Health, the Court concluded that without the right to marry, or the right to choose to marry, one is "excluded from the full range of human experience and denied full protection of the laws."

Since Massachusetts legalized same-sex marriage, several other states have considered same-sex marriage laws. In early 2008, an Iowa court of appeals struck down the state's anti-gay marriage laws; unfortunately, the judge who issued it quickly issued a stay of his ruling in order to allow the Supreme Court to make the final decision. The case is pending.

On October 10, 2008, the Connecticut Supreme Court ruled that denying equal marriage rights to all people, regardless of sexual orientation, violated the state's constitution. In Kerrigan v. the State Commissioner of Public Health, the Court noted that "Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same-sex partner of their choice. To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others."

Proposition 8 in California

A California State Supreme Court ruling in May 2008 protected a "fundamental right to marry," allowing same-sex couples to wed and has granting them many of the same rights as heterosexual couples enjoy. Unfortunately, with the passage of Proposition 8, the state's constitution was amended to define marriage as solely between one man and one woman.

In Perry v. Schwarzenegger (2010), the constitutionality of a same-sex marriage ban was challenged. Supporters of Proposition 8 argued that voters have every right to decide that the state should only recognize traditional marriages, while opponents argued the ban denies same-sex couples equal protection under the law, due process and freedom from discrimination.

U.S. District Judge Vaughn Walker concluded on August 4, 2010 that Proposition 8 is unconstitutional. The Reform Movement hailed this ruling (read our press statement here). The decision was undoubtedly a victory for marriage equality, but this is certainly not the end of the line, as the process of appealing the decision has already begun.

Defense of Marriage Act (DOMA)

Though same-sex couples in Massachusetts and Connecticut can receive the same benefits as heterosexual couples, same-sex marriages recognized in these states are not recognized by marriage laws in other states. The 1996 Defense of Marriage Act, commonly referred to as DOMA, passed overwhelmingly in both the House and Senate and was signed in by President Clinton. For the first time in the nation's history, the federal government defined the concept of marriage, done in a way that has been devastating to LGBT Americans. DOMA has two provisions:

The law stipulates that no state, territory or possession of the United States, nor Indian tribe, is required to give any sort of recognition to the marriage of a gay and lesbian couple as recognized or performed in any other state.

The law states that in any "Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word marriage means only a legal union between one man and one woman as husband and wife, and the word spouse refers only to a person of the opposite sex who is a husband or a wife."

Civil Unions and Domestic Partnerships

In December 1999, the Vermont Supreme Court issued a groundbreaking decision in Baker v. State of Vermont that granted gay and lesbian couples the same protections and benefits given to heterosexual couples. The Court ordered the state of Vermont to craft a solution for this situation, which led to the establishment of civil unions. The law allows both Vermonters and non-Vermont residents to acquire a license that certifies their relationship with a person of the same-sex. This license extends the same state benefits of heterosexual marriage to same sex couples, but couples are still ineligible for the more than 1,000 federal benefits of marriage, and their partnership is not recognized by any other state. Civil unions offering most of the state benefits of heterosexual marriage are now also available to same-sex couples in a number of states. For more detailed information on state laws, please visit the Human Rights Campaign.

The Federal Marriage Amendment (FMA)

In response to the recognition of same-sex marriages in Massachusetts, Congressional opponents of marriage equality introduced the so-called "Marriage Protection Amendment," also known as the "Federal Marriage Amendment (FMA)." In the 110th Congress, this proposed amendment to the U.S. Constitution attempted to define marriage as being between a man and a woman and ensure that no future court could rule it unconstitutional to deny same-sex couples the rights to civil marriage, thereby effectively banning the recognition of same-sex couples in the United States. The FMA would make permanent the inequality that same-sex couples face by institutionally denying them the government rights heterosexual couples receive. The bill has been defeated in several Congresses. Uniting American Families Act

United States immigration law is largely based on a premise of family unity. Currently, if an American falls in love with an opposite-sex citizen of another country, he or she can marry that individual and sponsor him or her for United States citizenship. According to the Human Rights Campaign, approximately 75 percent of the one million green cards and immigrant visas issued each year go to family members of U.S. citizens and permanent residents. However, the permanent partners of gay, lesbian, bisexual and transgender Americans are excluded from these definitions of family. Every year, thousands of LGBT Americans in committed relationships with non-American citizens are forced to either live apart from their loved ones or leave the country.

While some aspects of American law have begun to address the validity of committed same-sex

partnerships, American immigration law has not advanced same-sex partner immigration benefits. There is no proof of commitment -- financial, religious, or even legality in another country -- that allows a LGBT American citizen or permanent resident to bring his/her same-sex partner over through a legal green card arrangement. Currently, 19 countries (Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland and the United Kingdom) recognize same-sex couples for the purposes of immigration.

The Uniting American Families Act, formerly called the Permanent Partners Immigration Act, would amend the Immigration and Nationality Act (the main code of U.S. immigration law) to allow United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States.

Appendix B: (From Reform Movement's Religious Action Center)

Position of the Reform Jewish Movement The Reform Movement has been an advocate of gay and lesbian rights since 1965, when the Women of Reform Judaism (WRJ) passed a resolution calling for the decriminalization of homosexuality. In 1977, the URJ and the CCAR passed their first resolutions dealing with this issue, calling for human rights for homosexuals. Since then, the URJ, CCAR, WRJ, CSA, and NFTY have passed resolutions dealing with issues specific to Reform Judaism, such as inclusion of gays and lesbians in the rabbinate and cantorate, as well as national issues, such as support for civil marriage, elimination of discrimination within the Armed Forces and the Boy Scouts, and support for explicit workplace non-discrimination and civil rights legislation. Gay, lesbian and bisexual outreach and inclusion has been of great importance to the Reform Movement in recent years. The URJ Task Force on Gay and Lesbian Inclusion, headed by the late Rabbi Julie Spitzer, created a manual called Kulanu (All of Us): A Program for Congregations Implementing Inclusion. This text is aimed at helping congregations include gay and lesbian members and families and deal with gay and lesbian issues. The URJ's Department of Jewish Family Concerns also deals with gay and lesbian issues.

In addition, the Reform Jewish movement is committed to working to secure civil rights for gay men and lesbians, including the right to civil marriage. Both the URJ and the CCAR have adopted resolutions in support of gay and lesbian partnerships. In its 1993 resolution, the URJ resolved, among other things, to call upon congregations to extend the same benefits that are afforded to heterosexual spouses of staff members to homosexual partners of staff members. The CCAR, in its 1996 resolution on gay and lesbian partnerships, resolved to "oppose governmental efforts to ban gay and lesbian marriage." The most recent major Reform movement on the issue was the March 2000 passage of the CCAR resolution on "Same Gender Officiation," followed by the Commission on Social Action's January memorandum regarding the Boy Scouts of America.

Central Conference of American Rabbis and Same-Gender Officiation The Reform Movement has long been a proponent of civil unions on the secular, purely legal, level. However, in March 2000, the Central Conference of American Rabbis made history by becoming the first major group of North American clergy, as an organization, to give its support to those in its ranks choosing to perform same-gender ceremonies. The resolution, 'Resolution on Same Gender Officiation,' supports the decision of individual rabbis to officiate, or not officiate, at same-gender ceremonies.

The resolution calls for the Reform rabbinate to develop sample ceremonies, or liturgy, for those rabbis who choose to officiate at same-gender ceremonies. While it leaves the choice of officiation up to the individual rabbis, the resolution states that a relationship between two people of the same gender can serve as the foundation of stable Jewish families and is worthy of affirmation through appropriate Jewish ritual. The resolution does not suggest that these ceremonies are "marriages"; each individual rabbi is given the power to decide, within the context of faith, what each ceremony represents.

Civil Marriage for Gay and Lesbian Jewish Couples

Adopted by the General Assembly Union of American Hebrew Congregations
October 29-November 2, 1997 Dallas

Background

In 1987, the Union of American Hebrew Congregations (UAHC) reaffirmed its commitment to welcoming gay and lesbian Jews into its congregations and encouraging their participation in all aspects of synagogue and communal life. In 1993, Rabbi Alexander M. Schindler, President of

the UAHC, called upon the Reform movement to support the right of gay and lesbian couples to adopt children, to file joint income-tax returns, and to share in health and death benefits provided to heterosexual couples by federal, state, and local governments and by both large and small corporations. Following Rabbi Schindler's call, the UAHC, in 1993, resolved that full equality under the law for gay men and lesbians requires legal recognition of monogamous domestic gay and lesbian relationships.

In 1990, the Central Conference of American Rabbis (CCAR) adopted a position paper encouraging rabbis and congregations to treat with respect and to integrate fully all Jews into the life of the community regardless of sexual orientation and acknowledging the need for continuing discussion regarding the religious status of monogamous domestic relationships between gay men or lesbians and the creation of special ceremonies. In April 1996, the CCAR adopted a resolution supporting the right of gay and lesbian couples to share fully and equally in the benefits of civil marriage.

In addition, the Canadian Council for Reform Judaism (CCRJ) has supported the extension of spousal benefits to same-sex partners in relationships which would be deemed "common law" marriages if the partners were heterosexual. The CCRJ also supported the 1996 amendments to the Canada *Human Rights Act* to add "sexual orientation" as a prohibited ground for discrimination.

In the years since first the UAHC and subsequently the CCAR gave their support for full equality for gay men and lesbians in congregational life, gay men and lesbians have increasingly come forward to participate in the life of Reform Judaism on national, regional, and local levels. No less than heterosexual couples, gay men or lesbians living in monogamous domestic relationships have demonstrated, like their counterparts, love for one another, compassion for the sick, and grief for the dead.

The UAHC has for decades provided moral leadership to the Jewish community and to our nation, recognizing our differences and diversity, but acknowledging that we are but one family, equal before God. In this spirit, the UAHC must now move more forcefully to support the monogamous domestic relationships of gay men and lesbians.

Legal recognition of monogamous domestic gay and lesbian relationships and congregational honoring of these couples will together provide these men and women and their families with dignity and self esteem.

In 1993, the UAHC General Assembly resolution called for recognition for Lesbian and Gay relationships: A) by governmental legislation as to participation in health plans and survivor benefits, as to fitness to raise children, and as to legal acknowledgment of the relationship; and B) by congregations and institutions of the Reform movement to extend benefits to partners of staff members and employees.

A separate secular movement is proceeding to recognize these monogamous domestic relationships judicially and statutorily and to grant to gay and lesbian couples nondiscriminatory

economic, legal, and social rights equal to those under law enjoyed by monogamous heterosexual couples.

THEREFORE, the Union of American Hebrew Congregations resolves to:

1. Support secular efforts to promote legislation which would provide through civil marriage equal opportunity for gay men and lesbians;
2. Encourage its constituent congregations to honor monogamous domestic relationships formed by gay men or lesbians; and
3. Support the efforts of the CCAR in its ongoing work as it studies the appropriateness of religious ceremonies for use in a celebration of commitment recognizing a monogamous domestic relationship between two Jewish gay men or two Jewish lesbians.

BE IT FURTHER RESOLVED, that the CCAR oppose governmental efforts to ban gay and lesbian marriage.

BE IT FURTHER RESOLVED, that this is a matter of civil law, and is separate from the question of rabbinic officiation at such marriages.

Appendix C:

Constitutional Amendment to ban same sex marriage MN House Hearing

Slightly updated from testimony given to the Senate Hearing on 4/28/11.

May 2, 2011 / 28 Nisan 5771

Testimony by Rabbi Adam Stock Spilker, Mount Zion Temple

Mr. Chair, representatives, thank you for this opportunity to testify today. After I introduce myself I have two points that I will make.

I am Rabbi Adam Spilker, rabbi of Mount Zion Temple here in St. Paul on Summit Avenue, a 155 year old congregation, the oldest Jewish synagogue in the upper Midwest. I cannot speak on behalf of all of my 700 families but I do have a clear sense that the vast majority are opposed to this amendment, but I can speak on behalf of the Minnesota Rabbinical Association, comprised of the rabbis who represent the majority of Jews in Minnesota, and was asked to speak for the JCRC, Jewish Community Relations Council of Minnesota and the Dakotas whose board has historically voted to oppose this constitutional amendment.

And as part of my introduction, I am proud to say that the first same-sex union that my wife and I had the honor to co-officiate for was in 2003. My wife is also a member of the clergy at Mount Zion. We have been married for 19 years, fourteen of them here in Minnesota while serving our congregation.

Point 1**:** Two weeks ago, right before Passover, the Jewish holiday of freedom and equality, Jews read the same text in synagogues around the world that included Leviticus Chapter 18, verse 22. "Do not lie with a male as one lies with a woman….."

When these words were first uttered some 3000 years ago, my ancestors living in the Ancient Near East clearly made a certain sexual act forbidden.

And because my time is short, I'll make this brief and clear: My ancestors did not forbid a loving, committed same-sex relationship with this verse. Why?

Because they had never seen one.

Marriage was arranged at a young age and therefore they outlawed anything that would break up the only marriage they understood, heterosexual marriage.

Today, when many are getting married a little later in life than in the ancient world, in 30s if they are lucky, they have time to understand their true, God-given nature and form committed relationships, the majority of which are heterosexual and a minority of which are homosexual.

And this brings me to point 2**:**. Alexis de Tocqueville came to America in 1832 and warned about the tyranny of the majority. There are clearly faithful religious views on both sides of the issue of marriage. To put morality to an up or down vote on the 2012 ballot is to risk the majority imposing their religious views on the minority. Our representative democracy was built to protect the minority. Putting marriage or any

social issue on the ballot is not to be celebrated as “letting the people decide,” it is an abdication of legislative responsibility.

I will defend the right of my fellow clergy in the state to marry or not to marry whomever they choose. A moment ago I reconnected with Rev. Battle who spoke in favor of this bill. We first met right after 9/11 working to bridge relationships in our community. I don’t have to underscore the meaning of connecting on this day particular day with the news of last night. We have the freedom to disagree on this issue of whether to officiate or not .

This is part of the religious freedom of America *and it should stay in the realm of religion*.

But in the public square, there needs to be a secular reason to outlaw something. What is that secular reason?

Let’s be clear: The question on the table is not whether to re-define marriage. It is whether to let the public decide a moral question by a majority vote. A 2012 ballot question on marriage will further divide our state. It is a move in the wrong direction.

Wrong for justice.

Wrong for my belief of God’s love and mercy.

Wrong for Minnesota.

Thank you.