Francis Scarpaleggia, Liberal MP
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Mr. Speaker,

I will not be supporting the present bill to alter the existing definition of marriage. I assure my colleagues and constituents that I did not take this decision lightly.

My reasons are secular and philosophically liberal.

I favour equal legal and fiduciary rights and obligations for same-sex couples. But like most Canadians, I believe opposite-sex marriage has distinguishing features that make it worthy of its own designation. The word "marriage," in my view, benefits from a sort of "copyright," albeit not a legal one, but at the very least a cultural one.

The Supreme Court, in the *Nesbit* case, alluded to this copyright when it stated that marriage is firmly anchored in specific realities, and that while "it would be possible to legally redefine marriage…this would not change the biological and social realities that underlie the traditional marriage."

My decision not to support *Bill C-38* flows from a view of liberalism that has led me to have deep reservations about both the substance of this same-sex legislation and the process that gave rise to it.

As a liberal, I am guided in my political actions by a few basic principles, three of which are particularly relevant to the present case.

The first is the need to ensure equality in matters of public policy.

Second, as a liberal, I believe that a healthy democracy depends on civil discourse in a free marketplace of ideas. By civil discourse I do not mean "polite" discourse per se. I refer instead to discourse, however vigorous, that has, as its ultimate aim, to seek out consensus. The key to civil discourse is the recognition of the merits of the views of the other. It is based on the idea that one's opponent in debate is sincere and motivated by the same intellectual honesty we are.

I have read with great interest the views of those who favour redefining marriage, namely those expressed by the courts and by some of my constituents and close friends. I have not remained unmoved. By the same token, I believe it incumbent upon proponents of same-sex marriage to recognize that the existing conception of marriage is based on a strong and valid philosophical viewpoint, one that is long standing and universal.

The third principle that guides me in the present debate pertains to the role of the state in modern liberal society.

Individuals in liberal society—as opposed to those in early monarchies, for example—are not *subjects* of the state. They are sovereign. The state is subservient to, and depends for its legitimacy on, the citizenry. The state's right to interfere in civil life and culture is therefore limited. The liberal state and its representatives—whether legal, bureaucratic or legislative—lack the authority to proactively redefine society's most basic cultural norms in the absence of an obvious democratic demand to do so.

It is worth mentioning, in this regard, the distinction between *political liberalism* and *doctrinal liberalism*. The latter, to which I do *not* subscribe, grants the state greater latitude in refashioning the common culture.

Political liberalism was born of the recognition that the state could accommodate the different conceptions of religion that began to emerge in the 16th and 17th centuries *only* by stepping back from the conflict and refusing to enshrine one particular view. The secular debate over marriage has an intensity common to matters of religion. This is not surprising, for to quote from the *Halpern* decision, "the decision of whether or not to marry can…be one of the most personal decisions an individual will ever make…as personal as a choice regarding, for instance...one's religion."

John Rawls, the seminal philosopher of the "modern" liberal tradition has updated political liberalism for our time. In his view, modern political liberalism must strive to remain impartial as a way of respecting a diversity of *secular* core values as well as religious ones.

In other words, when deep disagreements over secular core values emerge, it is *not* the role of the liberal state to impose a particular solution. Any attempt to legally impose a particular ideology damages civic life, distorts liberalism, undermines constitutional consensus, and places communities holding different views in permanent tension with the law. We can observe all these phenomena in the present debate over marriage.

The state may have overstepped its bounds on the marriage issue. *Bill C-38* refashions the meaning of marriage in Canadian culture. On a symbolic level, *Bill C-38* reduces marriage to a vehicle for the affirmation of mutual romantic and sexual feeling and commitment between two individuals. Marriage's profound role of linking the generations and bridging the gender gap is no longer central to the institution.

By putting its imprimatur on one particular conception of marriage over another, the state has marginalized adherents of opposite-sex marriage, whose views are mainstream in an historical and global context. The state has done so in a well-meaning attempt to further enhance the status of gay and lesbian Canadians who have too long suffered from the ravages of discrimination that, in some cases, has ruined lives. But the state has, at the same time, in effect told those Canadians who are deeply attached to the symbolism of the word "marriage" in our culture—a group that arguably comprises *at least* fifty percent of the country's population, if not more—that their views on marriage are, at best, mistaken or, at worst, immoral, since those views are inconsistent with the law of

the land. I cannot in good conscience accept a solution to the marriage issue that sends such a message.

Some would say we are at a watershed moment in the history of the relationship of the state to marriage. In the 17th century, the founding liberal philosopher John Locke recognized that the state could not resolve fundamental conflicts over religion. He concluded that the liberal state thus had to get out of the sanctuaries of the nation. Because of irresolvable division over the definition of marriage, the day *may* have arrived to follow through to its logical conclusion Pierre Trudeau's prophetic statement that the state should withdraw from the bedrooms of the nation.

I favour engaging Canadians in a serious examination of a proposal that achieves both equality for gay and lesbian Canadians *and* state neutrality in dealing with marriage. The government should consider an approach, raised by the Law Reform Commission of Canada, to create a neutral civil registry at the federal level, equally accessible to same-sex and opposite-sex couples for the purposes of claiming federal benefits for individuals involved in formal conjugal relationships.

Following a two-step process similar to France, where a couple must first visit city hall before being married in a religious ceremony, under a Canadian civil registry system, a couple, after registering federally and partaking in a civil union ceremony in provincial jurisdiction, could be united in a same- or opposite-sex, religious or non-religious privately-sponsored ceremony of their choosing—in as public a way as the couple chooses. Some would choose religious ceremonies; others would use private facilitators to help write vows and perform a ceremony in a non-religious location of their choice. Marriage, thus cut loose from the state, would be allowed to settle back into civil culture and community.

A civil registry system succeeds on grounds of equality. It also recognizes that the state has an interest in providing a legal framework for the civil effects of interdependent relationships, but *may* not have a legitimate interest in defining the deep meaning or significance of marriage.

Parliament was in the process of exploring the civil-registry option, among others, when the Ontario Court of Appeal effectively cancelled its work.

The Standing Committee on Justice began cross-Canada public hearings on same-sex marriage in January of 2003. A draft report was prepared and was days away from being released when the Ontario Court of Appeal handed down its decision. The Committee felt compelled, by the immediate binding nature of the decision, to shut down its work. The Committee's report, which was *never* made public, might have opened discussion on the civil-registry option.

I will thus not be supporting *Bill C-38*, *among* other reasons to provide an opportunity, if the bill is defeated, for Parliament to begin a serious examination of the civil-registry option.

I am not suggesting that this option is perfect. I have my own strong reservations about it. Canadians would need to be asked how deeply they value state-sanctioned marriage; or whether the imprimatur of the state is judged by the majority to be of little consequence to the meaning they and their community give to their conjugal relationship.

I have raised the civil registry option, and the view of liberalism on which it rests, in order to highlight that, in fashioning a new definition of marriage, the state is not acting in a neutral way. It is imposing a particular ideology on a cultural institution that has developed organically, acquired its legitimacy slowly and taken root firmly over centuries and millennia—without state intervention, but rather with the state's quiet and respectful acquiesence.

In closing, I lament the semantic distinction being drawn in this debate between "religious" marriage and "civil" marriage, as if there are two separate meanings of marriage. Civil marriage, between a man and a woman, means as much to some as religious marriage, between a man and a woman, does to others. Marriage is marriage, Mr. Speaker.

Thank you.

Website for Francis Scarpaleggia
http://www.liberal.ca/bio_e.aspx?&id=24027