Good morning, Chairman Wells and members of the Committee.

My name is Matthew I. Fraidin, and I am an Assistant Professor of Law and Co-Director of the HIV/AIDS Legal Clinic at the University of the District of Columbia, David A. Clarke School of Law. I currently serve as Visiting Professor in the Domestic Violence Clinic of Georgetown University Law Center.

As a lawyer and teacher, I have provided legal services to indigent and low-income residents of the District of Columbia since 1998. Prior to joining the law school, I served as Supervising Attorney at The Legal Aid Society of D.C. and Legal Director of The Children’s Law Center. In these capacities, I have represented, and supervised the representation of, children, parents, kinship caregivers and foster parents in a wide variety of Superior Court family law matters, including abuse and neglect, child custody, adoption, guardianship, standby guardianship, child support and domestic violence. In addition, I have served on a wide variety
of Family Court committees, on the Steering Committee of the Family Law Section of the D.C. Bar, and as chair of the D.C. Bar’s pro bono training programs in the areas of Child Custody and Guardian Ad Litem practice.

For many years in the District of Columbia, non-parents have sought court-awarded custody of children for many reasons, including to ensure medical care and education for the children, to protect children from unstable parents, and to keep the children out of foster care. However, non-parent custody appears to have been eliminated in D.C. by the D.C. Court of Appeals. Legislation is required to protect children and families.

1. Non-parent custody eliminated

On August 31, 2006 the D.C. Court of Appeals decided W.D. v. C.S.M.. The Court appears to have ruled that the D.C. Council has not enacted legislation permitting non-parents to seek custody of children, and that in the absence of such legislation, non-parents may not do so.

This means that non-parents – grandmothers, aunts, uncles, other relatives, and family friends – can not gain the legal authority often needed to consent to medical care for a child, enroll a child in school, or protect a child from an unstable or unfit parent. The decision appears to be in tension with the law of the District of Columbia, including the Grandparent Caregiver Subsidy Pilot Program, Standby Guardianship Act, and other provisions of the D.C. Code.

Perhaps even more troubling and even more dangerous, the decision is not only in tension but in conflict with practices that have supported this community for decades – for generations. Preventing non-parents from seeking custody of children disrupts the very fabric of the community, endangers children, throws families into chaos, and threatens to send children into foster care. Non-parents have long stepped forward to care for children whose parents were unable to do so, to protect children whose welfare was endangered in the care of a parent, and to keep children out of the foster care system. A mother battles drug addiction and a father
A mother fights the ravages of HIV/AIDS and a neighbor opens her doors to a child. A child lives with her mother and grandmother – when the mother becomes incapacitated by illness, the child remains in her home and in her school, and maintains the stability of her life because her grandmother continues to take care of her. A prematurely-born child is abandoned at the age of 17 days at his grandmother’s home, and two days later, stops breathing and must be rushed to the Emergency Room. To consent to medical treatment, to enroll children in school, and sometimes, to protect the children from an unfit parent swooping back in to whisk the child into the streets, non-parents need court orders granting custody of the children. If caretakers do not have the authority to protect and care for children, the District’s foster care agency waits in the wings.

The lives of children and families are being disrupted in tragic ways. For example, in a case in which I was involved, Dontayvious Greene had lived in D.C. with his great-grandmother, Bessie Lewis, for his entire life – 11 years. When Ms. Lewis filed for custody, Dontayvious’ mother responded by threatening to set fire to the home shared by Dontayvious and Ms. Lewis. She then snatched the child from his home and trundled him off to North Carolina, where she lives with her boyfriend, who has abused her and the child in the past. Two days after Dontayvious was whisked away from his home, the Superior Court trial judge dismissed Ms. Lewis’ custody complaint. Today, the child remains in North Carolina, away from his home, his brother, his extended family, his school, his friends, his community, and his great-grandmother – whom he himself describes as his “mother”. This tragic story was the subject of “Elder Hostile,” by Arthur Delaney of The City Paper, on December 7, 2006.

2. Legislation is required

The Court of Appeals has been asked to reconsider or clarify its decision. The Court has
not decided whether it will reconsider its ruling, and has set no timetable for making even that
decision. Even if reconsideration is granted, months are likely to elapse before a hearing is
granted, and months or years may elapse after that before a decision is rendered. (The opinion in
W.D. v. C.S.M. was issued some 2 ½ years after the case was argued in the Court of Appeals.)
And even then, the Court may well reaffirm the August 31, 2006 decision in W.D. v. C.S.M.,
leaving children without protection and non-parents without a remedy.

Non-parent care of children in D.C. is an ineradicable part of the fabric of the
community. Thousands of children are being cared for by grandparents and other non-parents,
and are receiving the food, clothing, shelter, love and protection they deserve. Without the
ability to obtain a court order granting custody, those children are placed at risk.

Thus, the Council must enact a statute that will protect the ability of children to be cared
for by their caretakers, the people to whom they look for emotional, financial, and day-to-day
love and support. As D.C. law stands now, the doors of the courthouse are closed to childrens’
caretakers. Non-parents, like Ms. Lewis, must watch helplessly as children are taken from their
homes. Others will be unable to consent to medical care for the children they love. Other
children will be unable to obtain student loans for college, unless their caretaker is a legal
custodian. Other non-parents will be unable to enroll children in school. (Although the DC
Code permits non-parents to enroll children in schools without a custody order, in practice,
DCPS staff often require just such an order.) And these children, who would otherwise grow
and thrive in a family home, may unnecessarily be placed in foster care. If there is no legally-
authorized caretaker who can provide the services and supports a child needs – including, in
some instances, protection from the predations of an irresponsible parent – only the foster care
agency will be legally empowered to care for the child.

In the end, it is not all that complicated. Numerous states throughout the country have
enacted non-parent custody statutes. The District of Columbia relies on non-parents to take care of children. Children rely on non-parents to protect them and to provide them with the care and services they need to flourish. As recently as a few months ago, the Council itself recognized that non-parents are so essential to the very functioning of our city that the Grandparent subsidy law was required to support non-parents’ efforts. The Council required that non-parents obtain a court order to be eligible for the subsidy – a requirement that non-parents no longer can satisfy.

But do not be distracted by the grandparent subsidy program. It is a wonderful, innovative, extremely well-run, and much-needed program. But the grandparent subsidy program is just a tiny piece of this puzzle, however. Eliminating the court order requirement would make some non-parents eligible to participate in the program again. But much more important and much more immediate are children’s needs to be certain of medical care and protection, to reside with family instead of in foster care, and to have the stability and peace of mind that can be provided by the assurance of a court order.

The Council must again speak clearly – this time by enacting non-parent custody legislation to restore to children and families in the District of Columbia protections that, until August 31, 2006, served as the backbone of this city.

Thank you for the opportunity to address you. I look forward to supporting your efforts on this issue and will be pleased to answer any questions.