

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division

HARRY R. JACKSON, JR., <i>et al.</i>	)	
	)	
Petitioners,	)	Civil Action No. 2009 CA 008613 B
	)	Judge Judith N. Macaluso
v.	)	Calendar 9
	)	
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS,	)	[Next Court Event: Initial Conference, 9:30 am, Friday, February 26, 2010]
	)	
Respondent.	)	
	)	

---

**AFFIDAVIT OF HARRY R. JACKSON, JR.**

I, HARRY R. JACKSON, JR., swear and affirm that:

1. I am over eighteen years of age and of sound mind. I am a registered, qualified voter in the District of Columbia and my address is 1100 First Street, S.E., Apt. 1310, Washington, D.C. 20003. I am the Senior Pastor of Hope Christian Church and Chairman of the Stand for Marriage D.C. Coalition. I make this affidavit in support of Petitioners' Motion for Summary Judgment.

2. I am a proponent of the Marriage Initiative of 2009. The other proponents of the Initiative are Robert King, Walter E. Fauntroy, James Silver, Anthony Evans, Dale E. Wafer, Melvin Dupree, and Howard Butler.

3. The proposed initiative would add a provision to the District of Columbia's marriage code affirming that: "Only marriage between a man and a woman is valid or recognized in the District of Columbia."

4. I and my fellow proponents filed five copies of the full text of the Initiative with District of Columbia Board of Elections and Ethics (the "Board") on September 1, 2009. The filing also included a summary statement and short title of the Initiative, as well as an affidavit

from me testifying to my status as a registered qualified elector in the District. True and correct copies of the Initiative and accompanying documents are attached as Exhibit A.

5. That same day, September 1, 2009, I and my fellow proponents filed the required Verified Statement of Contributions with the District of Columbia Office of Campaign Finance.

6. The next day, September 2, 2009, I saw that the Board published notice on its website of its receipt of the Marriage Initiative of 2009.

7. Eight days later, on September 10, 2009, I and my fellow proponents received a letter from the Board informing us that a hearing on the Initiative had been tentatively scheduled for 10:00 a.m. on October 26, 2009, at One Judiciary Square, 441 4th Street, N.W., Suite 280, Washington, D.C. 20001. The letter also informed us that if we wished to submit a memorandum in support of the Initiative, we should do so by October 16, 2009. A true and correct copy of the letter from the Board to me dated September 10, 2009, is attached as Exhibit B.

8. On September 18, 2009, I saw that the Board published notice in the *D.C. Register* that it had received the Initiative and scheduled a public hearing on the Initiative for October 26, 2009, in the One Judiciary Square Building. True and correct copies of the pertinent portions of the *D.C. Register* are attached as Exhibit C.

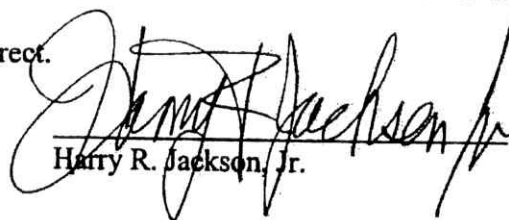
9. On October 15, 2009, I saw that the Board posted a "Public Notice" on its website announcing that there would be a Special Board Meeting on Monday, October 26, 2009 at 10:00 a.m. to determine whether the Marriage Initiative of 2009 was a proper subject for an initiative in the District. A true and correct copy of the "Public Notice" from October 15, 2009, is attached Exhibit D.

10. On October 16, 2009, before the 4:00 p.m. deadline, I and my fellow proponents, through our legal counsel, filed a memorandum with the Board explaining why the Marriage Initiative presented a proper subject for the initiative process. A true and correct copy of the memorandum filed with the Board on October 16, 2009, is attached as Exhibit E.

11. Just over a week later, on October 26, 2009, the Board held a public hearing on the Marriage Initiative to determine whether it presents a proper subject for the initiative process. I and my fellow proponents attended the hearing and provided testimony in support of the Initiative. Our attorneys, Cleta Mitchell and Austin R. Nimocks, also offered legal counsel to the Board explaining why the Initiative was a proper subject for the initiative process.

12. On November 17, 2009, I saw that the Board issued a decision that the Marriage Initiative of 2009 did not present a proper subject for the initiative process, because it authorizes, or would have the effect of authorizing, discrimination in violation of the District of Columbia Human Rights Act. A true and correct copy of the Board's decision dated November 17, 2009 is attached as Exhibit F.

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.

  
Harry R. Jackson, Jr.

DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 20<sup>th</sup> day of November 2009, by Harry R. Jackson, Jr..

  
Notary Public

My commission expires: 06-30-2014

## EXHIBIT A





## D.C. BOARD OF ELECTIONS AND ETHICS

## RECEIPT OF INITIATIVE (REFERENDUM) MEASURE

This acknowledge receipt of an Initiative (Referendum) Measure entitled:

Marriage Initiative of 2009

Items Submitted (Check Off):

- ☒ 5 Copies of Full Text of Measure
- ☒ Summary Statement of Measure
- ☒ Short Title of Measure
- ☒ Affidavit of Proposer



The Board's regulations governing Initiative (Referendum) Measures are attached. Please read them carefully because they contain information critical to your effort. If you have any legal questions, please call the General Counsel's Office at 727-2194. For general questions, call 727-2525. Also, please be advised of the following:

1. Pursuant to D.C. Code §§ 1-1102.04 and 1-1102.06, you must file a Statement of Organization and a Verified Statement of Contributions within 10 days of organization with the D.C. Office of Campaign Finance (OCF) for your petition form to be approved for circulation. OCF is located at 2000 14<sup>th</sup> Street, NW, Suite 400. Their phone number is 671-0550.
2. Failure to file the verified statement of contributions within 10 days of organization will result in rejection of your measure before the petitions is issued.
3. You must be present at the hearing where the Board considers your petition form for approval. Under D.C. law, you must formally adopt the petition form as your own. Do not send a representative.

I, Bishop Harry R. Jackson, Jr., swear or affirm that I am a registered qualified elector in the District of Columbia and that the information below is true:

Address: 1100 First Street, S.E., Apt. 1310, Washington, DC 20003

Phone: (202) 484-1891 Date: September 1<sup>st</sup>, 2009

Signature of Board Official: [Signature]

Signature of Person Submitting Measure: [Signature]



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS  
WASHINGTON, D.C.

AFFIDAVIT OF PROPOSER

I, Bishop Harry R. Jackson, Jr., swear or affirm that I am a registered qualified  
elector in the District of Columbia and that the information below is true:

1100 First Street, S.E., Apt. 1310, Washington, DC 20003  
ADDRESS

(202) 484-1891  
TELEPHONE NUMBER

Signature of Proposer

Subscribed and sworn or affirmed to me before this 1<sup>st</sup> day of September 20 09  
MONTH YEAR



Notary Public or D.C. Board of  
Elections and Ethics Official

## MARRIAGE INITIATIVE OF 2009

### Short Title

"Marriage Initiative of 2009"

### Summary Statement

The initiative, if passed, will provide that only marriage between a man and a woman is valid or recognized in the District of Columbia.

### Legislative Text

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Marriage Initiative of 2009."

Sec. 2. Chapter Forty-Three of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (Title 46, Subtitle I, Chapter 4 of the District of Columbia Official Code, D.C. Official Code § 46-401 *et seq.*), is amended by adding a new section providing as follows:

Only marriage between a man and a woman is valid or recognized in the District of Columbia.

Sec. 3. Effective Date. This act shall take effect in accordance with the provisions of § 1-1001.16 and § 1-206.02 of the District of Columbia Official Code.



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

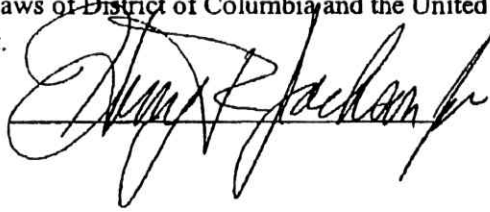
**AFFIDAVIT OF PROPONENT**

I, Bishop Harry R. Jackson, Jr., swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Bishop Harry R. Jackson, Jr.  
1100 First Street, S.E., Apt. 1310  
Washington, DC 20003  
(202) 484-1891

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.



DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by  
\_\_\_\_\_.

  
Notary Public

My commission expires: 06-30-2014



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

**AFFIDAVIT OF PROPONENT**

I, Rev. Walter E. Fauntroy, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Rev. Walter E. Fauntroy  
4105 17th Street, N.W.  
Washington, DC 20011  
(202) 269-5337

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.

*Walter E. Fauntroy*

DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August, 2009, by  
Rev. Walter E. Fauntroy

*Leslie R. Kim*  
Notary Public

Leslie R. Kim  
Notary Public, District of Columbia

My commission expires: My Commission Expires 8-31-2009



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

AFFIDAVIT OF PROPONENT

I, Robert King, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Robert King  
3102 Apple Road, N.E.  
Washington, DC 20018  
(202) 635-7664

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.



DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by  
\_\_\_\_\_.

  
Notary Public

My commission expires: 06-30-2014



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

**AFFIDAVIT OF PROPONENT**

I, Apostle James Silver, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Apostle James Silver  
7123 Chestnut Street, N.W.  
Washington, DC 20012  
(202) 291-8427

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.

James Silver

DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by  
\_\_\_\_\_.

Staci E. Saxon  
Notary Public

My commission expires: 06-30-2014



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

**AFFIDAVIT OF PROPONENT**

I, Rev. Anthony Evans, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Rev. Anthony Evans  
4021 7th Street, N.E., Apt. #4  
Washington, DC 20017  
(202) 367-8455

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.

*Anthony Evans*

DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by

*Staci E. Sefter*  
Notary Public

My commission expires: 06.30.2014





DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

AFFIDAVIT OF PROPONENT

I, Rev. Dale E. Wafer, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:


Rev. Dale E. Wafer  
4021 19th Street, N.E.  
Washington, DC 20018  
(202) 253-6129

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.



DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by  
\_\_\_\_\_.

  
Notary Public

My commission expires: 06-30-2014



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

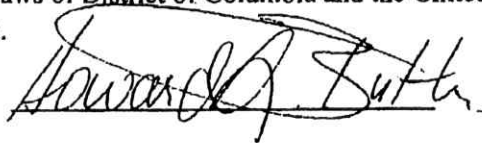
AFFIDAVIT OF PROPONENT

I, Elder Howard Butler, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Elder Howard Butler  
1301 Whittier Place, NW  
Washington, DC 20012  
(202) 726-5936  
(240) 508-9447

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.



DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by

  
Notary Public

My commission expires: 06.30.2014



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

Filed: September 1, 2009

Hearing: None scheduled yet.

**AFFIDAVIT OF PROPONENT**

I, Melvin Dupree, swear and affirm that:

1. I am over eighteen years of age, of sound mind, and competent to testify.
2. I am a proponent of the Marriage Initiative of 2009.
3. I am a registered qualified elector in the District of Columbia.
4. My address and telephone number are as follows:

Melvin Dupree  
1904 Naylor Road, S.E.  
Washington, DC 20020  
(202) 581-5625

I certify under penalty of perjury under the laws of District of Columbia and the United States that the above information is true and correct.

Melvin A. Dupree

DISTRICT OF COLUMBIA

SUBSCRIBED AND SWORN TO before me this 31 day of August 2009, by

Stacy E. Saper  
Notary Public

My commission expires: 06.30.2014



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF  
MARRIAGE INITIATIVE OF 2009

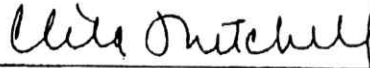
Filed: September 1, 2009

Hearing: None scheduled yet.

**NOTICE OF APPEARANCE**

Please take notice that Cleta Mitchell of Foley & Lardner, LLP hereby appears as counsel for Proponents Rev. Harry R. Jackson, Jr., Rev. Walter E. Fauntroy, Apostle James Silver, Rev. Dale E. Wafer, Melvin Dupree, Rev. Anthony Evans, Robert King, and Elder Howard Butler for the above-referenced initiative.

Respectfully submitted this 1st day of September, 2009.



Cleta Mitchell  
D.C. Bar No. 433386  
FOLEY & LARDNER, LLP  
3000 K Street, N.W., #500  
Washington, DC 20007  
Telephone: (202) 295-4081  
Facsimile: (202) 672-5399  
cmitchell@foley.com



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF  
  
MARRIAGE INITIATIVE OF 2009

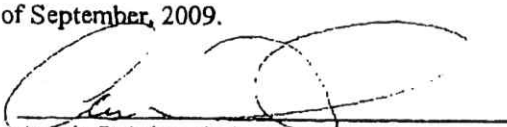
Filed: September 1, 2009

Hearing: None scheduled yet.

**NOTICE OF APPEARANCE**

Please take notice that Austin R. Nimocks of the Alliance Defense Fund hereby appears as counsel for Proponents Rev. Harry R. Jackson, Jr., Rev. Walter E. Fauntroy, Apostle James Silver, Rev. Dale E. Wafer, Melvin Dupree, Rev. Anthony Evans, Robert King, and Elder Howard Butler for the above-referenced initiative.

Respectfully submitted this 1<sup>st</sup> day of September, 2009.

  
Austin R. Nimocks\*  
ALLIANCE DEFENSE FUND  
801 G Street, N.W., Suite 509  
Washington, D.C. 20001  
Telephone: (202) 393-8690  
Facsimile: (202) 347-3622  
animocks@telladf.org

\* Application for admission to D.C. Bar pending



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF  
MARRIAGE INITIATIVE OF 2009

Filed: September 1<sup>st</sup> 2009

Hearing: None scheduled yet.

NOTICE OF APPEARANCE

Please take notice that Brian W. Raum of the Alliance Defense Fund hereby appears as counsel for Proponents Rev. Harry R. Jackson, Jr., Rev. Walter E. Fauntroy, Apostle James Silver, Rev. Dale E. Wafer, Melvin Dupree, Rev. Anthony Evans, Robert King, and Elder Howard Butler for the above-referenced initiative.

Respectfully submitted this 1<sup>st</sup> day of September, 2009.



Brian W. Raum\*  
ALLIANCE DEFENSE FUND  
15100 N. 90th Street  
Scottsdale, AZ 85260  
Telephone: (480) 444-0020  
Facsimile: (480) 444-0028  
braum@telladf.org

\* Not admitted in this jurisdiction



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

MARRIAGE INITIATIVE OF 2009

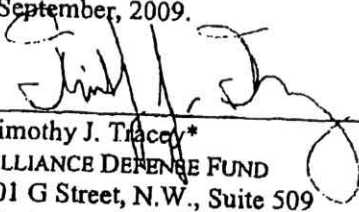
Filed: September 1, 2009

Hearing: None scheduled yet.

**NOTICE OF APPEARANCE**

Please take notice that Timothy J. Tracey of the Alliance Defense Fund hereby appears as counsel for Proponents Rev. Harry R. Jackson, Jr., Rev. Walter E. Fauntroy, Apostle James Silver, Rev. Dale E. Wafer, Melvin Dupree, Rev. Anthony Evans, Robert King, and Elder Howard Butler for the above-referenced initiative.

Respectfully submitted this 1<sup>st</sup> day of September, 2009.

  
\_\_\_\_\_  
Timothy J. Tracey\*  
ALLIANCE DEFENSE FUND  
801 G Street, N.W., Suite 509  
Washington, D.C. 20001  
Telephone: (202) 393-8690  
Facsimile: (202) 347-3622  
ttracey@telladf.org

\* Application for admission to D.C. Bar pending



## EXHIBIT B





DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS  
WASHINGTON, D.C. 20001-2745

September 10, 2009

Rev. Harry R. Jackson, Jr.  
1100 First Street, S.E., Apt. No. 1310  
Washington, DC 20003

Dear Rev. Jackson, Jr.

This letter confirms your filing of the proposed initiative "Marriage Initiative of 2009". The Board has tentatively scheduled a hearing on the matter for Monday, October 26, 2009 at 10:00 a.m., One Judiciary Square, 441 4<sup>th</sup> Street, N.W., First Floor, Old Council Chambers, Washington D.C. to determine whether your measure is a proper subject matter of initiative.

If you desire to submit memoranda supporting your measure for the Board's review prior to the meeting, please file it with the General Counsel's office on or before 4:00 p.m. Friday, October 16, 2009 at One Judiciary Square, 441 4<sup>th</sup> Street, N.W., Suite 270, Washington, DC 20001.

If you have any questions, please feel free to call me on (202) 727-2194.

Sincerely,

A handwritten signature in black ink, appearing to read "Kj McGhie".

Kenneth J. McGhie  
General Counsel

cc: Rokey Suleman, Executive Director  
Karen Brooks, Registrar of Voters  
Cleta Mitchell, Esq.

## BOARD OF ELECTIONS AND ETHICS

NOTICE OF PUBLIC HEARING  
RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE

The Board of Elections and Ethics shall consider in a public hearing whether the proposed measure "Marriage Initiative of 2009" is a proper subject matter for initiative, at the Special Board Meeting on Monday, October 26, 2009 at 10:00a.m., One Judiciary Square, 441 4<sup>th</sup> Street, N.W., First Floor, Old Council Chambers, Washington D.C., 20001

The Board requests that written memoranda be submitted for the record no later than 4:00 p.m., Friday, October 16, 2009 to the Board of Elections and Ethics, General Counsel's Office, One Judiciary Square, 441 4<sup>th</sup> Street, N.W., Suite 270, Washington, D.C. 20001.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number and name of the organization represented (if any) by calling the General Counsel's office at 727-2194 no later than Friday, October 23, 2009.

The Short Title, Summary Statement and Legislative Text of the proposed initiative read as follows:

## SHORT TITLE

"Marriage Initiative of 2009"

## SUMMARY STATEMENT

The initiative, if passed, will provide that only marriage between a man and a woman is valid or recognized in the District of Columbia.

## LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Marriage Initiative of 2009."

Sec. 2. Chapter Forty-Three of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (Title 46, Subtitle I, Chapter 4 of the District of Columbia Official Code, D.C. Official Code § 46-401 *et seq.*), is amended by adding a new section providing as follows:

Only marriage between a man and a woman is valid or recognized in the District of Columbia.

Sec. 3. Effective Date. This act shall take effect in accordance with the provisions of § 1-1001.16 and § 1-206.02 of the District of Columbia Official Code.

## EXHIBIT C

VOL. 56 – NO 38

FRIDAY, September 18, 2009



***District of Columbia***

# **REGISTER**

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## **HIGHLIGHTS**

- D.C. Council Schedules Public Hearing on Allocation of Temporary Assistance for Needy Families (TANF) Stimulus Funds
- Board of Elections and Ethics Schedules Public Hearing on Proposed Marriage Initiative of 2009
- Department of the Environment Schedules Public Hearing on Proposed Triennial Revision of the Water Quality Standards
- D.C. Water and Sewer Authority Adopts New Rates for Metered Retail Water and Sewer Services
- Department of Housing and Community Development Issues Notice of Funding Availability for the Small Business Assistance Program

## BOARD OF ELECTIONS AND ETHICS

## NOTICE OF PUBLIC HEARING

## RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE

The Board of Elections and Ethics shall consider in a public hearing whether the proposed measure "Marriage Initiative of 2009" is a proper subject matter for initiative, at the Special Board Meeting on Monday, October 26, 2009 at 10:00a.m., One Judiciary Square, 441 4<sup>th</sup> Street, N.W., First Floor, Old Council Chambers, Washington D.C., 20001

The Board requests that written memoranda be submitted for the record no later than 4:00 p.m., Friday, October 16, 2009 to the Board of Elections and Ethics, General Counsel's Office, One Judiciary Square, 441 4<sup>th</sup> Street, N.W., Suite 270, Washington, D.C. 20001.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number and name of the organization represented (if any) by calling the General Counsel's office at 727-2194 no later than, Friday, October 23, 2009.

The Short Title, Summary Statement and Legislative Text of the proposed initiative read as follows:

## SHORT TITLE

"Marriage Initiative of 2009"

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The initiative, if passed, will provide that only marriage between a man and a woman is valid or recognized in the District of Columbia.

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Only marriage between a man and a woman is valid or recognized in the District of Columbia.

Sec. 3. Effective Date. This act shall take effect in accordance with the provisions of § 1-1001.16 and § 1-206.02 of the District of Columbia Official Code.

## EXHIBIT D

[Home](#) | [Links](#) | [SiteMap](#) | [Contact Us](#)[Voter Information](#)[Election Information](#)[Candidate Information](#)[Voter Registration Stats](#)[DCBOEE & Regulations](#)[Newsroom](#) [News Room](#)

## News Room

[News](#)[Events](#)[Announcements](#)[News](#)[Events](#)[Announcements](#)[2009 Monthly Listing](#)[Jan](#) [Feb](#) [Mar](#) [Apr](#)  
[May](#) [Jun](#) [Jul](#) [Aug](#)  
[Sep](#) [Oct](#) [Nov](#) [Dec](#)[2008 Monthly Listing](#)[Jan](#) [Feb](#) [Mar](#) [Apr](#)  
[May](#) [Jun](#) [Jul](#) [Aug](#)  
[Sep](#) [Oct](#) [Nov](#) [Dec](#)

### Special Board Meeting on the Proposed Initiative, Marriage Initiative of 2009

#### PUBLIC NOTICE

The District of Columbia Board of Elections and Ethics announces that there will be a Special Board Meeting on Monday, October 26, 2009 at 10:00 AM. The hearing is to determine whether the proposed initiative measure entitled "Marriage Initiative of 2009" is a proper subject for an initiative in the District of Columbia. The hearing will be held in the Old Council Chambers, first floor of the One Judiciary Square building at 441 Fourth Street, N.W. Seating will be limited. For more information, the public may call 202-727-2525 (TDD: 202-638-8916).

[Back](#)

DC Board of Elections and Ethics  
441 4th Street, NW, Suite 250 North  
Washington, DC 20001  
Tel: (202) 727-2525 | TTY: (202) 638-8916 | Tollfree: 1-866-DC-VOTES

[DCBOEE Home](#) | [Voter Information](#) | [Election Information](#) | [Candidate Information](#) | [Voter Registration Stats](#) | [DCBOEE & Regulations](#) | [Newsroom](#) | [Links](#) | [SiteMap](#) | [Contact Us](#) | [Accessibility Info](#)

## EXHIBIT E



October 16, 2009

*VIA E-MAIL (ogc@dchoee.org) AND FACSIMILE (202-741-8774)*

Kenneth J. McGhie  
General Counsel's Office  
District of Columbia Board of Elections and Ethics  
One Judiciary Square  
441 4th Street, N.W., Suite 270  
Washington, D.C. 20001

RE: *In the Matter of the Marriage Initiative of 2009*; Filed September 1, 2009  
Hearing Date – October 26, 2009

Dear Mr. McGhie:

On September 1, 2009, the Initiative Proponents<sup>1</sup> filed the necessary and proper forms with the District of Columbia Board of Elections and Ethics ("Board") to commence a ballot initiative entitled the "Marriage Initiative of 2009." The Initiative Proponents contend that the people should have the opportunity to decide the future of marriage in the District of Columbia ("District"), not the Council, the Mayor, or any other District official.

The proposed initiative would add a simple provision to the District's marriage code, affirming current law that: "Only marriage between a man and a woman is valid or recognized in the District of Columbia." The citizens of 30 states have participated in the initiative and referendum process to protect and preserve the fundamental understanding of marriage—the union of a man and a woman. This unique and foundational social institution is one that deserves broad popular consideration. Because District law establishes the people's right to legislate on important public policy issues, such as this one, and the initiative does not otherwise conflict with the Human Rights Act, the Marriage Initiative of 2009 should be approved.

I. The People's Right of Initiative.

District law provides for an "initiative . . . process by which the electors of the District of Columbia may propose laws . . . and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval." D.C. Code § 1-204.101(a). The aim of the initiative process is to extend the "power to legislate . . . beyond the thirteen elected members of the Council and the elected Mayor to the citizens of the District of Columbia." *Hessey v. District of Columbia Bd. of Elecs. & Ethics*, 601 A.2d 3, 11 (D.C. 1991). "The initiative power, therefore, is a power of direct legislation by the electorate." *Convention*

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<sup>1</sup> The Initiative Proponents are Bishop Harry R. Jackson, Jr., Commissioner Robert King, Rev. Anthony Evans, Rev. Dale E. Wafer, Rev. Walter E. Fauntroy, Apostle James Silver, Chaplain Melvin Dupree, and Elder Howard Butler.

*Ctr. Referendum Comm'n v. District of Columbia Bd. of Elecs. & Ethics*, 441 A.2d 889, 897 (D.C. 1981) (*en banc*). See also Julius Hobson, Council of the District of Columbia, Memorandum on the Initiative and Referendum Act, at 1, 3 (Jan. 3, 1977) (explaining that the right of initiative uniquely "allow[s] the electorate to voice directly its sentiments and make that sentiment public policy").

The United States Supreme Court has held that the right of initiative "is designed to 'give citizens a voice on questions of public policy.'" *Eastlake v. Forest City Enter., Inc.*, 426 U.S. 668, 673 (1976) (quoting *James v. Valtierra*, 402 U.S. 137, 141 (1971)). Pursuant to that right, the citizens of the District have "reserve[d] to themselves power to deal directly with matters which might otherwise be assigned to the legislature." *Id.* at 672 (citing *Hunter v. Erickson*, 393 U.S. 385, 392 (1969)).

The power of the people to act by initiative is "coextensive with the power of the legislature to adopt legislative measures." *Id.*; see also *Atchison v. District of Columbia*, 585 A.2d 150, 156 (D.C. 1991) ("the electorate's power to adopt initiatives is coextensive with the power of the legislature to adopt legislative measures") (internal quotations omitted). If the voters approve an initiative measure, it in essence "becomes an act of the Council." *Convention Ctr.*, 441 A.2d at 897. Thus, for instance, the Council has the power to pass laws imposing criminal penalties for drug possession and distribution. See *Holiday v. United States*, 683 A.2d 61, 86-87 (D.C. 1996). At the same time, the voters of the District have passed the "Treatment Instead of Jail for Certain Non-Violent Drug Offenders Initiative of 2002," mandating alternative penalties for certain drug-related offenses.

The same has always been true of the District's marriage laws. Both the citizens, by initiative, and the Council share power to legislate on the subjects of marriage and divorce. The Council passed the Marriage and Divorce Act of 1977, D.C. Law 1-107, 1977 D.C. Stat. 114, making "two changes in the long-standing marriage chapter" of the D.C. Code. *Dean*, 653 A.2d at 312. The Council removed "color" from the list of information required to obtain a marriage license, and repealed the provisions of the marriage chapter dealing with "slave marriages." *Id.* Earlier this year, the Council passed the Jury and Marriage Amendment Act of 2009, D.C. Code § 46-405.01, adding a new section to the marriage chapter recognizing marriage licenses issued to same-sex couples from other jurisdictions.<sup>2</sup> These changes *could* have been completed through the initiative process.

The Marriage Initiative of 2009 now provides the voters of the District a chance to *affirm or reject* the District's longstanding definition of marriage as being only a legal union between a man and a woman.

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<sup>2</sup> The Act does not permit resident same-sex couples go outside the District to obtain marriage licenses. Cf. D.C. Code § 46-405.

- II. In Accordance with the Opinions of this Board and the District of Columbia, the Superior Court Specifically Instructed the Proponents to Pursue an Initiative.

The Initiative Proponents sought a referendum on the Jury and Marriage Amendment Act of 2009, D.C. Code § 46-405.01, in May of this year. Because the timeframe imposed on the referendum process made it virtually impossible for the Initiative Proponents to exercise fully their right of referendum, the Proponents asked the District of Columbia Superior Court to stay the effective date of the Act to provide more time.

The Superior Court denied this request, holding that the Proponents' inability to pursue a referendum "would not result in irreparable harm" since the "the District's Home Rule Act provides the right of initiative for voters to repeal a law." *Jackson v. District of Columbia Bd. of Elecs. & Ethics*, Civ. A. No. 09-004350, slip op. at 10 (D.C. Super. June 30, 2009). The Court explained that the Proponents' "remedy is to pursue an initiative or to seek redress through the political process by lobbying the Council and by exercising their right to vote." *Id.* at 12.

That is precisely what the Initiative Proponents are now doing—pursuing an initiative to give the voters the chance to affirm or reject the definition of marriage in the District. Both this Board and the District of Columbia argued to the Superior Court in the aforementioned proceeding "that there would be no irreparable harm because even if [the Proponents] are too late to complete a referendum, they nonetheless have the right to proceed with the initiative process." *Id.* at 10. This Board, in particular, argued:

If the Court denies the [Proponents'] request for injunctive relief and the Act becomes law by way of the expiration of the Congressional review period, they may still avail themselves of the initiative process.

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Clearly the [Proponents] will have at their disposal the right of Initiative as the Council contemplated should their time run on the referendum process.

(Bd.'s Opp. to Pets.' Mot. for Prelim. Inj., at 21-22.) This Board, the District, and the Superior Court all maintained that denying the Proponents their right of referendum caused no injury, since the initiative process is open to them. The Superior Court then directed the Proponents to abandon the referendum and pursue an initiative. Thus, the Proponents are following the directions of the Superior Court, in reliance upon the representations made by both this Board

and the District of Columbia. Accordingly, the Board must accept the Marriage Initiative of 2009.<sup>3</sup>

III. The Marriage Initiative of 2009 is Consistent with the HRA.

This Board is "required to construe the right of initiative liberally, and may impose on the right only those limitations expressed in the law or 'clear[ly] and compelling[ly]' implied." *Hessey v. Burden*, 584 A.2d 1, 3 (D.C. 1990) (quoting *Glass v. Smith*, 244 S.W.2d 645, 649 (Tex. 1951)) (brackets in original). The Marriage Initiative of 2009 does not "authorize[], or [] have the effect of authorizing, discrimination" prohibited by the District of Columbia Human Rights Act of 1977, D.C. Code § 2-1401.01 *et seq.* ("HRA"). D.C. Code § 1001.16(b)(1)(D). District of Columbia law is clear that the question of whether "marriage . . . is inherently a male-female relationship" does *not* violate the HRA. *Dean*, 653 A.2d at 313, 318-20.

The Superior Court in *Dean* specifically held that the "City Council consciously chose *not* to make the language of the Human Rights Act applicable to the regulation of the marital relationship." *Dean v. District of Columbia*, No. 90-13892, slip op. at \*4-8 (D.C. Super. Dec. 30, 1991), *aff'd*, *Dean*, 653 A.2d at 318-20 (emphasis added). The court reasoned that "only a few months before the Council enacted the Human Rights Act, it had rejected a proposal expressly to permit same-sex marriages." *Dean*, 653 A.2d at 310. The HRA was signed into law by the Mayor on September 28, 1977. See Legislative History of Laws, D.C. Official Code § 2-1401.01. The Marriage and Divorce Act was signed by the Mayor only about eight months earlier, on January 4, 1977. See Legislative History of Laws, D.C. Official Code § 46-410.

The initial version of the Marriage and Divorce Act, Bill No. 1-89, proposed by Councilmember Arrington Dixon, "would [have] permit[ted] marriages between persons of the same sex." *Dean*, 653 A.2d at 311. The bill generated a "fervent debate" and the Council persuaded Dixon to withdraw the bill and provide a substitute. *Id.* at 312. The substitute bill became the final Marriage and Divorce Act and it "contained no references to same-sex marriages." *Id.* Because the Council had expressly rejected the issuance of marriage licenses to

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<sup>3</sup> Indeed, this Board is estopped from denying the initiative. "[J]udicial estoppel applies when a litigant switches positions from one proceeding to another." *Ivey v. District of Columbia*, 949 A.2d 607, 611 (D.C. 2008); see also *Porter Novelli, Inc. v. Bender*, 817 A.2d 185, 188 (D.C. 2003) ("The independent doctrine of judicial estoppel precludes a litigant from playing fast and loose with a court of justice by changing his position according to the vicissitudes of self interest."). The doctrine applies equally against the government as against a private litigant. *New Hampshire v. Maine*, 532 U.S. 742, 749, 755-56 (2001); see also *County of San Miguel v. Kempthorne*, 587 F. Supp. 2d 64, 73 (D.D.C. 2008). This Board has already represented to the Superior Court that the Proponents may avail themselves of the initiative process. As such, the Board cannot now claim that the process is closed to them.

same-sex couples only eight months earlier,<sup>4</sup> and neither the language of the HRA nor its legislative history made any mention of redefining marriage, the Superior Court ruled that the HRA was not "applicable to the regulation of the marital relationship." *Dean*, slip op. at \*4-8.

The Superior Court, thus, concluded that the denial of a marriage license to a same-sex couple did not run afoul of the HRA:

[P]laintiffs were denied a marriage license because of the nature of marriage itself, requiring, as it does, that the parties thereto be a male and a female. What the plaintiffs herein sought a license to enter into, by definition, simply was not a "marriage." Any change in that definition must come from the legislature—not this Court.

*Id.* In other words, the Superior Court affirmed the lack of any correlation between "sexual orientation" and marriage.

The Court of Appeals affirmed the Superior Court's ruling, holding that when the Council passed the HRA in 1977, it did not redefine the District's long established understanding of marriage as "inherently a male-female relationship." *Dean*, 653 A.2d at 313, 318-20. The court explained:

Although the Council undoubtedly intended the Human Rights Act to be read broadly to eliminate the many proscribed forms of discrimination in the District, we cannot conclude that the Council ever intended to change the ordinary meaning of the word "marriage" simply by enacting the Human Rights Act. Had the Council intended to effect such a major definitional change, counter to common understanding, we would expect some mention of it in the Human Rights Act or at least in its legislative history. There is none.

\* \* \* \*

Furthermore, in 1977, the same Council was considering both the Human Rights Act and the Marriage and Divorce Act legislation. Councilmembers were keenly aware of the gay marriage debate and presumably would have stated their intentions expressly if they had wanted the Human Rights Act, instead of the Marriage and Divorce Act, to expand the marriage statute to authorize same-sex

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<sup>4</sup> The composition of the Council that enacted the HRA and rejected making marriage licenses available to same-sex couples was identical, with all the same members participating in both actions. *See Dean*, 653 A.2d at 320 ("[T]he same Council was considering both the Human Rights Act and the Marriage and Divorce Act legislation.").

unions. We therefore cannot conclude that the Council intended the Human Rights Act to change the fundamental definition of marriage.

*Id.* at 320. The Court of Appeals concluded that the HRA was not violated since the District's very own legislative definition of marriage "requires persons of opposite sexes." *Id.* This same definition continues today, meaning that the HRA does not implicate the definition of marriage.

The Court of Appeals has since affirmed *Dean*. In *Evans v. United States*, 682 A.2d 644 (D.C. 1996), the Court of Appeals rejected the claim that peremptory challenges based on age violate the HRA. *Id.* at 648-49. In *Evans*, the Court of Appeals explained its decision in *Dean* this way:

In *Dean v. District of Columbia*, 653 A.2d 307 (D.C. 1995), this court rejected a discrimination claim based on the DCHRA, finding that the statute contained no language or legislative history supporting the broad interpretation necessary to uphold the claim. The appellant in *Dean* contended that the government's refusal to issue marriage licenses to same-sex couples unlawfully denied the couple "equal opportunity" to participate in an important aspect of life protected by the DCHRA, and more specifically, contravened the prohibition against discrimination in public accommodations. The court recognized that the District of Columbia Council passed the DCHRA intending it to be a "powerful, flexible, and far-reaching prohibition against discrimination of many kinds, including sex and sexual orientation." Nevertheless, the court held that the statute could not be read to mean that every discriminatory practice is prohibited.

\* \* \* \*

[F]inding no mention of such intent in the specific language or the legislative history of the DCHRA, *Dean* concluded that the Council had no intention, in passing the DCHRA, of changing the ordinary meaning of marriage, as understood in the marriage statute to apply only to heterosexual couples.

*Id.* at 648 (quoting *Dean*, 653 A.2d at 319) (internal citations omitted). See also *NOW v. Mutual of Omaha Ins. Co.*, 531 A.2d 274, 277 (D.C. 1987) (holding that Council did not intend the HRA to apply to gender distinctions in actuarial pricing policies, even though the Council intended the Act to prohibit denial of "full and equal enjoyment" of the goods, services, and privileges provided by insurance companies generally). Thus, the HRA is not designed to be broadly construed to encompass any item that may touch upon a protected category.

In ruling that same-sex couples may adopt children, the Court of Appeals in *In re M.M.D.*, 662 A.2d 837 (D.C. 1995), specifically distinguished *Dean*, observing:



Recently we noted that a "marriage," according to "the ordinary sense and meaning traditionally attributed to the word," does not include a same-sex couple, and thus partly for this reason we concluded that Congress, in enacting the marriage statute without specific limitation to heterosexual couples, could not have intended to include same-sex couples. In contrast, the idea of "adoption" does not suggest an inherent, traditional limitation on who may adopt; we cannot use an "ordinary" meaning of "adoption" to say that Congress assuredly made unmarried couples ineligible to adopt.

*Id.* at 848. The Court of Appeals' repeated reaffirmation of *Dean* makes clear that the regulation of the marital relationship does *not* fall within the ambit of the HRA.

In only the last few years, the Court of Appeals has continued to reiterate that "marriage" in the District means a "husband and a wife." In *Coleman v. United States*, 948 A.2d 534 (D.C. 2008), the Court of Appeals reaffirmed that "common law marriage" requires "cohabitation as husband and wife." *Id.* at 544 (emphasis added). Similarly, in *Mesa v. United States*, 875 A.2d 79 (D.C. 2005), the Court of Appeals explained that "common law marriage in this jurisdiction [necessarily entails] cohabitation as husband and wife." *Id.* at 83 (emphasis added). See also *Dean*, 653 A.2d at 364 n.8 (Steadman, J., concurring) (citing *DeSanto v. Barnsley*, 476 A.2d 952, 955-56 (Pa. Super. 1984), for proposition that "two persons of the same sex cannot enter a common law marriage").

Accordingly, as a matter of law, the Marriage Initiative of 2009 does not "authorize[], or . . . have the effect of authorizing, discrimination" prohibited by HRA, D.C. Code § 1-1001.16(b)(1)(D), and the Board should accept the initiative.

A. The HRA Has Not Been Significantly Amended Since Its Enactment.

This Board is bound by *Dean*. While the Council could attempt to amend the HRA to minimize *Dean*'s applicability, this has not been done. The only significant amendment to the HRA since *Dean* is the 2002 amendment clarifying the act's application to the provision of government services. D.C. Code § 2-1402.73.<sup>5</sup> Accordingly, the 2002 amendment to the DC-HRA did not undermine the *Dean* court's analysis.

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<sup>5</sup> The applicability of the HRA to government services was already assumed by the Court of Appeals in *Dean*. "We, too, assume . . . the Marriage License Bureau is a place of public accommodation for purposes of our analysis." *Dean*, 653 A.2d at 319. Even assuming the HRA applied, the Court of Appeals still held that the refusal to recognize same-sex "marriages" did *not* violate the HRA, because the District's "legislative definition" of "'marriage' requires

The HRA and the District's marriage laws have existed side-by-side for thirty-two years. In 1995, the Court of Appeals affirmed that these laws do not conflict—that the passage of the HRA in no way changed the fundamental definition of “marriage” in the District. It cannot be, therefore, reasonably contended that the Marriage Initiative of 2009, which merely offers the citizens the chance to *accept or reject* the District's longstanding definition of “‘marriage’ [as] requir[ing] persons of opposite sexes,” now runs afoul of the HRA. *Id.* *Dean* still stands as clear and controlling precedent in the District and, as a matter of law, the Marriage Initiative of 2009 does not violate the HRA.

B. The Jury and Marriage Amendment Act of 2009 Did Not Undermine *Dean*.

The Jury and Marriage Amendment Act of 2009, which went into effect on July 7, 2009, changed District law in two distinct ways, neither of which affect the definition of marriage. First, it provided some recognition to marriage licenses issued to same-sex couples in other jurisdictions. Second, some of the nomenclature was amended in the consanguinity provision in the District's marriage statutes. D.C. Code §§ 46-405.01, 46-401. Neither of these changes permits the District to issue marriage licenses to same-sex couples or allows the solemnization of same-sex “marriages” in the District. Moreover, a resident same-sex couple cannot evade District law by going to another jurisdiction to obtain a marriage license. *Cf.* D.C. Code § 46-405.

The small changes to the terminology of the consanguinity provision, D.C. Code § 46-401, also do not alter the force and weight of *Dean*. The *Dean* court's decision did not turn on the gender specific terms of the consanguinity provision. The court examined all the definitional sources for the term “marriage”—the legislative history of the Marriage and Divorce Act, *Dean*, 653 A.2d at 311-12; the numerous references to “husband and wife” in the divorce statute, *id.* at 314-15; the common law of the District, *id.* at 315; decisions of appellate courts in other states, *id.* at 315-16; and dictionary definitions of “marriage,” *id.* at 315—and concluded that the District “[n]ever intended to sanction same-sex marriages,” *id.* at 318. Thus, that the consanguinity provision no longer employs certain terms does nothing to affect the analysis laid out by the Court in *Dean*.

Additionally, Councilmember David Catania introduced same-sex “marriage” legislation on October 6, 2009. Tim Craig, *Gay Marriage Bill Unveiled Before Packed D.C. Council Chambers*, Washington Post, Oct. 6, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/06/AR2009100602259.html>. Such legislation would be unnecessary

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persons of opposite sexes,” and, in passing the HRA, the Council never intended “to expand the marriage statute to authorize same-sex unions.” *Id.*



if in fact the Council had already settled the question of same-sex "marriages" when it adopted the Jury and Marriage Amendment Act of 2009. Councilmember Catania's legislation, therefore, undermines any proffered impact of the Act.

C. The Marriage Initiative of 2009 Does Not Discriminate on the Basis of "Sexual Orientation."

The Marriage Initiative of 2009 does not preclude those who define themselves as homosexual from entering a marriage—the union between a man and a woman. *Dean*, 653 A.2d at 320. As such, the proposed initiative does not discriminate on the basis of "sexual orientation."

The HRA defines "sexual orientation" as "male or female homosexuality, heterosexuality and bisexuality, by preference or practice." D.C. Code § 2-1401.02(28). The Marriage Initiative of 2009 is facially neutral with regard to "sexual orientation." It makes no mention of "sexual orientation" whatsoever. It reaffirms that only marriage between a man and a woman is valid or recognized in the District, but it does not mandate that either the man or the woman have a particular "sexual orientation."

Moreover, the existing marriage laws in the District, which the initiative seeks merely to affirm, also do not implicate "sexual orientation." The Clerk of the Superior Court is tasked by statute with acquiring the information necessary for issuance of a marriage license.

It shall be the duty of the Clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the *names and ages* of the parties desiring to marry, and *if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not*, and if so, in what degree, which facts shall appear on the face of the application, of which the Clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury.

D.C. Code § 46-410 (emphasis added). "Sexual orientation" is *not* part of the marriage license process. Accordingly, the criteria for a marriage license has nothing to do with "sexual orientation" and cannot constitute "sexual orientation" discrimination.

Here, a person's "sexual orientation," or a change in one's declared "sexual orientation," has no affect on his or her ability to marry. A same-sex couple cannot be issued a marriage license in the District whether one or both is heterosexual, homosexual, or bisexual. How can there be "sexual orientation" discrimination under the HRA when a change in "sexual orientation" does not change the alleged discriminatory result? Like current District law, the

Marriage Initiative of 2009 does not preclude persons from entering into matrimony based on their "sexual orientation."

It may well be that a person who identifies as homosexual may not want to marry someone of the opposite sex, but that does not amount to unlawful discrimination. The HRA can "not be read to mean that every discriminatory practice is prohibited." *Evan*, 682 A.2d at 648; see also *Dean*, 653 A.2d at 319 ("The Council . . . did not intend the [HRA] to prohibit every discriminatory practice."). District laws draw distinctions all the time that do not run afoul of the HRA. For instance, laws allowing for the age discriminatory use of peremptory challenges, *Evan*, 682 A.2d at 649, and laws permitting gender discriminatory pricing practices for insurance companies, *NOW*, 531 A.2d at 278-79, have been upheld as consistent with the HRA, even though the laws were clearly making distinctions that implicate the HRA. The mere fact that the District's marriage laws distinguish between same-sex and opposite-sex couples does not make the laws impermissibly discriminatory. See *Baker v. Nelson*, 191 N.W.2d 185, 187 (Minn. 1971) ("The equal protection clause of the Fourteenth Amendment, like the due process clause, is not offended by the state's classification of persons authorized to marry. There is no irrational or invidious discrimination."); *Singer v. Hara*, 522 P.2d 1187, 1194-95 (Wash. App. 1974) (limiting marriage to opposite-sex couples was not gender discrimination because "differentiat[ions] between the sexes are permissible so long as they are based upon the unique physical characteristics of a particular sex"); *Hernandez v. Robles*, 855 N.E.2d 1, 10-12 (N.Y. 2006) (holding that "[b]y limiting marriage to opposite-sex couples, New York is not engaging in sex discrimination" and that the "distinction between opposite-sex and same-sex couples enacted by the Legislature does not violate the Equal Protection Clause"); *Conaway v. Deane*, 932 A.2d 571, 635 (Md. 2007) (holding that Maryland's marriage law "does not discriminate on the basis of sex in violation of Article 46, and does not otherwise implicate a suspect or quasi-suspect class"). It is for this reason that the *Dean* court held that by refusing to issue a marriage license to a same-sex couple, "the Clerk did not unlawfully discriminate against appellants under the District of Columbia Human Rights Act." *Dean*, 653 A.2d at 309. Thus, the Marriage Initiative of 2009 does not unlawfully discriminate on the basis of "sexual orientation," or any other basis, and this Board must accept the initiative as proper under D.C. Code § 1-1001.16(b)(1).

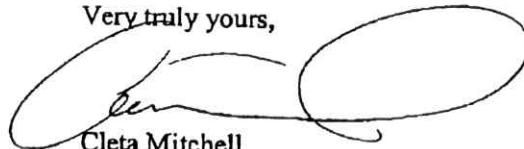
#### IV. The Marriage Initiative of 2009 Satisfies the Remaining Criteria for Approval.

The Initiative Proponents submitted the Marriage Initiative of 2009 in proper form, and they filed the verified statement of contributions, required by D.C. Code §§ 1-1102.04 and 1-1102.06, with the Office of Campaign Finance. D.C. Code § 1001.16(b)(1). Moreover, the initiative itself does not "directly amend the [District] Charter," "change the structure of government and the procedures and responsibilities assigned by the Charter," or relate to "acts appropriating funds." *Hessey*, 601 A.2d at 12.

V. Conclusion.

The Marriage Initiative of 2009 satisfies all the criteria for a proposed initiative set out in D.C. Code § 1-1001.16(b)(1). This Board, the District, and the Superior Court acknowledged that the initiative process was available to the Initiative Proponents for this matter. Acting in reliance upon those representations, and because the definition of "marriage" within the District is untouched by the HRA, the Marriage Initiative of 2009 is proper and should be sent to the voters. The citizens of the District have the right to affirm or reject the definition of "marriage" in the District. Accordingly, the Marriage Initiative of 2009 should be accepted by the Board.

Very truly yours,



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## EXHIBIT F

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

In Re:	)	
	)	
Marriage Initiative of 2009	)	Administrative Hearing
	)	No. 09-006
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**I. Introduction**

This matter came before the District of Columbia Board of Elections and Ethics (hereinafter “the Board”) during a special hearing on Monday, October 26, 2009 pursuant to the submission of a proposed initiative measure, the “Marriage Initiative of 2009” (“the Initiative”). The Initiative, if passed, would establish that “only marriage between a man and a woman is valid or recognized in the District of Columbia.”<sup>1</sup> The purpose of the special hearing was to determine whether or not the Initiative presents a proper subject matter for initiative in the District. Reverend Harry R. Jackson, Jr. (“Rev. Jackson”), the lead proposer of the Initiative, appeared before the Board, and was also represented at the hearing by Cleta Mitchell, Esq. of Foley & Lardner LLP, and Austin R. Nimocks, Esq. of the Alliance Defense Fund.<sup>2</sup> Chairman Errol R. Arthur and Board member Charles R. Lowery, Jr. presided over the hearing.

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<sup>1</sup> Summary Statement, Initiative.

<sup>2</sup> Brian W. Raum, Esq. and Timothy J. Tracey, Esq. also filed Notices of Appearance with the Board on behalf of Rev. Jackson and the other proponents.

## II. Statement of the Facts

On July 7, 2009, the “Jury and Marriage Amendment Act of 2009” (“JAMA”) was enacted. As a result of JAMA’s passage, same-sex marriages entered into and recognized as valid in other jurisdictions are now recognized as valid marriages in the District.<sup>3</sup>

JAMA was the target of an unsuccessful referendum attempt. Sixteen days after the Council of the District of Columbia (“the Council”) submitted JAMA to Congress,<sup>4</sup> Rev. Jackson and others submitted to the Board a referendum entitled the “Referendum Concerning the Jury and Marriage Amendment Act of 2009” (“the Referendum”), which sought to suspend the section of JAMA pertaining to same-sex marriages until it had been presented to the registered qualified electors of the District of Columbia for their approval or rejection. On June 15, 2009, the Board ruled that the Referendum was not a proper subject for referendum because it

would, in contravention of the [Human Rights Act (“HRA”)], strip same-sex couples of the rights and responsibilities of marriage that they were afforded by virtue of entering into valid marriages elsewhere, and that the Council intends to clearly make available to them here in the District, simply on the basis of their sexual orientation. Because the Referendum would authorize discrimination prohibited by the HRA, it is not a proper subject for referendum, and may not be accepted by the Board.<sup>5</sup>

On June 17, 2009, the proposers of the Referendum filed with the D.C. Superior Court a petition for review of the Board’s decision and for a writ in the nature of mandamus to compel the Board to accept the Referendum. The proposers subsequently filed a motion for preliminary injunction to stay the effective date of JAMA until either the end of litigation, in the event that

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<sup>3</sup> See D.C. Official Code § 46-405.01.

<sup>4</sup> See D.C. Official Code § 1-206.02(c)(1) (2006).

<sup>5</sup> Board Memorandum Opinion and Order, “In Re: Referendum Concerning the Jury And Marriage Amendment Act of 2009, 09-004 (June 15, 2009) (“Board Referendum Order”)

they lost on the merits, or thirty (30) days after the Board provided them with an original petition form for signature collection if they won on the merits. The proposers sought this injunctive relief because it was clear that, in light of the litigation, there was insufficient time for the Referendum to complete the entire referendum process prior to JAMA becoming effective.<sup>6</sup>

In its opposition to the proposers' motion for preliminary injunction, the Board argued, *inter alia*, that the proposers would not be irreparably harmed in the absence of a stay of JAMA's effective date because, even if JAMA were enacted, the proposers "could still avail themselves of the initiative process."<sup>7</sup> The Board referenced the legislative history of the Initiative, Referendum, and Recall Charter Amendments Act of 1978 ("the Charter Amendments Act"),<sup>8</sup> which created the right of initiative and referendum. This legislative history clarified that "[s]hould the citizens desire, basically, to reverse a decision of the Council which has already become law, they would then have the ability to initiate through the initiative process the same measure to the ballot," provided the initiative at issue is a proper subject for initiative pursuant to D.C. Official Code § 1-1001.16(b)(1).<sup>9</sup>

On June 30, 2009, the court issued an order denying the proposers' requests for relief, finding that the "Board correctly concluded that the proposed referendum would violate the District of Columbia Human Rights Act[.]"<sup>10</sup> Specifically, the court determined that, because the

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<sup>6</sup> JAMA was scheduled to, and did, complete the Congressional review period on July 6, 2009.

<sup>7</sup> Respondent District of Columbia Board of Elections and Ethics' Opposition to Petitioners' Motion for Preliminary Injunction ("Board Preliminary Injunction Opposition") at 21, *Jackson v. District of Columbia Bd. of Elections and Ethics*, No. 2009 CA 004350 B slip op. (D.C. Superior Ct. 2009) ("Jackson").

<sup>8</sup> D.C. Law 2-46, 24 D.C. Reg. 199 (1978) (*codified as amended* at D.C. Official Code § 1-204.101 *et seq.*).

<sup>9</sup> *Convention Center Referendum Committee v. District of Columbia Bd. of Elections*, 449 A.2d 889, 910 n.38 (D.C. 1991).

<sup>10</sup> *Jackson* at 2.

proposed referendum asks the voters to decide whether the District should recognize same-sex marriages—which are legally indistinguishable from opposite-sex marriages in the jurisdictions in which they were performed—solely on the basis of the person’s gender or sexual orientation[, the] measure ‘authorizes or would have the effect of authorizing discrimination prohibited under the [DCHRA],’ and hence is not a proper subject for referendum.<sup>11</sup>

Moreover, the court agreed that the proposers would not be irreparably harmed if the court did not grant a stay of JAMA’s effective date, noting that

the District’s Home Rule Act provides the right of initiative for voters to repeal a law. *Moreover, Petitioners’ right to referendum has not been deprived. The Board did not refuse to consider Petitioners’ proposed referendum, and this Court has not declined to exercise jurisdiction.* Petitioners’ proposed referendum has followed the course contemplated for all referenda pursuant to D.C. Code § 1-1001.16—a course successfully charted by others who have sought to submit District legislation to a direct vote. *Petitioners are entitled to the process outlined in D.C. Code § 1-1001.16. They are not entitled to a favorable ruling on whether their proposed referendum meets the legal requirements established by District law.*<sup>12</sup>

On September 1, 2009, Rev. Jackson, Howard Butler, Melvin Dupree, Rev. Anthony Evans, Rev. Walter E. Fauntroy, Robert King, James Silver, and Rev. Dale E. Wafer (“the Proposers”) filed the Initiative with the Board.<sup>13</sup> Also on September 1, the Proposers filed a verified statement of contributions with the D.C. Office of Campaign Finance.<sup>14</sup> On September 10, 2009, the Board’s Office of the General Counsel (“the General Counsel”) transmitted a Notice of Public Hearing and Intent to Review regarding the Initiative (“the Notice”) to the Office of Documents and Administrative Issuances for publication in the D.C. Register.<sup>15</sup> On

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<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Jackson* at 2 (emphasis added).

<sup>13</sup> See D.C. Official Code § 1-1001.16(a) (2006).

<sup>14</sup> See D.C. Official Code § 1-1001.16 (b)(1)(A) (2006).

<sup>15</sup> See D.C. Mun. Regs. tit. 3 § 1001.2 (2007).



September 10, the General Counsel also sent the Notice to the Mayor, the Chairman of the D.C. Council, the D.C. Attorney General, and the General Counsel for the Council, inviting them to address the issue of whether the Initiative presents a proper subject for initiative. The Notice was published in the D.C. Register on September 18, 2009.

The Board held the proper subject hearing on October 26, 2009.<sup>16</sup> In response to the Board's invitation to comment on the propriety of the Initiative, the Board received written testimony and heard oral testimony during the hearing from numerous individuals and organizations. The Board also held the record open for additional comments until the close of business on October 28, 2009. In all, the Board heard testimony from 60 witnesses and received and considered comments from approximately 29 individuals and/or organizations.

### **III. Analysis**

#### **A. Introduction**

The Board shall refuse to accept an initiative measure if it:

finds that it is not a proper subject of initiative ... under the terms of Title IV of the District of Columbia Home Rule Act or upon any of the following grounds:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1102.04 and 1-1102.06;<sup>17</sup>
- (B) The petition is not in the proper form established in subsection (a) of this section;<sup>18</sup>
- (C) The measure authorizes, or would have the effect of authorizing, discrimination

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<sup>16</sup> See D.C. Mun. Regs. tit. 3 § 1001.3 (2007).

<sup>17</sup> The verified statement of contributions consists of the statement of organization required by D.C. Official Code § 1-1102.04 and the report of receipts and expenditures required by D.C. Official Code § 1-1102.06.

<sup>18</sup> D.C. Official Code § 1-1001.16 (a) provides that initiative measure proposers must file with the Board "5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative."

- prohibited under Chapter 14 of Title 2;<sup>19</sup> or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.<sup>20 21</sup>

Based upon the written and oral opinions submitted to the Board regarding the propriety of the Initiative, the Board's own research and consideration of the matter, and the D.C. Superior Court's ruling in *Jackson*, the Board now concludes that the Initiative does not present a proper subject of initiative because it would authorize discrimination prohibited under the Human Rights Act ("HRA").

#### **B. JAMA and the Referendum**

As of July 2009, the District now recognizes same-sex marriages entered into and recognized as valid in other jurisdictions. Massachusetts, Connecticut, Iowa, Vermont, and New Hampshire currently permit, or are set to permit, same-sex marriages. From June 2008 until November 2008, California also authorized same-sex marriages. In November of 2008, California voters voted in favor of Proposition 8, an initiative constitutional amendment banning same-sex marriages. However, same-sex marriages performed prior to the enactment of the proposition are still recognized as valid in California. Additionally, Belgium, Canada, the Netherlands, Norway, South Africa, Spain, and Sweden allow same-sex marriages. Accordingly, if a same-sex couple entered into a marriage in any one of the aforementioned jurisdictions during a time when same-sex marriage was recognized as valid in that jurisdiction, that marriage

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<sup>19</sup> Chapter 14 of Title 2 of the D.C. Official Code contains the District of Columbia Human Rights Act. See D.C. Official Code § 2-1401.01 *et seq.* (2006 Repl.).

<sup>20</sup> D.C. Official Code § 1-204.46 deals with budgetary acts of the D.C. Council.

<sup>21</sup> D.C. Official Code § 1-1001.16 (b)(1) (2006 Repl.).

is now recognized as valid in the District, provided it is otherwise lawful under District law.<sup>22</sup>

As discussed above, the Board had occasion to consider whether or not the section of JAMA pertaining to same-sex marriages was susceptible to referendum. In its Board Referendum Order, which the D.C. Superior Court affirmed, the Board held that it was not because it represented a legislative effort to abolish in the District distinctions between valid marriages entered into in other jurisdictions on the basis of sexual orientation. As such, JAMA was covered by the HRA, the stated purpose of which is to

secure an end in the District of Columbia to discrimination for any reason other than individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business.<sup>23</sup>

The Board further noted that JAMA comported with “[e]xisting District law [which] requires the recognition of marriages that were valid at their place of celebration,”<sup>24</sup> and that it

unequivocally declares that the District is a jurisdiction that affords full faith and credit to valid same-sex marriages[;]<sup>25</sup> [that it was] consistent with recent efforts by the Council to eradicate impermissible discrimination on the basis of same-sex discrimination by putting same-sex couples on a par with heterosexual couples in

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<sup>22</sup> See D.C. Official Code §§ 46-401 – 403. Marriages are not lawful in the District if they are: incestuous or bigamous; have been judicially declared null and void; or contain at least one individual who is not of the age of consent, is unable to consent to marriage due to mental incapacity, and/or has been forced or fraudulently tricked into consenting to the marriage.

<sup>23</sup> D.C. Official Code § 2-1401.01 (2006 Repl.).

<sup>24</sup> Letter from Brian Flowers, General Counsel, Council of the District of Columbia, to Kenneth J. McGhie, General Council, D.C. Board of Elections and Ethics regarding the Referendum on Jury and Marriage Amendment Act of 2009 (June 9, 2009) (“Flowers Letter”) at 6 (discussing laws and cases supporting proposition that “the District has recognized marriages valid in the state in which they were solemnized, unless the marriage was between persons domiciled in the District at the time of the marriage and the marriage would have been expressly prohibited by one of the provisions contained in D.C. Official Code § 46-401 through 46-404, or the marriage is in violation of the ‘strong public policy’ of the District.”).

<sup>25</sup> “This amendment makes clear what is already the law: to recognize marriages duly performed in other jurisdictions, including officially sanctioned marriages between persons of the same-sex.” Amendment offered by Councilmember Phil Mendelson to Bill 18-10, Disclosure to the United States District Court Act of 2009 (Committee Print) (April 7, 2009).

numerous provisions of District law[, for *e.g.*, the] Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009, a partial aim of which was to “formally acknowledge that families created by same-sex couples are not distinguishable from any other family currently recognized under District law,”<sup>26</sup> [and] ... Council efforts to remove gender-specific references in statutes pertaining to marriage and/or the rights and responsibilities thereof[.]<sup>27 28</sup>

Finally, the Board considered the impact of *Dean v. District of Columbia* (“*Dean*”)<sup>29</sup>, a case cited by both proposers and opponents of the Initiative, on the matter. In *Dean*, the D.C. Court of Appeals ruled, *inter alia*, that the practice of denying marriage licenses to same-sex couples did not violate the HRA. The court reasoned that the HRA, though “a powerful, flexible, and far-reaching prohibition against discrimination of many kinds, including sex and sexual orientation,”<sup>30</sup> was not intended to prohibit discrimination of *every* kind. Specifically, it was not intended to “change the ordinary meaning of the word ‘marriage’”<sup>31</sup> such that impermissible discrimination occurred when marriage licenses were not granted to same-sex couples along with heterosexual couples.

In reaching this conclusion, the *Dean* court engaged in the analysis it had employed in *National Organization for Women v. Mutual of Omaha Insurance Co., Inc.*<sup>32</sup> In *NOW*, the court

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<sup>26</sup> Report of the Committee on Public Safety and the Judiciary on Bill 18-66, the Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009 at 9 (Council of the District of Columbia, March 10, 2009).

<sup>27</sup> Flowers Letter at 8 (discussing fact that several statutory provisions “have been amended by the Council to remove the gender-specific references as part of a systemic effort to employ gender-neutral language throughout the D.C. Official Code statutes pertaining to marriage and the rights, benefits, and obligations incident to marriage.”).

<sup>28</sup> Board Referendum Order at 10.

<sup>29</sup> 653 A.2d 307 (D.C. 1995).

<sup>30</sup> *Id.* at 319.

<sup>31</sup> *Id.* at 320.

<sup>32</sup> 531 A.2d 274 (D.C. 1987) (“*NOW*”).

considered whether or not the defendant insurer's practice of charging higher health premiums for women violated the HRA. The court noted that

[i]t is true that it can be argued with some persuasion that the “plain language” of the [HRA] prohibits discrimination based on gender in the services offered by insurance companies. Significantly, however, the [HRA] contains no language purporting explicitly to regulate insurance premium practices. If the Council had intended to effect such a dramatic change in insurance rate-setting practices, it is reasonable to assume that there would have been at least some specific reference to it in the language of the [HRA] or, at least, within its legislative history. Under the circumstances, therefore, we think it appropriate to look to the [HRA’s] statutory context and its legislative history to ascertain whether its scope extends to actuarial pricing practices.<sup>33</sup>

The court further observed that, in instances where the legislative history of the HRA is silent as to a particular topic, “courts can sometimes find guidance by reading it in conjunction with other statutes relating to the same subject.”<sup>34</sup> Accordingly, the court read the HRA in conjunction with the statute that allowed the gender-based differential in insurance rates that the *NOW* petitioners alleged violated the HRA, and which had existed prior to the HRA, and examined its relationship with the same.

In reaching the conclusion that the insurance practice was not in conflict with the HRA, the court afforded “great weight”<sup>35</sup> to the fact that the District’s Corporation Counsel<sup>36</sup> had advised the D.C. Council, pursuant to a request for an opinion on the matter, that life insurance set-backs for women did not violate the HRA, as well as the fact that the Council relied upon this opinion when it subsequently increased life insurance set-backs for women from three years to

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<sup>33</sup> *Id.* at 276 (citations omitted).

<sup>34</sup> *Id.* at 277.

<sup>35</sup> “We add that the Corporation Counsel’s interpretation of the [HRA], while not binding on this court, is entitled to great weight.” *NOW*, 531 A.2d at 278 (citing *Jordan v. District of Columbia*, 362 A.2d 114, 118 (D.C. 1976)).

<sup>36</sup> The District’s Attorney General was formerly referred to as the Corporation Counsel.

six years. Clearly, the court wrote,

the Council did not enact the insurance set-back provisions in ignorance of their potential conflict with the [HRA]. ... Rather, it did so only after consulting the Corporation Counsel and expressly considering the potential impact of the [HRA] on those provisions. In such a situation, it is proper to view the later act “as a legislative interpretation of the earlier act ... in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting.” ... We should construe the two statutes to be in harmony if reasonably possible. ... To do so requires us to conclude that the Council did not intend the Act to include gender-based insurance pricing within its scope.<sup>37</sup>

Applying the analysis in *NOW*, the court in *Dean* looked at the legislative history of the HRA in conjunction with District laws concerning marriage as they existed when *Dean* was decided. The court determined that same-sex marriage could not possibly be within the scope of the HRA, and would necessarily be missing from its legislative history, because “by legislative definition – as we have seen – ‘marriage’ requires persons of opposite sexes; there cannot be discrimination against a same-sex marriage if, by independent statutory definition extended to the [HRA], there can be no such thing.”<sup>38</sup> The court held that it could not “conclude that the Council ever intended to change the ordinary meaning of the word ‘marriage’ simply by enacting the [HRA],”<sup>39</sup> and that, therefore, the denial of marriage licenses to same-sex couples did not contravene the HRA.

The decisions in *Dean* and *NOW* are instructive. They both clarify that, in order to determine whether or not a particular form of discrimination is of the kind that the HRA is intended to prohibit, both the Board and the courts should consider the legislative history of the HRA, the current statutory context, and legislative intent. A consideration of these factors

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<sup>37</sup> *Id.* at 278 (citations omitted).

<sup>38</sup> *Dean*, 653 A.2d at 320.

<sup>39</sup> *Id.*

demonstrates that the Initiative is not a proper subject for initiative in the District.

While neither the HRA nor its legislative history explicitly mentions same-sex marriage, it is without question that the HRA must “be read broadly to eliminate the many proscribed forms of discrimination in the District.”<sup>40</sup> Since JAMA’s enactment, the District recognizes same-sex marriages that have been properly entered into, performed, and recognized by other jurisdictions. This did not exist when *Dean* was decided. Consequently, couples who fall within JAMA’s purview are entitled to the same benefits of marriage that are afforded heterosexual married couples, and the denial of these benefits to married couples on the basis of the sexual orientation of the individuals who comprise the couples now constitutes a “proscribed form of discrimination.” It is clear that this result is the intent of the Council, which voted 12-1 to pass JAMA. The Initiative seeks to deny recognition to JAMA marriages on the basis of the sexual orientation of the individuals who comprise the couples. As a result, the Board finds, and both the District’s Attorney General and the General Counsel for the Council agree, that the Initiative authorizes or would authorize discrimination proscribed by the HRA and is therefore not a proper subject for initiative.

Counsel for the Proposers have argued before the Board that the Board is collaterally estopped from finding that the Initiative is not a proper subject for initiative because the Board argued in the D.C. Superior Court that “[i]f the Court denies the Petitioners’ request for injunctive relief and [JAMA] becomes law by way of the expiration of the Congressional review period, they may still avail themselves of the initiative process.”<sup>41</sup> This argument is without merit. Stating that a party may avail themselves of the initiative process is not the equivalent of

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<sup>40</sup> *Id.*

<sup>41</sup> Board Preliminary Injunction Opposition at 21.

asserting that the party is entitled to actually have the initiative appear on the ballot; in addition to meeting all other prerequisites for ballot access, a proposed initiative measure must be a proper subject for initiative or it must be refused by the Board. The Proposers have done exactly what the Board said they may do – they have availed themselves of the initiative process. They submitted a proposed initiative measure that the Board considered in its customary fashion. Because “the Board did not refuse to consider” the Initiative, the Proposers’ “right to [initiative] has not been deprived.”<sup>42</sup>

#### **IV. Conclusion**

Under current law, the District recognizes same-sex marriages validly performed in other jurisdictions<sup>43</sup>. The proposed Initiative seeks to prohibit the District from continuing to recognize these same-sex marriages. The Initiative instructs that “only marriage between a man and a woman is valid or recognized in the District of Columbia.”<sup>44</sup> If passed, the Initiative would, in contravention of the HRA, strip same-sex couples of the rights and responsibilities of marriages currently recognized in the District.

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<sup>42</sup> *Jackson* at 2.

<sup>43</sup> D.C. Code §46-405.01 (added by §3(b) of the Jury and Marriage Amendment Act of 2009).

<sup>44</sup> Summary Statement, Initiative.



The District's Initiative, Referendum and Recall Procedures Act requires the Board to refuse to accept referenda and initiatives which violate the HRA. Because the Initiative would authorize discrimination prohibited by the HRA, it is not a proper subject for initiative, and may not be accepted by the Board.<sup>45</sup>

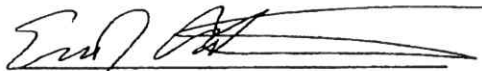
Accordingly, it is hereby:

**ORDERED** that the Initiative is **RECEIVED BUT NOT ACCEPTED** pursuant to D.C.

Official Code § 1-1001.16(b)(2).

November 17, 2009

Date



Errol R. Arthur

Chairman, Board of Elections and Ethics

Charles R. Lowery, Jr.

Member, Board of Elections and Ethics

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<sup>45</sup> The Proposers and other supporters of the Initiative have requested that the Board accept the Initiative and thereby allow voters to be heard on the issue of the recognition of same-sex marriage in the District. As it stated during the proceedings concerning the Referendum, the Board, as an entity responsible for ensuring the integrity of a very critical aspect of the democratic process, is particularly sensitive to issues of fairness and due process. However, the Board must also act in a manner which adheres to its statutory obligations.