

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

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| 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. |) | |
| |) | |

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF CONSENT MOTION TO EXPEDITE

Petitioners Harry R. Jackson, Jr., Robert King, Walter E. Fauntroy, James Silver, Anthony Evans, Dale E. Wafer, Melvin Dupree, and Howard Butler (the "Proponents") hereby file this Memorandum of Points and Authorities in Support of Consent Motion to Expedite showing as follows:

PROCEDURAL AND FACTUAL BACKGROUND

The Proponents filed the Marriage Initiative of 2009 with the Board on September 1, 2009. The proposed initiative would add a provision to the District's marriage code, affirming that: "Only marriage between a man and a woman is valid or recognized in the District of Columbia."

The Board held a public hearing on October 26, 2009, to determine whether the Initiative presented a proper subject for the initiative process. On November 17, 2009, the Board rejected the Initiative on the basis that it "authorizes, or would have the effect of authorizing, discrimination" in violation of the District of Columbia Human Rights Act of 1977, D.C. Code § 2-1401.01 *et seq.* (the "HRA"). The Board made no finding that the Initiative involved or

purported to make an appropriation, the only subject matter grounds on which the Board is authorized to reject an initiative pursuant to D.C. Code § 1-204.101.

The Proponents petitioned this Court within the ten (10) day time period established by D.C. Code § 1-1001.16(b)(3). The Proponents seek review of the Board's decision, a declaration that the Initiative does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Initiative. The Proponents now respectfully ask this Court to expedite its consideration of this matter as required by D.C. Code § 1-1001.16(b)(3).

ARGUMENT AND CITATION OF AUTHORITY

This Court is required to expedite this matter by D.C. Code § 1-1001.16(b)(3), which provides in pertinent part:

If the Board refuses to accept any initiative or referendum measure submitted to it, the person or persons submitting such measure may apply, within 10 days after the Board's refusal to accept such measure, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such measure. The Superior Court of the District of Columbia shall expedite consideration of the matter.

Id. (emphasis added).

If the Court determines that the Initiative does not "authorize, or . . . have the effect of authorizing, discrimination" in violation of the HRA and orders the Board to accept the Initiative, the Proponents and the Board will still need to complete a number of tasks before the next election scheduled for September 14, 2010.

After the Board accepts the Initiative, it will have twenty (20) days to formulate a proposed summary statement, short title, and legislative form for the Initiative. *Id.* at § 1-1001.16(c). The Board then has five (5) days to publish notice of the proposed format for the Initiative and to receive public comments. *Id.* at § 1-1001.16(d). Any voter in the District has ten (10) days to object to the proposed format and to seek review in this Court. *Id.* at § 1-

1001.16(e). Once the summary statement, short title, and legislative form have been finalized and all objections have been litigated and resolved, the Board must schedule a public meeting to supply the Proponents with the official signature petitions. *Id.* at § 1-1001.16(g). Proponents then have one hundred and eighty (180) days to secure the signatures of five (5) percent of the registered voters in the District. *Id.* at § 1-1001.16(i)-(j). After the signatures are collected and accepted by the Board, the Board has thirty (30) days to certify that the petitions contain the requisite number of valid signatures. *Id.* at § 1-1001.16(o). Once the signatures have been verified, the Board will certify the Initiative to appear on the ballot, and schedule an election on the Initiative at the next primary, general, or city-wide special election held at least ninety (90) days after the date on which the measure was certified as qualified to appear on the ballot. *Id.* at § 1-1001.16(p)(1).

Thus, for the Initiative to appear on the ballot for the next election—the primary election scheduled for September 14, 2010—the initiative process will need to be completed by June 16, 2010. If the Proponents are to take advantage of the full one hundred and eighty (180) days afforded them by statute to circulate signature petitions, then they will need to start circulating petitions in January 2010. Because of the statutory requirement of D.C. Code § 1-1001.16(b)(3) and the fact that January 2010 is less than two months away, this Court should grant the Proponents’ Consent Motion to Expedite and expedite its review of the Board’s denial of the Initiative.

As stated in the motion, in light of the short timeframe for proceeding with the Initiative, the Proponents suggest the following expedited schedule:

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| Board’s Response to Motion for Summary Judgment | November 30, 2009 |
| Proponents’ Reply in Support of Motion for Summary Judgment | December 7, 2009 |

CONCLUSION

For the foregoing reasons, the Proponents respectfully request that this Court grant their Consent Motion to Expedite.

Respectfully submitted this 20th day of November, 2009.

/s/ Cleta Mitchell

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CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum of Points and Authorities in Support of Consent Motion to Expedite was served by mail on the following parties and their attorneys who are not registered in eFiling for Courts, this 20th day of November, 2009:

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I certify that the foregoing Memorandum of Points and Authorities in Support of Consent Motion to Expedite was served electronically on the following parties and their attorneys via eFiling for Courts:

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This 20th day of November, 2009.

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