

HARRY R. JACKSON, JR., *et al.*

Petitioners,

V.

DISTRICT OF COLUMBIA BOARD OF
ELECTIONS AND ETHICS,

Respondent.

Civil Action No. 2009 CA 008613 B

Judge Judith N. Macaluso

Calendar 9

[Next Court Event: Initial Conference, 9:30 am, Friday, February 26, 2010]

Petitioners Harry R. Jackson, Jr., Robert King, Walter E. Fauntroy, James Silver, Anthony Evans, Dale E. Wafer, Melvin Dupree, and Howard Butler (the “Proponents”), pursuant to Super. Ct. Civ. R. 56, hereby file this Statement of Facts as to Which There is No Genuine Issue.

1. On September 1, 2009, the Proponents filed the Marriage Initiative of 2009 with the District of Columbia Board of Elections and Ethics. (Jackson Aff. ¶¶ 3-4.)
2. 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." (Jackson Aff. ¶¶ 3-4; *see also* Copy of the Marriage Initiative of 2009 attached to Jackson Aff. as Ex. A.)
3. The next day, September 2, 2009, the Board published notice on its website that it had received the Marriage Initiative of 2009. (Jackson Aff. ¶ 6.)
4. Eight days later, on September 10, 2009, the Board sent a letter to the Proponents informing them that a hearing on the Initiative had been tentatively scheduled for October 26,

2009, at One Judiciary Square, 441 4th Street, N.W., Suite 280, Washington, D.C. 20001. (Jackson Aff. ¶ 7; *see also* Letter from the Board to Jackson dated September 10, 2009, attached to Jackson Aff. as Ex. B.)

5. The letter further informed the Proponents that if they wished to submit a memorandum in support of the Initiative, they should do so by October 16, 2009. (Jackson Aff. ¶ 7; *see also* Letter from the Board to Jackson dated May 28, 2009, attached to Jackson Aff. as Ex. B.)

6. On September 18, 2009, 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. (Jackson Aff. ¶ 8; *see also* Pertinent Portions of the *D.C. Register* attached to Jackson Aff. as Ex. C.)

7. On October 15, 2009, 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. (Jackson Aff. ¶ 9; *see also* "Public Notice" October 18, 2009, attached to Jackson Aff. as Ex. D.)

8. A day later, on October 16, 2009, the Proponents filed a memorandum with the Board explaining why the Marriage Initiative presented a proper subject for the initiative process. (Jackson Aff. ¶ 10; *see also* Memorandum filed with the Board on October 16, 2009, attached to Jackson Aff. as Ex. E.)

9. 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.

(Jackson Aff. ¶ 11.) The Proponents attended the hearing and provided testimony in support of the Initiative. (Jackson Aff. ¶ 11.)

10. On November 17, 2009, the Board issued its Order determining 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 HRA. (Jackson Aff. ¶ 12; *see also* Copy of Board Decision regarding the Initiative attached to Jackson Aff. as Ex. F.)

11. The Board did not find that the Marriage Initiative of 2009 constituted an appropriation. (Copy of Board Decision regarding the Initiative attached to Jackson Aff. as Ex. F.)

12. The Marriage Initiative of 2009 does not relate to the subject of appropriations. (Copy of Board Decision regarding the Initiative attached to Jackson Aff. as Ex. F.)

13. The Board marked the Initiative as “received but not accepted,” and now holds the Initiative pending this Court’s review. D.C. Code § 1-1001.16(b)(2).

Respectfully submitted this 20th day of November, 2009.

/s/ Cleta Mitchell

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CERTIFICATE OF SERVICE

I certify that the foregoing Petitioners' Statement of Facts as to Which There is No Genuine Issue 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 Petitioners' Statement of Facts as to Which There is No Genuine Issue 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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