



COUNCIL OF THE DISTRICT OF COLUMBIA  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004

Phil Mendelson  
Councilmember At-Large

Office: (202) 724-8064  
Fax: (202) 724-8099

June 9, 2009

Kenneth J. McGhie  
Board of Elections and Ethics  
Government of the District of Columbia  
One Judiciary Square  
441 4th Street NW, Suite 250 North  
Washington, DC 20001

**Re: A Referendum Concerning the Jury and Marriage Amendment Act of 2009**

Dear Mr. McGhie:

I write regarding the District of Columbia Board of Elections and Ethics (BOEE) consideration of whether the proposed "A Referendum Concerning the Jury and Marriage Amendment Act of 2009" is a proper subject for a referendum. The subject of this petition is legislation recognizing marriages legally entered into in other jurisdictions in the District. For the reasons identified below, this petition is not a proper subject of a referendum. It should be rejected by BOEE.

It is a longstanding policy of the District of Columbia to afford equal rights, and equal dignity, to all District residents. This is the public policy of the District and, thus, the public policy behind the District's Human Rights Act.<sup>1</sup>

Since the creation of domestic partnerships in 1992,<sup>2</sup> the District has taken a number of steps to broaden the rights and responsibilities of same-sex couples. Though the progress has been incremental, the District has been resolute in its commitment to providing parity in the law for same-sex and opposite-sex couples. It is in this context that, on May 5<sup>th</sup>, the Council adopted D.C. Law 18-70, the Jury and Marriage Amendment Act of 2009, providing for the recognition of marriages performed in other jurisdictions.<sup>3</sup> This legislation fulfills the policy inherent in the District's human rights law.

<sup>1</sup> The Human Rights Act of 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

<sup>2</sup> The Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114; D.C. Official Code § 32-701 *et seq.*).

<sup>3</sup> The Council, in prior legislation, conferred authority upon the Mayor to certify as domestic partnerships relationships substantially similar to domestic partnerships under District law. *See* D.C. Law 17-231, the Omnibus Domestic Partnership Equality Act of 2008. As it was apparent by March 2009 that the Executive had no intention of exercising this authority, the Committee on Public Safety and the Judiciary included a provision within Bill 18-66, the Domestic Partnership Judicial Determination of Parentage Act of 2009, to establish that a marriage recognized under the laws of another jurisdiction that is not recognized as a marriage in the District is recognized as

The jurisprudence surrounding same-sex marriage has greatly changed in the United States in recent years. In 1995 the District of Columbia Court of Appeals ruled that the refusal to issue a marriage license to a same-sex couple did not violate the District's Human Rights Act.<sup>4</sup> However, this decision did not contemplate the legal recognition of same-sex marriages that has since occurred in Massachusetts, Connecticut, California<sup>5</sup>, Iowa, Maine, Vermont, and New Hampshire. The evolving body of law in this area means that, unlike in 1995, a same-sex couple married in another jurisdiction that moves to the District would lose -- because of their sexual orientation -- their marital status.

The public policy of the District, which includes the Human Rights Act's prohibition against discrimination based on sexual orientation, cannot permit such a result. The District's has continuously sought to expand the rights and responsibilities of same-sex couples. In anticipation of the eventual recognition of same-sex marriages the District has methodically revised its laws to make them gender neutral.<sup>6</sup> In adopting D.C. Law 18-70, the Council has continued this tradition of fundamental fairness and the recognition of basic civil rights for all District residents. The expansion of rights achieved by this legislation is in keeping with the Human Rights Act, and to act contrary in any way would be to sanction the discrimination of individuals because of their sexual orientation.

The proposed referendum would seek to redefine what is discriminatory, contravening the District policy of continued expansion of rights for same-sex couples and the recognition that discrimination against an individual because of their sexual orientation is intolerable. The Jury and Marriage Amendment Act of 2009 is a symbol of the fair and equitable application of civil rights to all District residents. As a matter of fairness and equity, a civil right should not be subject to referendum. The BOEE should reject the proposed "A Referendum Concerning the Jury and Marriage Amendment Act of 2009."

Thank you for consideration. Please contact me if you have any questions.

Sincerely,



Phil Mendelson, Chairman  
Committee on Public Safety and the  
Judiciary

---

a domestic partnership as defined under District law. This measure was amended at the April 7, 2009 Legislative Meeting to recognize same-sex marriages performed elsewhere as marriages in the District.

<sup>4</sup> See *Dean v. District of Columbia*, 653 A.2d 307 (D.C. App. 1995).

<sup>5</sup> While the California Supreme Court ruled in May 2008 that same-sex couples have the right to marry, Proposition 8, limiting marriage to one man and one woman, was subsequently passed in November. The approximately 18,000 same-sex marriages previously performed in California remain valid.

<sup>6</sup> See, e.g., D.C. Law 17-231.