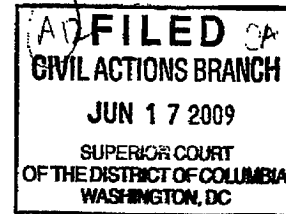


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**pending pro hac vice admission*

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

1 HARRY R. JACKSON, JR., a registered,
qualified voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

910 M Street, N.W. #630
Washington, DC 20001

2 WALTER E. FAUNTROY, a registered,
qualified voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

4105 17th Street, N.W.
Washington, D.C. 20011

3 PATRICIA JOHNSON, a registered, qualified
voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

18 Quincy Place, N.W.
Washington, D.C. 20001

4 MELVIN DUPREE, a registered, qualified

0004350-09

DOCKET NO. _____



voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

1904 Naylor Rd. S.E.
Washington, D.C. 20020

5 SANDRA B. HARRIS; a registered, qualified
voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

3202 Vista St. N.E.
Washington, D.C. 20018

6 BOBBY PERKINS, SR.; a registered,
qualified voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

4712 Fort Totten Dr. N.E.
Washington, DC. 20011-7508

7 and DALE E. WAFER, a registered, qualified
voter in the District of Columbia and
proponent of the Referendum Concerning the
Jury and Marriage Act of 2009,

4021 19th Street N.E.
Washington, DC 20018

Petitioners,

v.

DISTRICT OF COLUMBIA BOARD OF
ELECTIONS AND ETHICS, an agency of
the District of Columbia,

441 4th Street, N.W., Suite 250
Washington, D.C. 20001,

Respondent.

**PETITION FOR REVIEW OF AGENCY DECISION
AND FOR WRIT IN THE NATURE OF MANDAMUS**

Petitioners Harry R. Jackson, Jr., Walter E. Fauntroy, Patricia Johnson, Melvin Dupree, Sandra B. Harris, Bobby Perkins, Sr., and Dale E. Wafer (collectively the "Proponents") petition this Court, pursuant to D.C. Code § 1-1001.16(b)(3), for review of the June 15, 2009, decision of the District of Columbia Board of Elections and Ethics (the "Board") refusing to accept the Referendum Concerning the Jury and Marriage Amendment Act of 2009 (the "Referendum"), for a declaration that the Referendum does not violate the District of Columbia Human Rights Act of 1977, D.C. Code § 2-1401.01 *et seq.* ("DC-HRA"), and for a writ in the nature of mandamus compelling the Board to accept the Referendum. A true and correct copy of the decision from the Board dated June 15, 2009, is attached to this petition.

INTRODUCTION

1. The Referendum provides the voters of the District of Columbia ("D.C.") the opportunity to decide whether the District should hold to its longstanding definition of marriage as being a legal union between a man and a woman rather than deferring to the laws of the states or foreign countries regarding the definition of marriage.
2. D.C. has always maintained the understanding that marriage "is inherently a male-female relationship." *Dean v. Dist. of Columbia*, 653 A.2d 307, 313 (D.C. 1995). The people of D.C. have a right to protect the definition despite the acts of the Council of the District of Columbia ("D.C. Council").
3. D.C. is one of twenty-four jurisdictions in the United States providing citizens a right of referendum. The right of referendum lets the voters of D.C. place a law passed by the D.C. Council on hold and insist that the law only go into effect if it is approved by a majority of the District's voters. The electorate may "voice directly its sentiments and make that sentiment

public policy.” Julius Hobson, Council of the District of Columbia, Memorandum on the Initiative and Referendum Act, at 1, 3 (Jan. 3, 1977). It is a right that the D.C. Court of Appeals has insisted should be “liberally construed.” *Convention Ctr. Referendum Comm. v. Dist. of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 913 (D.C. 1981).

4. The D.C. Council passed The Jury and Marriage Amendment Act of 2009, No. 18-0070, on May 5, 2009 (the “Act”). The Act would legally recognize same-sex “marriages” entered into in the states or in foreign countries as valid under federal law in D.C.

5. The Proponents filed the Referendum with the Board on May 27, 2009. The Board held a public hearing on June 10, 2009, to determine whether the Referendum presented a proper subject for referendum. Five days later, June 15, 2009, the Board rejected the Referendum 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.* (“DC-HRA”).

6. The Proponents now petition this Court, pursuant to D.C. Code § 1-1001.16(b)(3), for review of the Board’s decision, for a declaration that the Referendum does not violate the DC-HRA, and for a writ in the nature of mandamus compelling the Board to accept the Referendum.

7. The Board’s determination that the Referendum violates the DC-HRA is erroneous because the determination directly contradicts the D.C. Court of Appeals’ decision in *Dean*, 653 A.2d 307, holding that the current D.C. law limiting marriage to opposite-sex couples does *not* violate the DC-HRA.

JURISDICTION

8. This Court has subject matter jurisdiction of this case pursuant to D.C. Code § 11-921 and D.C. Code § 1-1001.16(b)(3), which provides in pertinent part that “[i]f 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.”

9. This Court has personal jurisdiction over the Board.

THE PARTIES

10. Petitioner Harry R. Jackson, Jr. is a qualified registered voter in D.C. and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board’s decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

11. Petitioner Walter E. Fauntroy is a qualified registered voter in D.C. and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board’s decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

12. Petitioner Patricia Johnson is a qualified registered voter in D.C. and an official proponent of the Referendum. She has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board’s decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

13. Petitioner Melvin Dupree is a qualified registered voter in D.C. and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek

review of the Board's decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

14. Petitioner Sandra B. Harris is a qualified registered voter in D.C. and an official proponent of the Referendum. She has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

15. Petitioner Bobby Perkins, Sr. is a qualified registered voter in D.C. and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

16. Petitioner Dale E. Wafer is a qualified registered voter in D.C. and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the Referendum does not violate the DC-HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

17. The respondent in this case is the Board, a three-member body created by statute. D.C. Code § 1-1001.03. Because of a vacancy on the three-member election board, Errol R. Arthur and Charles Lowery Jr. are currently the only sitting members. The Board's duties include overseeing the initiative and referendum process. D.C. Code § 1001.16. The Board is specifically tasked with determining whether a proposed referendum presents a proper subject for the referendum process. D.C. Code § 1001.16(b)(1).

18. Except as provided in the D.C. Government Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-601.01 *et seq.*, the Board, in the performance of its duties, is not "subject to the direction of any nonjudicial officer of the District." D.C. Code § 1-1001.06(a).

THE REFERENDUM PROCESS

19. The right of referendum makes it possible for five percent of the registered voters in D.C. to “suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.” D.C. Code § 1-204.101(b).

20. If a majority of the voters participating in a referendum disapprove of an act (or portion of an act), then the act is deemed rejected and “no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the 365 days following the date of the [Board’s] certification of the vote concerning the referendum.” D.C. Code § 1-204.104.

21. The referendum process begins with a voter or voters filing a referendum measure with the Board. The measure must include a short title and a summary statement of not more than 100 words. It also must designate “the act or part thereof on which a referendum is desired.” D.C. Code § 1-1001.16(a)(1).

22. Upon receipt of the referendum measure, the Board undertakes a review to determine whether the measure presents a proper subject for a referendum under Title IV of the District’s Self-Government and Governmental Reorganization Act, D.C. Code § 1-201.1 *et seq.* (popularly known as the “Home Rule Act”). Part of the determination rests on whether the measure “authorizes, or would have the effect of authorizing, discrimination” prohibited by DC-HRA.

23. If the Board refuses to accept a proposed referendum, it endorses the measure as being “received but not accepted” and “retain[s] the measure pending appeal.” D.C. Code § 1-

1001.16(b)(2). At that point, the persons submitting the referendum measure have ten (10) days to apply to this Court "for a writ in the nature of mandamus to compel the Board to accept such measure." D.C. Code § 1-1001.16(b)(3)

24. If a referendum measure is accepted, the Board is responsible for preparing, adopting, and arranging for publication of a proposed summary statement, short title, and legislative form. During the ten (10) calendar days following publication, a voter who objects to the proposed summary statement, short title, and legislative form may seek expedited review by this Court. Absent such judicial review, the proposed summary statement, short title, and legislative form are deemed to be accepted by the Board. D.C. Code § 1-1001.16(c)-(e).

25. Once the proposed summary statement, short title, and legislative form are accepted by the Board, the Board provides the proposer with an original petition form to be used in printing petition sheets for circulation. The proposer must secure the signatures of five percent of the registered voters in the District, including five percent of the registered voters in at least five of the eight wards, to submit the referendum petition to the Board. D.C. Code § 1-1001.16(g)-(i).

26. Before accepting a referendum petition, the Board checks, among other things, whether the petition is "not in the proper form" or "on its face clearly bears an insufficient number of signatures." However, the Board is not required to certify whether the petition contains the minimum number of "valid" signatures until thirty (30) calendar days after the petition has been accepted. D.C. Code § 1-1001.16(k) & (o).

27. Upon accepting the submitted referendum petition, the Board must notify the President of the Senate and the Speaker of the House, who are then to return the act (or part thereof) to the Chairman of the D.C. Council. "No further action may be taken upon such act

until after a referendum election is held” or after the Board determines that the petition does not in fact contain the requisite number of signatures. D.C. Code §§ 1-1001.16(m), 1-204.102(b)(1).

28. The referendum process applies only to acts that have been passed by the D.C. Council but have not yet taken effect following the required period of congressional review. Once an act takes effect, it is no longer subject to referendum. D.C. Code § 1-204.102(b)(2).

29. Once the signatures have been verified, the Board certifies that the referendum will appear on the ballot, and schedules an election to occur within 114 days after the date the measure was certified. D.C. Code § 1-1001.16(p)(1).

THE JURY AND MARRIAGE AMENDMENT ACT OF 2009

30. The D.C. Council’s initial legislation regarding the recognition of same-sex “marriages” from other jurisdictions was part of the Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009, Bill No. 18-0066. The bill was introduced by Councilmembers Phil Mendelson and Jack Evans on January 6, 2009.

31. In March 2009, the D.C. Council’s Committee on Public Safety and the Judiciary amended the bill to provide that same-sex “marriages” from other jurisdictions would be recognized as domestic partnerships in D.C..

32. On March 17, 2009, the Committee of the Whole placed the amended bill on the D.C. Council’s legislative agenda for the April 7, 2009. After the Committee of the Whole meeting, however, Councilmember David Catania raised objections to Councilmember Mendelson about recognizing same-sex “marriages” from other jurisdictions as anything less than “marriages” in the District.

33. In apparent response to these objections, Councilmember Mendelson proposed on April 2, 2009, recognizing same-sex “marriages” from other jurisdictions as “marriages” in D.C. through amending an unrelated bill.

34. At the April 7, 2009, legislative session, the D.C. Council amended a bill about the release of D.C.’s tax information to include a provision recognizing same-sex “marriages” from other jurisdictions as “marriages” in D.C.. At the same time, the D.C. Council removed the section relating to recognition of same-sex “marriages” as domestic partnerships from the Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009.

35. On May 5, 2009, the D.C. Council took up Bill No. 18-0010 regarding the disclosure of D.C. tax information to federal courts. The bill included the newly added provision recognizing same-sex “marriages” from other jurisdictions as “marriages” in D.C. . The D.C. Council’s legislative agenda for the day advertised the bill as the “Disclosure to the United States District Court Amendment Act of 2009,” making no mention of recognizing same-sex “marriages.”

36. The D.C. Council hastily passed the bill as part of its “consent agenda”—a package of typically uncontroversial bills considered together without objection. The bill initially passed without any discussion and no dissenting votes.

37. Only after Councilmember Marion Barry realized what had happened and moved for reconsideration was there any debate. Even then the debate about the recognition of same-sex “marriages” lasted a mere forty minutes—beginning at about 11:20 a.m. and ending at noon.

38. The D.C. Council then voted 12 to 1 to recognize same-sex “marriages” from other jurisdictions with Councilmember Marion Barry casting the lone dissenting vote.

39. After the bill passed, its name was changed to The Jury and Marriage Amendment Act of 2009.

40. Mayor Adrian M. Fenty signed the Act on May 6, 2009, and the D.C. Council transmitted the Act to the United States Congress on May 11, 2009.

41. The Act would add a new section to the D.C. Code, Section 1287a, recognizing same-sex "marriages" entered into in other jurisdictions, such as the states and foreign countries. Unrelated to this proceeding, the Act would also amend the consanguinity provision enacted by the United States Congress in 1901, D.C. Code § 46-401, to make the list of marriages void *ab initio* gender neutral and amend certain disclosure provisions in D.C. Code § 47-1805.04 pertaining to the release of tax information to federal courts.

42. The Act provides in pertinent part:

A marriage legally entered into in another jurisdiction between 2 persons of the same sex that is recognized as valid in that jurisdiction, that is not expressly prohibited by sections 1283 through section 1286, and has not been deemed illegal under section 1287, shall be recognized as a marriage in the District.

43. Following the required period of review by the United States Congress, the Act is scheduled to become effective on July 6, 2009.

THE PROPOSED REFERENDUM

44. On May 27, 2009, the Proponents filed the Referendum with the Board. The Referendum seeks to give the people of D.C. the opportunity to decide themselves whether the portions of the Act related to the recognition of same-sex "marriages" from other jurisdictions should become the law of D.C..

45. The next day, May 28, 2009, the Board sent a letter to Bishop Harry R. Jackson, Jr., the primary proponent of the Referendum, informing him that a hearing on the Referendum had been tentatively scheduled for June 10, 2009. The letter further informed Bishop Jackson

that if he wished to submit a memorandum in support of the Referendum, he should do so by June 9, 2009.

46. On June 5, 2009, the Board gave public notice in the D.C. Register that it had received the Proponents' Referendum and scheduled a public hearing on the Referendum for 10:30 a.m. on Wednesday, June 10, 2009.

47. On June 9, 2009, the Proponents filed a memorandum with the Board explaining why the Referendum presented a proper subject for the referendum process under D.C. Code § 1-1001.16(b)(1).

48. The Board held a public hearing on the Referendum on June 10, 2009, to determine whether the Referendum presents a proper subject for the referendum process under D.C. Code § 1-1001.16(1).

49. Councilmember Mendelson, who sponsored the bill to recognize same-sex "marriages" performed in other jurisdictions, provided testimony at the hearing opposing the Referendum. The members of the Board commented to Councilmember Mendelson that they had never before had a D.C. Councilmember appear before to offer testimony.

50. All appointments to the Board are nominated by the Mayor and approved by the D.C. Council, including Councilmember Mendelson.

51. On June 15, 2009, the Board decided that the Referendum did not present a proper subject for referendum, because it "authorizes, or would have the effect of authorizing, discrimination" in violation of the DC-HRA. D.C. Code § 1-1001.16(b)(1). The Board marked the Referendum as "received but not accepted," and now holds the Referendum pending this Court's review. D.C. Code § 1-1001.16(b)(2). *See* Decision of the Board dated June 15, 2009, attached to this petition.

52. The Board's rejection of the Referendum began the ten (10) day time period for applying to this Court for a "writ in the nature of mandamus" ordering the Board to accept the Referendum. D.C. Code § 1-1001.16(b)(3). The ten (10) day time period is set to expire on June 26, 2009.

53. The Proponents now apply to this Court, pursuant to D.C. Code § 1-1001.16(b)(3), for review of the Board's decision and a "writ in the nature of mandamus" compelling the Board to accept the Referendum.

THE BOARD'S DECISION CONTRADICTS CONTROLLING PRECEDENT

54. The D.C. Court of Appeals' decision in *Dean*, 653 A.2d 307, controls the question of whether the Referendum violates the DC-HRA.

55. In *Dean*, the Court of Appeals considered whether the Clerk of the Superior Court unlawfully discriminated in violation of the DC-HRA by refusing to issue a marriage license to a same-sex couple. The court held that the Clerk's refusal did not violate the DC-HRA because in D.C. "marriage requires persons of opposite sexes" and the Council "[n]ever intended to change the ordinary meaning of the word 'marriage' simply by enacting" the DC-HRA. *Id.* at 320.

56. The passage of the DC-HRA in 1977, according to the court, did nothing "to change the fundamental definition of marriage." *Id.* at 320. "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." *Id.* The Court of Appeals, thus, ruled that "there cannot be discrimination against a same-sex marriage if, by independent statutory definition extended to the Human Rights Act, there can be no such thing." *Id.*

57. The Board's denial of the Referendum directly contradicts *Dean*. The Court of Appeals in *Dean* conclusively determined that the refusal to afford same-sex couples the status of "marriage" does *not* run afoul of the DC-HRA. It is true that the Jury and Marriage Act of 2009, at issue here, purports to address only the recognition of same-sex "marriages" from other jurisdictions, rather than, as in *Dean*, authorizing same-sex "marriages" in D.C. in the first instance. But that is a distinction without a difference. It is illogical to say that, under *Dean*, limiting the status of "marriage" in D.C. to opposite-sex couples in the first instance is consistent with the DC-HRA, but that denying the very same status to same-sex unions deemed "marriages" in other jurisdictions is not. Either way the issue is the same: whether refusing to afford same-sex couples the status of "marriage" contravenes the DC-HRA. *Dean* clearly holds it does not. Because *Dean* controls, the Referendum does not "authorize[], or . . . have the effect of authorizing, discrimination" prohibited by the DC-HRA and the Proponents are entitled to summary judgment.

58. Thus, the Board erroneously rejected the Referendum on the basis that it "authorizes, or would have the effect of authorizing, discrimination" prohibited by the DC-HRA, and the Proponents request that the Court declare that the Referendum does not violate the DC-HRA and issue a "writ in the nature of mandamus", pursuant to D.C. Code § 1-1001.6(b)(3), compelling the Board to accept the Referendum.

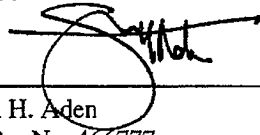
PRAYER FOR RELIEF

WHEREFORE, Petitioners request that this Court grant the following relief:

1. Expedite consideration of this matter as required by D.C. Code § 1-1001.6(b)(3).
2. Declare that the Referendum does not authorize or have the effect of authorizing discrimination in violation of the DC-HRA.

3. Issue a “writ in the nature of mandamus,” pursuant to D.C. Code § 1-1001.6(b)(3), ordering the Board to accept the Referendum.
4. Grant other declaratory relief and permanent and temporary injunctive relief as may be necessary to ensure that the Referendum is accepted by the Board and that the referendum process moves forward.
5. Grant such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted this 13th day of June, 2009.



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* *pending pro hac vice admission*

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

)	
)	
In Re:)	
Referendum Concerning the Jury)	Administrative Hearing
And Marriage Amendment Act of)	No. 09-004
2009)	
)	

MEMORANDUM OPINION AND ORDER

I. Introduction

This matter came before the Board of Elections and Ethics (hereinafter "the Board") during a special hearing on Wednesday, June 10, 2009 pursuant to the submission of a proposed measure, the "Referendum Concerning the Jury and Marriage Amendment Act of 2009" ("the Referendum"). The Referendum seeks to suspend section 3 of Act 18-0070, the "Jury and Marriage Amendment Act of 2009," ("the Act") until it has been presented to the registered qualified electors of the District of Columbia for their approval or rejection. The purpose of the Special Hearing was to determine whether or not the Referendum presents a proper subject matter for a referendum in the District. Reverend Harry R. Jackson, Jr., the lead proposer of the Referendum, appeared before the Board *pro se*.¹ Chairman Errol R. Arthur and Board member Charles R. Lowery, Jr. presided over the hearing.

II. Statement of the Facts

Section 3(b) of the Act provides that same-sex marriages entered into and recognized as valid in other jurisdictions shall be recognized as valid marriages in the District. It reads as

¹ Although Rev. Jackson spoke on his own behalf before the Board, David W. New, Esq. is the counsel of record for Rev. Jackson and the other proposers of the Referendum. Brian W. Raum, Esq., of the Alliance Defense Fund, filed a Notice of Appearance on behalf of the proposers on May 27, 2009, and, along with Rev. Jackson, presented the argument on their behalf at the hearing.

follows:

Sec. 1287a. Recognition of Marriages from Other Jurisdictions. – A marriage legally entered into in another jurisdiction between 2 persons of the same sex that is recognized as valid in that jurisdiction, that is not expressly prohibited by sections 1283 through section 1286, and has not been deemed illegal under section 1287, shall be recognized as a marriage in the District.²

The Act's originating bill, B18-0010 ("the Bill") was introduced on Friday, January 02, 2009 by D.C. Council Chairman Vincent Gray at the request of Mayor Adrian Fenty.³ An Amendment to the Bill, which included the language of section 3(b), was offered by Councilmember Phil Mendelson on April 7, 2009. The Council approved the Bill as amended on its first reading on that date. The Council approved the Bill again on its final reading on Tuesday, May 5, 2009 by a vote of 12-1. The Council transmitted the Bill to Mayor Fenty on Wednesday, May 6, 2009, and the Mayor signed the Bill on the same day.⁴ The resulting Act was transmitted to the U.S. Congress on Monday, May 11, 2009, and is projected to become law on Monday, July 6, 2009.⁵

On Wednesday, May 27, 2009, Rev. Harry R. Jackson, Jr., Rev. Walter E. Fauntroy, Rev. Dale E. Wafer, Melvin Dupree, Sandra B. Harris, Dr. Patricia Johnson, and Bobby Perkins, Sr. ("the Proposers") filed the Referendum with the Board.⁶ Also on May 27, the Proposers filed a

² The D.C. Code provisions referenced dictate that marriages entered into in other jurisdictions will not be recognized 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, unable to consent to marriage due to mental incapacity, and/or has been forced or fraudulently tricked into consenting to the marriage.

³ See D.C. Official Code § 1-204.22(5) (2006).

⁴ See D.C. Official Code § 1-204.04(e) (2006).

⁵ See D.C. Official Code § 1-206.02(c)(1) (2006).

⁶ See D.C. Official Code § 1-1001.16(a) (2006).

verified statement of contributions with the D.C. Office of Campaign Finance.⁷ On Thursday, May 28, 2009, the Board's Office of the General Counsel ("the General Counsel") transmitted a Notice of Public Hearing and Intent to Review regarding the Referendum ("the Notice") to the Office of Documents and Administrative Issuances for publication in the D.C. Register.⁸ Also on May 28, the General Counsel sent the Notice to the Mayor, the Chairman of the D.C. Council, the D.C. Attorney General, and the General Counsel for the D.C. Council, inviting them to address the issue of whether the Referendum presents a proper subject for referendum. The Notice was published in the D.C. Register on Friday, June 5, 2009.

The Board held the proper subject hearing on Wednesday, June 10, 2009.⁹ In response to the Board's invitation to comment on the propriety of the Referendum, the Board received written testimony and heard oral testimony during the hearing from numerous individuals and organizations. The Board also held the record open until the close of business on Thursday, June 11, 2009 for additional comments. In all, the Board received and considered comments from approximately 75 individuals and/or entities.

III. Analysis

A. Introduction

The D.C. Board of Elections and Ethics ("the Board") may not accept a referendum measure if it:

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

7 See D.C. Official Code § 1-1001.16 (b)(1)(A) (2006).

8 See D.C. Mun. Regs. tit. 3 § 1001.2 (2007).

9 See D.C. Mun. Regs. tit. 3 § 1001.3 (2007).

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1102.04 and 1-1102.06;¹⁰
- (B) The petition is not in the proper form established in subsection (a) of this section;¹¹
- (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2;¹² or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.^{13 14}

Based upon the written and oral opinions submitted to the Board regarding the propriety of the Referendum, as well as its own research and consideration of the matter, the Board now concludes that the Referendum does not present a proper subject of referendum because it would authorize discrimination prohibited under the Human Rights Act ("HRA").

B. The Initiative and Referendum Right

With the passage of the Initiative, Referendum, and Recall Charter Amendments Act in 1978 ("the Charter Amendments Act"),¹⁵ electors in the District of Columbia were granted the "power of direct legislation",¹⁶ putting them on a par with the District's legislative body, the Council of the District of Columbia ("the Council").¹⁷ The Council itself had been established

¹⁰ 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.

¹¹ 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."

¹² 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.).

¹³ D.C. Official Code § 1-204.46 deals with budgetary acts of the D.C. Council.

¹⁴ D.C. Official Code § 1-1001.16 (b)(1) (2006 Repl.).

¹⁵ D.C. Law 2-46, 24 D.C. Reg. 199 (1978) (*codified as amended* at D.C. Official Code § 1-204.101 *et seq.*).

¹⁶ *Marijuana Policy Project v. United States*, 304 F.3d 82 (D.C. Cir. 2002) ("Marijuana Policy Project").

¹⁷ *See Convention Ctr. Comm. v. D.C. Board of Elections and Ethics*, 441 A.2d 889, 897 (D.C. 1981) ("Absent express or implied limitation, the power of the electorate to act by initiative is coextensive with the power of the

five years earlier pursuant to the United States Congress' enactment of the Self-Government and Governmental Reorganization Act ("the Home Rule Act"),¹⁸ a primary purpose of which was to relieve Congress of the burden of legislating for the District by "delegat[ing] certain legislative powers to the government of the District of Columbia."¹⁹

As a result of the Charter Amendments Act, any registered qualified elector may use the initiative process to propose a law by presenting it to the electorate for its approval or disapproval. Upon voter approval, a proposed initiative measure will become "an act of the Council," and, if it survives the Congressional review period to which acts of the Council are subjected, a law in the District of Columbia.²⁰ Moreover, the District's registered qualified electors may use the referendum process to propose to suspend an act of the D.C. Council, or some part(s) thereof, until such act has been presented to the electorate for its approval or disapproval.

C. Restrictions on the Initiative and Referendum Right

Although the right of initiative and referendum is to be "liberally construed", *Convention Center Referendum Comm v. District of Columbia Bd. Of Elections and Ethics*, 441 A.2d 889, 913, there are certain specific limitations on that right.²¹ For example, although the electorate's initiative and referendum power is largely coextensive with the Council's power to legislate, the

legislature to adopt legislative measures.").

18 87 Stat. 777 (1973) (*codified as amended at D.C. Official Code § 1-201.01 et seq.*).

19 D.C. Official Code § 1-201.02(a) (2006 Repl.).

20 See D.C. Official Code §§1-204.105, 1-206.02(c) (2006 Repl.).

21 See Section III A *infra*; see also *Hessey v. District of Columbia Bd. of Elections and Ethics*, 601 A.2d 3 at 11 n.18 (D.C. 1991) ("No proponent of initiative or referendum would maintain that all municipal activity should be subject to popular election. If governments are to function there must be some area in which representative action will be final.") (citations omitted).

statutory definition of the term “initiative” makes clear that, in contrast to the Council, the electorate may not, for example, propose laws that appropriate funds.²² This limitation on the right of initiative – which applies to referenda as well - was added to the Charter Amendments Act to insure that the electorate would not use its newly-created right to propose laws authorizing programs and activities as a means by which to interfere with the fiscal responsibilities assigned to the Council by the District Charter.²³

D. The Human Rights Act

Another clear restriction on the right of initiative and referendum is that these processes may not be used to authorize discrimination prohibited under the Human Rights Act (HRA).²⁴ Enacted in 1977, the stated purpose of the HRA 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.²⁵

The HRA prevents discrimination in public accommodations, among other areas.

Specifically, section 231 of the HRA provides that

[i]t shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family

22 See D.C. Official Code § 1-204.101(a) (2006 Repl.).

23 Of the 24 states that have an initiative and/or referendum process, at least 13, including the District, impose subject matter limitations. For example, Massachusetts precludes any measure involving religion or the judiciary (Mass. Const. amend. art. XLVIII, c.II, § 2 (2009)), Ohio prohibits any measures involving property taxes (Ohio Const. art. II, § 1(e) (2009)), and Alaska, Massachusetts, and Wyoming prohibit measures from making or repealing appropriations (Alaska Const. art. XI, § 7 (2009); Mass. Const. art. XLVIII, c.II, § 2; Wyo. Const. art. 3, § 52(g) (2008)).

24 See D.C. Official Code § 1-1001.16 (b)(1)(C); D.C. Official Code § 2-1401.01 *et seq.* (2006 Repl.).

25 D.C. Official Code § 2-1401.01 (2006 Repl.).

responsibilities, genetic information, disability, matriculation, political affiliation, source of income, or place of residence or business of any individual:

(1) To deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations.²⁶

In 2002, the Human Rights Act was amended to make plain its application to the

District of Columbia government:

Except as otherwise provided for by District law or when otherwise lawfully and reasonably permitted, *it shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual's actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business.*²⁷

When the enabling legislation required to implement the Charter Amendments Act was being considered by the Council, there was an extensive debate as to whether to exclude laws concerning human rights from the initiative and referenda processes. Ultimately, those in favor of the human rights exclusion were victorious; the Council approved an amendment – offered by Councilmember Marion Barry - to the Charter Amendment Act's enabling legislation that reflected the Council's intent that "the initiative and referendum process would never be used to interfere with basic civil and human rights."²⁸

The amendment in its earliest form, provided that initiative and referendum

26 D.C Official Code § 2-1402.31 (2006 Repl.)

27 D.C. Official Code § 2-1401.73 (2006 Repl.).

28 Memorandum from Councilmember Marion Barry to D.C. Council Government Operations Committee members regarding Proposed Amendment to 2-317, the "Initiative, Referendum, and Recall Procedures Act of 1978" (April 26, 1978).

petitions must be rejected if they

authorize[], or would have the effect of authorizing, 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.²⁹

In its current form, the amendment simply indicates that measures which would authorize discrimination prohibited under the HRA are prohibited, reflecting the legislature's intent that the HRA encompass any and all District laws that are intended to address impermissible forms of discrimination. It is clear, then, that the Board, as "the gatekeeper for the initiative process,"³⁰ must refuse to accept initiative and referendum measures that would thwart legislative efforts to eradicate unlawful discrimination. Accordingly, the Board must determine whether or not the Act constitutes such an effort, such that a request for a referendum concerning the Act must necessarily be denied.

E. Same-Sex Marriage in the District

As stated above, the Act provides that same-sex marriages entered into and recognized as valid in other jurisdictions shall be recognized as valid marriages in the District. Presently, Massachusetts, Connecticut, Iowa, Maine, Vermont, 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

29 *Id.*

30 *Marijuana Policy Project v. United States*, 304 F.3d 82, 84 (D.C. Cir. 2002).

banning same-sex marriages.³¹ 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, contrary to times past, there can be, and is, such a thing as a valid same-sex marriage.

Prior to the Act, District law was silent regarding the recognition of such marriages in the District. However, as the General Counsel for the D.C. Council has stated, “[e]xisting District law requires the recognition of marriages that were valid at their place of celebration.”³² This broad policy of recognition insures that couples who enter into valid marriages elsewhere and then relocate into the District are privy to all of the rights and responsibilities that marriage in the District carries.³³

Rather than allow District law to continue to remain silent on the issue of whether or not valid same-sex marriages would be recognized in the District and, consequently, afforded the same status as heterosexual marriages, the Council saw fit to legislate the

31 The formal title of Proposition 8 was “Eliminates Right of Same-Sex Couples to Marry. Initiative Constitutional Amendment”.

32 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.”).

33 Proponents and supporters of the Referendum have argued that the Referendum, if successful, would not discriminate in violation of the HRA because same-sex couples, whether or not they are validly married in other jurisdictions, would still be able to avail themselves of the District’s comprehensive and generous domestic partnership laws, and thereby reap the same benefits and obligations of marriage that heterosexual married couples receive. The Board is not persuaded by this argument. Heterosexual married couples whose marriages originate in other jurisdictions are not required to shed their marital status and find consolation in the fact that there is, in the District, an alternative form of union available. The HRA dictates that same-sex couples who are validly married in other jurisdictions should similarly not be so constrained.

Act. This legislative initiative is significant for several reasons. First, it unequivocally declares that the District is a jurisdiction that affords full faith and credit to valid same-sex marriages.³⁴ Second, it is 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 numerous provisions of District law. 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,”³⁵ is one example. Council efforts to remove gender-specific references in statutes pertaining to marriage and/or the rights and responsibilities thereof are another.³⁶ Finally, the Act effectively adds discrimination against same-sex couples who have entered into valid marriages in other jurisdictions to the list of acts of discrimination prohibited under the HRA. This final consequence of the Act is most significant when considering the import of *Dean v. District of Columbia* (“*Dean*”)³⁷ – a case cited frequently by both proponents and opponents of the Referendum – with respect to this matter.

34 “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).

35 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).

36 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.”).

37 653 A.2d 307 (D.C. 1995).

F. The *Dean* Case

In *Dean*, the D.C. Court of Appeals ruled that there was no violation of the HRA when the Clerk of the Superior Court denied a marriage license to a same-sex couple. The court reasoned that the HRA, though intended to prohibit discrimination of many kinds, was not intended to prohibit discrimination of *every* kind, and was clearly not intended to prohibit discrimination on the basis of sexual orientation such that the long-standing definition of marriage was now altered to include same-sex couples. In reaching this conclusion, the court stated that,

[h]ad the Council intended to effect such a major definitional change, counter to common understanding, we would expect some mention of it in the [HRA] or at least in its legislative history. ... There is none. ... This is not surprising, however, for 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.³⁸

As discussed above, there is now, unlike in 1995 when *Dean* was decided, such a thing as a valid same-sex marriage. The Council has, through the Act, expressed its determination to clearly state that discrimination against same-sex couples who are validly married elsewhere is prohibited. Simply stated, the Act means that the HRA now requires the District government and all public accommodations, *inter alia*, to refrain from discriminating against same-sex couples who are validly married elsewhere unless the marriage is otherwise prohibited in the District. For these reasons, *Dean*, while informative, is not controlling in this matter.

IV. Conclusion

For the very same reasons, the Board must reject the Referendum. The Referendum instructs that “[a] ‘NO’ vote ... will continue the current law of recognizing

38 *Dean*, 653 A.2d at 320.

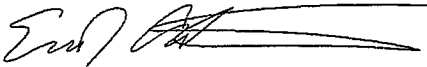
only marriage between persons of the opposite sex."³⁹ Notwithstanding the incorrect statement of existing law, it is clear that the Referendum's Proposers would, in contravention of the HRA, strip same-sex couples of the rights and responsibilities of marriage that they were afforded by virtue of entering 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.⁴⁰

For the foregoing reasons, it is hereby:

ORDERED that the Referendum is **RECEIVED BUT NOT ACCEPTED** pursuant to

D.C. CODE § 1-1001.16(b)(2).

June 15, 2009
Date



Errol R. Arthur
Chairman, Board of Elections and Ethics

Charles R. Lowery, Jr.
Member, Board of Elections and Ethics

39 The Referendum Summary Statement.

40 The Proposers and supporters of the Referendum have requested that the Board accept the Referendum and thereby allow voters to be heard, for what they say would be the first time, regarding the desirability of the Act among the electorate. 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.

CA Form 1

**Superior Court of the District of Columbia
CIVIL DIVISION**

500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

Harry R. Jackson, et al

Plaintiff

vs.

Civil Action No. **00-1350-09**

District of Columbia Board of Elections and Ethics

Defendant

SUMMONS

c/o Mayor Adrian Fenty
Office of the Mayor

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon your exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear **below**. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W. between 9:00 am. and 4:00 pm., Mondays through Fridays or between 9:00 am. and 12:00 Noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Steve Aden

Name of Plaintiff's Attorney

801 G Street NW, Suite 509

Address

Washington, D.C. 20001

(202) 637-4610

Telephone

By

Deputy Clerk

Date

JUN 17 2009

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

Form CV(6)-454/Mar. 98

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

IMPORTANT: IF YOU FAIL TO SERVE AND FILE AN ANSWER WITHIN THE TIME
STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE
COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED
AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE
COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR
PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY
THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT *FAIL TO ANSWER
WITHIN THE REQUIRED TIME*

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact
one of the offices of the Legal Aid Society (628-1 161) or the Neighborhood Legal Services (682-2700) for help
or come to Room JM 170 at 500 Indiana Avenue, N.W., for more information concerning where you may
ask for such help.

CA Form 1

**Superior Court of the District of Columbia
CIVIL DIVISION**

500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

Harry R. Jackson, et al

Plaintiff

vs.

District of Columbia Board of Elections and Ethics

Defendant

Civil Action No.

0004350-09

SUMMONS

c/o Robert J. Spagnoletti
Corporation Counsel of D.C.

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon your exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear **below**. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W. between 9:00 am. and 4:00 pm., Mondays through Fridays or between 9:00 am. and 12:00 Noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Steve Aden

Name of Plaintiff's Attorney

801 G Street NW, Suite 509

Address

Washington, D.C. 20001

(202) 637-4610

Telephone

By

Deputy Clerk

Date

JUN 17 2009

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

Form CV(6)-456/Mar. 71

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

IMPORTANT: IF YOU FAIL TO SERVE AND FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT *FAIL TO ANSWER WITHIN THE REQUIRED TIME*

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CA Form 1

**Superior Court of the District of Columbia
CIVIL DIVISION**

500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

Harry R. Jackson, et al

Plaintiff

vs.

District of Columbia Board of Elections and Ethics

Defendant

Civil Action No.

0001550-09

SUMMONS

c/o Kenneth J. McGhie
General Counsel for the
D.C. Board of Elections and Ethics

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon your exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear **below**. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

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Clerk of the Court

Steve Aden

Name of Plaintiff's Attorney

801 G Street NW, Suite 509

Address

Washington, D.C. 20001

(202) 637-4610

Telephone

By

Deputy Clerk

Date

JUN 17 2009

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

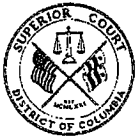
YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

Form CV(6)-456/Mar. 98

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

IMPORTANT: IF YOU FAIL TO SERVE AND FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT *FAIL TO ANSWER WITHIN THE REQUIRED TIME*

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

HENRY R. JACKSON JR.

Vs.

C.A. No. 2009 CA 004350 B

DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients prior to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference once, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge JUDITH E RETCHIN

Date: June 17, 2009

Initial Conference: 9:30 am, Friday, September 18, 2009

Location: Courtroom 316

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 105, 515 5th Street, N.W. (enter at Police Memorial Plaza entrance). Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Clerk's Office. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Lee F. Satterfield

Superior Court of the District of Columbia

CIVIL DIVISION - CIVIL ACTIONS BRANCH

INFORMATION SHEET

0004350-08

Harry R. Jackson Jr. Et. Al

Case Number: _____

vs

Date: _____

D.C. Board of elections and Ethics

Name: (please print) <u>Steven H. Aden</u>		Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) Other: _____
Firm Name: <u>ALLIANCE DEFENSE FUND</u>		
Telephone No.: <u>202-637-4610</u>	Six digit Unified Bar No.: <u>466777</u>	

TYPE OF CASE: ☒ Non-Jury ☐ 6 Person Jury ☐ 12 Person Jury
Demand: \$ N/A Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: N/A Judge: _____ Calendar #: _____


Case No.: _____ Judge: _____ Calendar #: _____

NATURE OF SUIT: (Check One Box Only)		
A. CONTRACTS		
<input type="checkbox"/> 01 Breach of Contract <input type="checkbox"/> 02 Breach of Warranty <input type="checkbox"/> 06 Negotiable Instrument <input type="checkbox"/> 15 _____	<input type="checkbox"/> 07 Personal Property <input type="checkbox"/> 09 Real Property-Real Estate <input checked="" type="checkbox"/> 12 Specific Performance	COLLECTION CASES <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent <input type="checkbox"/> 16 Under \$25,000 Consent Denied <input type="checkbox"/> 17 OVER \$25,000
B. PROPERTY TORTS		
<input type="checkbox"/> 01 Automobile <input type="checkbox"/> 02 Conversion <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102(a)	<input type="checkbox"/> 03 Destruction of Private Property <input type="checkbox"/> 04 Property Damage	<input type="checkbox"/> 05 Trespass <input type="checkbox"/> 06 Traffic Adjudication
C. PERSONAL TORTS		
<input type="checkbox"/> 01 Abuse of Process <input type="checkbox"/> 02 Alienation of Affection <input type="checkbox"/> 03 Assault and Battery <input type="checkbox"/> 04 Automobile-Personal Injury <input type="checkbox"/> 05 Deceit (Misrepresentation) <input type="checkbox"/> 06 False Accusation <input type="checkbox"/> 07 False Arrest <input type="checkbox"/> 08 Fraud	<input type="checkbox"/> 09 Harassment <input type="checkbox"/> 10 Invasion of Privacy <input type="checkbox"/> 11 Libel and Slander <input type="checkbox"/> 12 Malicious Interference <input type="checkbox"/> 13 Malicious Prosecution <input type="checkbox"/> 14 Malpractice Legal <input type="checkbox"/> 15 Malpractice Medical (Not Automobile, Not Malpractice) <input type="checkbox"/> 16 Negligence-(Not Automobile, Not Malpractice)	<input type="checkbox"/> 17 Personal Injury -(Not Automobile, Not Malpractice) <input type="checkbox"/> 18 Wrongful Death (Not malpractice) <input type="checkbox"/> 19 Wrongful Eviction <input type="checkbox"/> 20 Friendly Suit <input type="checkbox"/> 21 Asbestos <input type="checkbox"/> 22 Toxic Mass Torts <input type="checkbox"/> 23 Tobacco <input type="checkbox"/> 24 Lead Paint

SEE REVERSE SIDE AND CHECK HERE ☐ IF USED

INFORMATION SHEET, Continued

C. OTHERS I. <input type="checkbox"/> 01 Accounting <input type="checkbox"/> 02 Att. Before Judgment <input type="checkbox"/> 04 Condemnation (Emin. Domain) <input type="checkbox"/> 05 Ejectment <input type="checkbox"/> 07 Insurance/Subrogation Under \$25,000 Plt. Grants Consent <input type="checkbox"/> 08 Quite Title <input type="checkbox"/> 09 Special Writ/Warrants DC Code § 11-941	<input type="checkbox"/> 10 T.R.O. Injunction <input type="checkbox"/> 11 Writ of Replevin <input type="checkbox"/> 12 Enforce Mechanics Lien <input type="checkbox"/> 16 Declaratory Judgment <input type="checkbox"/> 17 Merit Personnel Act (OEA) (D.C. Code Title 1, Chapter 6) <input type="checkbox"/> 18 Product Liability <input type="checkbox"/> 24 Application to Confirm, Modify, Vacate Arbitration Award (D.C. Code § 16-4315)	<input type="checkbox"/> 25 Liens: Tax Water Consent Granted <input type="checkbox"/> 26 Insurance Subrogation Under \$25,000 Consent Denied <input type="checkbox"/> 27 Insurance Subrogation Over \$25,000 <input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only) <input type="checkbox"/> 26 Merit Personnel Act (OHR) <input type="checkbox"/> 30 Liens: Tax Water Consent Denied
II. <input type="checkbox"/> 03 Change of Name <input type="checkbox"/> 06 Foreign Judgment <input type="checkbox"/> 13 Correction of Birth Certificate <input type="checkbox"/> 14 Correction of Marriage Certificate	<input type="checkbox"/> 15 Libel of Information <input type="checkbox"/> 19 Enter Administrative Order as Judgment [D.C. Code § 2-1802.03(h) or 32-1519(a)] <input type="checkbox"/> 20 Master Meter (D.C. Code § 42-3301, et seq.)	<input type="checkbox"/> 21 Petition for Subpoena [Rule 28-1 (b)] <input type="checkbox"/> 22 Release Mechanics Lien <input type="checkbox"/> 23 Rule 27 (a)(1) (Perpetuate Testimony)


 Attorney's Signature

6/17/09
 Date