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GLAA
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Fighting for equal rights since 1971

Monday, June 1, 2009

Kenneth J. McGhie
General Counsel
District of Columbia Board of Elections and Ethics
441 4th Street, NW, Suite 250
Washington, D.C. 20001-2745

Dear Mr. McGhie:

Please accept this letter as our comments on the proposed measure, "A Referendum Concerning the Jury and Marriage Amendment Act of 2009." We believe that it is not a proper subject for referendum.

The proposers of the referendum talk about marriage as if it has remained unchanged for millennia. In fact, the civil institution of marriage, which is what we are talking about here, has changed considerably in the past half-century, most notably to reflect the equal status of women in modern society.

This evolution of marriage—part of our ongoing effort as a nation to live up to our founding ideals—continues. In recent years, the D.C. Council has changed references to "husband" and "wife" in various parts of the D.C. Code to the gender-neutral "spouse." To date, we have heard no objections to this update of our statutes. Now the Council has taken the further step of recognizing same-sex marriages from other jurisdictions, in keeping with our city's long tradition of embracing diversity and respecting the rights of all.

This is a simple matter of equity. To deny recognition to the legal marriages of same-sex couples, as those proposing the current measure seek to do, violates the law on referenda by attacking the D.C. Human Rights Act's prohibition against discrimination based on sexual orientation. Our opponents invoke tradition when they insist that denial of civil marriage equality to same-sex couples is not discriminatory. Somehow, by their thinking, the fact that the exclusion of gay people has a long pedigree makes it sacrosanct. But as we have noted, our marriage laws have evolved and are not frozen by dogma. By contrast, a religious sect is free to preach a particular doctrine regarding marriage and to enforce that doctrine in its decisions about whom to marry and welcome into its house of worship.

In America, however, the freedom of a given church to impose its doctrines ends with its own adherents. Allowing one group in our diverse society to use the power of the state to impose its doctrines on everyone else would deny others their own free exercise of religion. This exposes the falsehood of our opponents' claim that they are the aggrieved ones in this matter. If the city's

recognition of civil marriages from Boston and Des Moines somehow infringed upon others' religious liberty, our opponents might have a point. But no one has proposed a repeal of the First Amendment of the U.S. Constitution, and no law could force any minister to perform or approve of any marriage in violation of his or her beliefs. What the D.C. Council and Mayor Fenty have done with the Jury and Marriage Amendment Act of 2009, rather, is to continue a decades-long effort to bring the city's laws into conformity with its overarching commitment to equal protection of the law for all.

The city recognized the danger of subjecting minority protections to a plebiscite thirty years ago when it barred referenda and initiatives from taking away rights guaranteed under Title 2, Chapter 14. Here is the relevant passage in D.C. Code Section 1-1001.16 (b)(1): "Upon receipt of each proposed initiative or referendum measure, the Board shall refuse to accept the measure if the Board finds that it ... authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2...."

Authorizing discrimination against gay people is precisely the purpose of the proposed referendum, which is why the Board should refuse to accept it. We as gay citizens have not only justice but the law on our side when we say that our families are entitled to the same civil protections as everyone else, as expressed in the District's motto, *Justitia Omnibus*.

On another point, we are troubled by recent reports in *The Washington Post* suggesting that the Board intends to cut short its normal referendum process. We respectfully insist that the Board comply with its own rules. Specifically, should the proposal be approved as an appropriate matter for referendum, the official language must be published in the DC Register, along with the legislative text. The DC Register publication would then begin a ten day challenge period, during which any registered voter may object to the short title, summary statement, or legislative form in the Superior Court. At the end of this challenge period (or once any court challenges are successfully resolved), the Board would then hold a public meeting to approve the petition form for circulation.

One of the great defenders of the Constitution in modern history was Congresswoman Barbara Jordan of Texas. No one who watched can ever forget the electrifying moment in 1974, during debate on the impeachment of President Richard Nixon, when Jordan summarized the long American journey that had brought her to that moment, and concluded, "My faith in the Constitution is whole, it is complete, it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution." Shouldn't such a revered figure have been accorded the same legal protections that her neighbors took for granted? As it happened, in 1988, Jordan nearly drowned in her backyard swimming pool; she was rescued by her longtime companion, Nancy Earl, and lived eight more years. But there were no legal protections for them as a couple, and no room for them politically. So Jordan—who did so much to help others—had to treat her own family as a secret.

Two decades later, our city and our country have made great progress toward the goal of equality for all. We owe it to the Barbara Jordans yet to emerge to include them in "We, the People" by reaffirming the law's equal protection for them and their chosen families. As former South

African Archbishop and Nobel Peace Laureate Desmond Tutu said to the Church of Scotland's General Assembly on May 26, "In this family there are no outsiders."

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Wood".

Mitch Wood
President