

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL



June 11, 2009

Kenneth J. McGhie, Esq.  
General Counsel  
Board of Elections and Ethics  
441 4<sup>th</sup> Street, N.W., Suite 250  
Washington, D.C. 20001

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

Dear Mr. McGhie:

This responds to your May 28, 2009 letter, in which you invite comment on whether the proposed measure, "A Referendum Concerning the Jury and Marriage Amendment Act of 2009" ("Referendum"), is a proper subject for a referendum under District law. In my analysis of this issue, I have taken account of the presentations made yesterday to the Board, and I am particularly impressed by the cogent analysis of the issue by Brian Flowers, General Counsel to the City Council.

The following Summary Statement was contained in the Notice of Public Hearing that accompanied your letter:

The D.C. Council approved "The Jury and Marriage Amendment Act of 2009." The Act would recognize as valid a marriage legally entered into in another jurisdiction between 2 persons of the same sex.<sup>11</sup> The "Referendum Concerning the Jury and Marriage Amendment Act of 2009" will allow the voters of the District of Columbia the opportunity to decide whether the District of Columbia will recognize as valid a marriage legally entered into in another jurisdiction between 2 persons of the same

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<sup>1</sup> Section 3(b) of the Jury and Marriage Amendment Act of 2009 ("Amendment Act"), signed by the Mayor on May 6, 2009 (D.C. Act 18-70; 56 DCR 3797), would amend Chapter Forty-Three of An Act To establish a code of law for the District of Columbia, approved March 3, 1901, 31 Stat. 1391, D.C. Official Code § 46-401 *passim* (2005 Repl.), by adding a new section 1287a to read as 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 [D.C. Official Code §§ 46-401 through -404], and has not been deemed illegal under section 1287 [D.C. Official Code § 46-405], shall be recognized as a marriage in the District.