

MEMORANDUM

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TO: District of Columbia Board of
Elections & Ethics

DATE: June 9, 2009

FROM: Aaron M. Flynn, Esq.

The Proposed Measure
“A Referendum Concerning the Jury and Marriage Amendment Act of 2009”
Is Improper Subject Matter For a Referendum

On June 5, 2009, the District of Columbia Board of Elections and Ethics (“Board”) published a notice of public hearing (“Notice”) regarding the Board’s receipt and intent to review a proposed referendum measure. This measure would seek to invalidate in part the Jury and Marriage Amendment Act of 2009 (the “Act”), Act No. A18-0070, passed by the D.C. Council and signed by the Mayor on May 6, 2009 and currently pending review by the United States Congress. The Act was transmitted to Congress on May 11, 2009, and the review period is projected to close on July 6, 2009.¹

The referendum process in the District of Columbia (“D.C.” or the “District”) is governed by the Initiative, Referendum, and Recall Charter Amendments Act of 1977² and the Initiative, Referendum, and Recall Procedures Act.³ See generally *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 600 (D.C. 1994). These statutes are further supplemented by regulations promulgated by the Board.⁴ As described below, these statutes and regulations, as interpreted by the courts of the District, require the Board to reject to proposed referendum on the basis that it seeks to address improper subject matter under District law.

¹ See Council of the District of Columbia, LIMS, available at <http://www.dccouncil.washington.dc.us/lims/legislation.aspx?LegNo=B18-0010&Description=JURY-AND-MARRIAGE-AMENDMENT-ACT-OF-2009.---&ID=21817>.

² D.C.Law 2-46, § 2, 24 D.C.Reg. 199 (1978), as amended by Pub.L. No. 95-526, § 1(3), 92 Stat. 2023 (1978) (codified as amended in D.C.Code §§ 1-281 to -287 and §§ 1-291 to -295 (1992)).

³ D.C.Law 3-1, § 2(c), 25 D.C.Reg. 9454 (1979) (codified as amended in D.C.Code §§ 1-1320 to -1326 (1992)).

⁴ D.C. MUN. REGS. tit. 3, §§ 1000-1015.