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June 9, 2009

BY FACSIMILE AND HAND DELIVERY

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

Re: Referendum on Jury and Marriage Amendment Act of 2009

Dear Mr. McGhie:

Section 16(c)(3) of the District of Columbia Election Code of 1955, effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.16(c)(3)), allows the Board of Elections to consult with this office to ensure that referendum measures are in the proper legislative form. In addition, you have asked if the proposed measure is the proper subject for a referendum. I have reviewed the proposed referendum for compliance with the requirements of District law, including the Initiative, Referendum, and Recall Charter Amendments Act of 1977, effective March 10, 1978 (D.C. Law 2-46; D.C. Official Code § 1-204.101 *et seq.*), the Initiative, Referendum, and Recall Procedures Act of 1979, effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.01 *passim*), the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; DC Official Code 1-201.01 § *et seq.*) ("Home Rule Act"), the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) ("Human Rights Act"), and judicial interpretations of these statutes.

Based on my review of the authorities cited above, it is my opinion that as currently drafted, the proposal is not the proper subject for a referendum under District law because it would authorize, or would have the effect of authorizing, discrimination prohibited by the Human Rights Act. Because this proposal is legally objectionable, it should not be certified as the proper subject for a referendum.