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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