



GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF THE ATTORNEY GENERAL

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District Files Responsive Brief in Jackson v. District of Columbia Board of Elections and Ethics

WASHINGTON, D.C.—The District's responsive brief in Jackson v. District of Columbia Board of Elections and Ethics, 2009 CA 008613 B, was filed Friday, December 18, 2009, in the form of a Motion to Dismiss or, in the Alternative, for Summary Judgment.

The District's main arguments are as follows:

- The proposed initiative would violate the Human Rights Act by prohibiting the denial of benefits or services on the basis of gender and sexual orientation;
- Petitioners' main argument--that the District Charter prohibits any substantive "restriction" on the peoples' right of initiative aside from "an appropriation of funds"--is wrong as a matter of law and precluded because they failed to raise it before the Board or in the earlier litigation;
- The Council had broad discretion in defining the scope of the right of direct legislation, and chose to incorporate the basic protections of the HRA, which, like the republican form of government itself, protects the rights of disfavored minorities against the threat of an unchecked majority;
- Petitioners' claim that their proposed initiative does not discriminate on the basis of gender or sexual orientation must be rejected for the same reasons the Supreme Court rejected the State's arguments in Loving v. Virginia;
- Dean v. District of Columbia does not control here, because the HRA and District law has been considerably enhanced in the intervening years to protect the relationships of same-sex couples and their rights to form legally recognized families;
- The Supreme Court, in Lawrence v. Texas, made clear that moral objections are not a sufficient basis for infringing on the fundamental rights of homosexuals, and petitioners have advanced no other justification for their proposed initiative that meets even minimal constitutional scrutiny; and
- Heightened scrutiny applies to the proposed initiative, despite petitioners' failure to advance any objectives at all arguably served by the classification in the initiative, because, like classifications based on gender, it is likely based on irrelevant stereotypes and prejudice.

Oral argument is scheduled for 9 a.m. on Wednesday, January 6, 2010, before Judge Judith Macaluso in D.C. Superior Court.

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