

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:
“An Initiative to Overturn District
Columbia Council Same Sex Marriage
Law Restore Traditional Marriage Law

Administrative Hearing
No. 13-06

Re: Rejection of Proposed
Initiative Measure

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections (hereinafter “The Board”) on Wednesday, April 3, 2013, and involved a determination by the Board that the proposed initiative—“An Initiative to Overturn District Columbia Council Same Sex Marriage Law Restore Traditional Marriage Law”—could not be processed by virtue of its inconsistency with the Constitution of the United States. Chairman Deborah K. Nichols and Board members Devarieste Curry and Stephen I. Danzansky presided over the hearing. The Proponent, Ms. Joan F.M. Malone, did not appear for the hearing notwithstanding notice served by first class mail on Tuesday, March 19, 2013, pursuant to tit. 3 D.C. Mun. Regs. § 402.2. The Board accordingly proceeded *ex parte* pursuant to tit. 3 D.C. Mun. Regs. § 403.4.¹

The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval. D.C.

¹ 3 D.C. Mun. Regs. § 403.4 states in relevant part: “If any person waives the right to be present at the hearing or fails to appear at the hearing, the Board may proceed *ex parte*. . .”

CODE § 1-204.101 (a) (2011 repl.). The electors' power to legislate is not absolute. Proposed measures must conform to the strictures of the United States Constitution pursuant to the District of Columbia Home Rule Act which states:

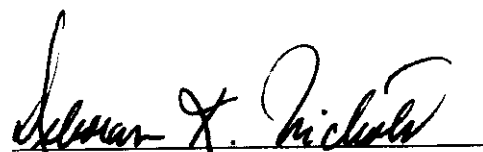
[T]he legislative power of the District shall extend to all rightful subjects of legislation within the District *consistent with the Constitution of the United States* and the provisions of this chapter subject to all the restrictions and limitations imposed upon the states by the 10th section of the 1st article of the Constitution of the United States. (emphasis added).

D.C. CODE §1-203.02 (2011 repl.). The First Amendment to the United States Constitution states that Congress shall make no law respecting an establishment of religion. The Board found that the legislative text of the proposed measure is a religious proclamation that exemplifies a law respecting an establishment of religion.

Pursuant to D.C. CODE § 1-1001.16 (b)(1) (2011 repl.): “[u]pon receipt of each proposed initiative or referendum measure, the Board shall refuse to accept the measure if the Board finds that it is not a proper subject of initiative or referendum, whichever is applicable, under the terms of *title IV of the District of Columbia Home Rule Act. . .*” (emphasis added). In the instant case, the Proponent has proposed a measure that does not include a bill and conflicts with the First Amendment of the United States Constitution. Accordingly, this initiative measure is not a rightful subject of legislation within the District of Columbia consistent with the Constitution as required of all legislative measures. Moreover, the proposed initiative does not propose a law as required by D.C. CODE § 1-204.101 (a) (2011 repl.). Accordingly, it is hereby

ORDERED, that - "An Initiative to Overturn District Columbia Council Same Sex Marriage Law Restore Traditional Marriage Law" Initiative is received but not accepted on the grounds that the measure is in direct contravention to the Constitution, and it does not propose a law.

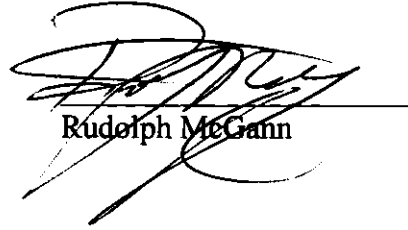
April 5, 2013

A handwritten signature in black ink, reading "Deborah K. Nichols", written over a horizontal line.

Deborah K. Nichols
Chairman,
D.C. Board of Elections

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was delivered via first class mail to the following party: Yehanna Malone, 1140 North Capitol Street, N.W. suite 504, Washington D.C.



Rudolph McGann