DAN WOODS (State Bar No. 78638)
PATRICK HUNNIUS (State Bar No. 174633)
EARLE MILLER (State Bar No. 116864)
AARON A. KAHN (State Bar No. 238505)
WHITE & CASE LLP
633 W. Fifth Street, Suite 1900
Los Angeles, CA 90071-2007
Telephone: (213) 620-7700
Facsimile: (213) 452-2329
Email: dwoods@whitecase.com
Email: phunnius@whitecase.com
Email: emiller@whitecase.com
Email: aakahn@whitecase.com

Attorneys for Plaintiff
Log Cabin Republicans

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LOG CABIN REPUBLICANS, a non-profit corporation,

Plaintiff,

v.

UNITED STATES OF AMERICA and ROBERT M. GATES, SECRETARY OF DEFENSE, in his official capacity,

Defendants.

Case No. CV04-8425 VAP(Ex)

PLAINTIFF'S SECOND SUPPLEMENTAL (POST-HEARING) MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Date: April 26, 2010
Time: 2:00 p.m.
Ctrm: 2

I.

STANDING

A. Log Cabin's Burden at the Summary Judgment Stage

As the non-moving party, Log Cabin need only show that there exists a genuine issue of material fact for trial. Fed. R. Civ. P. 56(c)(2), 56(e)(2). Log Cabin need not prove its case at this point; that burden remains for trial. This is true for the standing issue just as for the merits of Log Cabin's due process and First Amendment claims: with standing as with any other issue, "the manner and degree of evidence required at the successive stages of the litigation" varies. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 2136-37 (1992). At the pleading stage, general factual allegations of injury suffice; at trial, controverted facts must be adequately supported by evidence; but on summary judgment, the facts in Log Cabin's affidavits or other evidence will be "taken to be true," id., and the existence of an issue of material fact is sufficient to deny summary judgment.

Log Cabin has, at a minimum, presented such an issue as to the membership of Mr. Nicholson and Lt. Col. Doe. The Bradley, Meekins, and Doe Declarations show that Lt. Col. Doe was a member of Log Cabin as of the date the original complaint was filed; the Ensley, Nicholson and Hamilton Declarations show that Mr. Nicholson was a member as of the date of the amended complaint; and even the government does not dispute that Lt. Col. Doe was a member then. Even if the Court were to find that any of these facts had not been proven to the degree required at trial, the declarations are more than sufficient to show the existence of a genuine issue and to compel the denial of the motion.

B. Log Cabin Has Associational Standing Based on DADT'S Consequences to Its Members

Log Cabin need not show that its members have been discharged under DADT: the consequences to them of the threat of discharge are sufficient.

In Forum for Academic and Institutional Rights, Inc. v. Rumsfeld, 291 F.

Supp. 2d 269 (D.N.J. 2003), rev'd on other grounds, 390 F. 3d 219 (3rd Cir. 2004), rev'd, 547 U.S. 47, 126 S. Ct. 1297, 164 L.Ed.2d 156 (2006) ("FAIR"), an association of law schools and law faculties sued (along with other plaintiffs) to enjoin the enforcement against them of the Solomon Act, 10 U.S.C. § 983(b), which authorized the United States to deny federal funding to educational institutions that prohibit or prevent on-campus military recruiting. FAIR contended that the Solomon Amendment interfered with its members' First Amendment rights of academic freedom, free speech, and freedom of expressive association, 291 F. Supp. 2d at 274, by forcing its members to abandon their non-discrimination policies under the threat of losing federal funding under the statute. The government moved to dismiss FAIR's claim for lack of standing.

The court held that a member school's actual loss of funding was not a necessary prerequisite for such a member to have standing to challenge the statute:

> law school members of FAIR have a sufficient stake in this controversy insofar as the allegations demonstrate that the schools have capitulated to government threats of losing federal funding due to non-compliance with the Solomon Amendment. The relevant injury for standing purposes is the government-induced abandonment of the schools' non-discrimination policies and not, as the Government urges, an actual loss of funding.

Id. at 286. And since an individual member would have standing notwithstanding that it had not yet suffered an actual loss of funding, so too did FAIR have standing: "[t]here are no remaining uncertainties as to the effect of the Solomon Amendment on FAIR law school members. Thus, the factual allegations are sufficient to confer associational standing on FAIR." Id. at 288.[1]

Log Cabin here is in an exactly analogous situation. Its members who are in

[1] While the Supreme Court ultimately rejected the merits of the plaintiffs' claims, it upheld FAIR's associational standing. 547 U.S. at 53 n.2, 126 S. Ct. at 1303 n.2.

the military live daily under the threat of enforcement of DADT against them, and capitulate to that threat by concealing their core sexual identity. E.g., Doe Declaration, Dkt. 39 at ¶¶ 6-7. They – and Lt. Col. Doe in particular – need not have been actually discharged, as the government contends, to establish the unconstitutional effect of DADT on them. A plaintiff who challenges a statute must show that the operation or enforcement of the statute presents the danger of direct injury, but need not "await the consummation of threatened injury to obtain preventive relief.... When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he 'should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.'" Babbitt v. United Farm Workers, 442 U.S. 289, 298, 99 S.Ct. 2301, 2308-09 (1979); see also Jones v. Bates, 127 F.3d 839, 847 n. 8 (9th Cir. 1997) (state legislators challenging term limits did not have to actually be barred by such limits, but rather "demonstrated an adequate likelihood of future injury [for standing] ... merely by alleging their desire to run"). Moreover, "when the threatened enforcement effort implicates First Amendment rights, the inquiry tilts dramatically toward a finding of standing," because "free expression – of transcendent value to all society, and not merely to those exercising their rights – might be the loser." LSO, Ltd. v. Stroh, 205 F.3d 1146, 1155 (9th Cir. 2000).

The injury that servicemembers face from the application of DADT is not de minimis, nor is it "remote, contingent and speculative" as was the potential additional workman's compensation insurance charge in Gange Lumber Co. v. Rowley, 326 U.S. 295, 66 S. Ct. 125 (1945). Under DADT, servicemembers face discharge from the military and loss of pension and benefits. Nor do the claims here rely on injury from past conduct alone with mere speculation whether such injury will recur, as in City of Los Angeles v. Lyons, 461 U.S. 95, 103 S. Ct. 1660 (1983). The plaintiffs' challenge in Lyons was purely speculative because it

depended on the unwarranted assumption that plaintiffs would violate otherwise unchallenged lawful criminal statutes. 461 U.S. at 102-03, 103 S. Ct. 15 1665. Accordingly, the allegations that would be required to establish standing would be "incredible" and mere conjecture.

Here, by contrast, Log Cabin is directly challenging DADT, and need not rely on the speculative aftermath of a potential violation of some unchallenged law. The analysis of whether a plaintiff challenging government action faces a realistic threat depends on a variety of factors, including past instances of enforcement (though a finding of such is not necessary for standing, see Babbitt, supra), and the government's failure to disavow application of the challenged provision.[2] LSO, Ltd. v. Stroh, 205 F.3d at 1155-56. Log Cabin has shown that threat here.

C. The Standing Analysis Here Is Analogous to a Class Action Claim

Even though Log Cabin has identified two members "injured by the subject policy" who could assert individual standing, these individuals are not the plaintiffs in this lawsuit. Log Cabin is an organization and the plaintiff here is a group of affected individuals, not simply the two servicemembers Log Cabin identified. Just as in a class action, where the plaintiff is the entire class of injured persons and not merely the named class representatives, so here the plaintiff is Log Cabin on behalf of all its members affected by DADT.

"'[T]he termination of a class representative's claim does not moot the claims of the unnamed members of the class.' That the class was not certified until after the named plaintiffs' claims had become moot does not deprive [the court] of jurisdiction," County of Riverside v. McLaughlin, 500 U.S. 44, 51-52, 111 S. Ct. 1661, 1667 (1991) (citations omitted). Likewise, the particulars of Mr. Nicholson's

---

[2] Log Cabin has amply demonstrated both these factors here in its Statement of Genuine Issues (e.g. SGI 94-112, 90-92). And just last week, on Friday, April 30, 2010, the top civilian and military leaders of the armed forces reiterated to Congress their wish to keep enforcing Don't Ask, Don't Tell during the current assessment process. (Letter available at http://www.scribd.com/doc/30758487/Letter-from-Sec-Gates-and-Adm-Mullen-to-Chairman-Skelton-on-DADT and attached as Attachment A.)

or Lt. Col. Doe's claims do not affect the Court's jurisdiction to hear Log Cabin's claims on behalf of its members.

For that reason, the government's reliance on, e.g., Schreiber Foods, Inc. v. Beatrice Cheese, Inc., 402 F. 3d 1198, 1202 n.3 (Fed. Cir. 2005) and Lynch v. Leis, 382 F.3d 642, 647 (6th Cir. 2004), for the proposition that "the initial standing of the original plaintiff is assessed at the time of the original complaint, even if the complaint is later amended" is misplaced. Both Schreiber and Lynch were brought and prosecuted as individual actions, by individual plaintiffs.[3] The courts analyzed the individual standing of the specific plaintiffs as of the date of filing the complaint. That analysis does not control the outcome here, however, where the organizational nature of the plaintiff, Log Cabin, means that its standing flows from that of any member of the organization, not merely the two that Log Cabin has specifically identified.[4] See FAIR, supra, 291 F. Supp. 2d at 289 (evaluating standing as of date of amended complaint when two named members identified). That is the effect of McLaughlin; Thomas v. Mundell, 572 F.3d 756 (9th Cir. 2009); and the other authorities cited in Log Cabin's Supplemental Brief on this point (Dkt. 161). As an organizational representative of a group of individuals, Log Cabin's standing may be evaluated as of the date of filing of the First Amended Complaint in April 2006, because a complaint is not coextensive with the action in which it is filed. The amended complaint "supersedes the original, the latter being treated thereafter as non-existent," Loux v. Rhay, 375 F. 2d 55, 57 (9th Cir. 1967), but the action itself persists. The government has never, at the hearing or in its papers, refuted this holding of Loux, or the other authorities previously cited on this point by Log Cabin.

---

[3] While Lynch refers to a motion for class certification, there is no indication in the opinion that that motion was pursued or ruled upon, and the analysis and disposition treats the case entirely as an action with two individual plaintiffs.

[4] The Court has already found that Log Cabin's First Amended Complaint sufficiently alleged standing, and that the specific identity of Lt. Col. Doe need not be disclosed.

D. Log Cabin, Not the Government, Determines Who Is A Member

The government makes much ado about a supposed inconsistency between Log Cabin's Articles of Incorporation and its bylaws as to whether Log Cabin may have honorary members such as Mr. Nicholson, whose membership is not contingent on the payment of dues; and it selectively cites from the District of Columbia Code to argue that the bylaws' provision for honorary membership is "void." The government cites no District of Columbia law for that proposition, only a Nevada state court case decided under Nevada law and a dissenting opinion in an Illinois state court case decided under Illinois law. The government's argument is wrong. Log Cabin's bylaws are not inconsistent with its Articles of Incorporation; even if they were, they are not therefore "void"; and in any event the government has no standing here to assert any supposed inconsistency.

Log Cabin's bylaws provide that a person may become a "Member" in several ways: by personal registration; by meeting a membership standard established by a local or state chapter; or by meeting criteria for an honorary or special membership. Engle Declaration (Dkt. 144), Exh. A, §§ 2.01-2.02. But these various paths to membership do not lead to separate classes of membership: however someone becomes a member of Log Cabin, he or she is nevertheless then a "Member" of the organization, in the single membership class established by the Articles of Incorporation. Mr. Nicholson's honorary membership in the Georgia Chapter, under a standard established by that Chapter, makes him a Member of Log Cabin in its single membership class. Id., § 2.03(d). If the Georgia Chapter has deemed Mr. Nicholson's supportive activities to be tantamount to a "financial contribution" to the organization, that is a decision it may make that is not inconsistent with the Articles of Incorporation.

Second, the District of Columbia Code recognizes that the "qualifications and rights of the members" of a nonprofit corporation such as Log Cabin may be set forth "in the [corporation's] articles of incorporation or the bylaws." D.C. Code §

29-301.12. Accordingly, Log Cabin may properly set forth in its bylaws the qualifications of an individual to become a Member of the corporation.

Finally, the government provides no authority in either the District of Columbia corporation law or its case law to support the argument that an inconsistency between the articles of incorporation and the bylaws renders the bylaws automatically "void," rather than merely voidable. District of Columbia law is to the contrary. D.C. Code § 29-301.06 provides that "[n]o act of a corporation ... shall be invalid by reason of the fact that the corporation was without capacity or power to do such act...." It further provides that a claim of such lack of capacity or power may be asserted only in a proceeding by a member or director against the corporation, by the corporation itself against its current or former officers or trustees, or by the Mayor to dissolve the corporation or enjoin it from transacting unauthorized acts. Id.[5] The government being neither a member or director of Log Cabin, nor a representative of Log Cabin, nor the Mayor of the District of Columbia, it may not complain here about Log Cabin's membership rolls.

II.

THE MERITS

The government's motion for summary judgment must be denied on the merits as well. Log Cabin has submitted to the Court voluminous evidence demonstrating the existence of many genuine issues of material fact. The government presented no evidence even rebutting, let alone negating, Log Cabin's submission. It objected to a few scattered items of evidence in Log Cabin's opposition – objections to which Log Cabin has responded and rebutted (Dkt. 164) – but it notably did not object at all to the seven declarations of expert witnesses that Log Cabin has filed that demonstrate substantial genuine issues for trial. Once the Court has found, as it should, that Log Cabin has shown that it has standing,

[5] Copies of the D.C. Code sections cited herein are attached as Attachment B.

proceeding to a trial on the merits is a straightforward decision. This portion of this brief highlights only a few salient points regarding merits issues.

A. Log Cabin's Burden at the Summary Judgment Stage

Log Cabin need not disprove, at this stage, any possible rational basis for DADT. United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095 (1987), on which the government relies for this contention, arose after an evidentiary hearing on a pretrial detention motion, not on summary judgment. In the context of a summary judgment motion, a plaintiff challenging a statute need only present some factual evidence that there is no rational connection between the legislation and its stated purpose. Log Cabin contends that following Lawrence v. Texas, 539 U.S. 558, 123 S. Ct. 2472 (2003) and Witt v. Dep't of the Air Force, 527 F.3d 806, 816-17 (9th Cir. 2008), the appropriate standard of review is at least some form of heightened rational basis, even if not the precise heightened standard announced in Witt; but even under traditional rational basis analysis, Log Cabin's burden is only to present evidence that no rational connection exists between DADT and the asserted governmental interests.[6]

This point is illustrated in Lockary v. Kayfetz, 917 F. 2d 1150 (9th Cir. 1990). In Lockary, plaintiffs challenged, on substantive due process and equal protection grounds, a utility district's refusal to provide them with water hookups. The utility claimed it was imposing a water moratorium in response to a water shortage. The district court granted summary judgment in favor of the utility district and the plaintiffs appealed. The court stated the standard as, "[T]he rational relation test will not sustain conduct by state officials that is malicious, irrational or

---

[6] As Lawrence teaches (539 U.S. at 579, 123 S. Ct. at 2484), "times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress," so it is appropriate to consider post-enactment evidence to determine whether the enactors of a statute were blind to Constitutional constraints. The Court in Lawrence did just that when it reviewed the history of repeal of sodomy laws and their diminished enforcement, both domestically and internationally, as well as the effect of intervening case law such as Planned Parenthood v. Casey and Romer v. Evans.

plainly arbitrary." 917 F.2d at 1155. It then reversed the summary judgment. In doing so, the court noted that the state's asserted government interest – controlling a water shortage – was legitimate. But the court noted that plaintiffs raised triable issues of fact as to whether there was even an actual water shortage in the first place, and went on to examine post-moratorium evidence that the utility had not been conserving water at all and had relinquished rights to other water sources – actions that were inconsistent with the stated goal of conservation. Construing this evidence in the light most favorable to plaintiffs, the court held that the utility's refusal to grant water hookups to plaintiffs may have been arbitrary or even malicious conduct prohibited by due process. The court remanded to give the plaintiffs the opportunity to prove that the government's conduct was arbitrary or malicious, relying in part on the plaintiffs' presentation of evidence as to facts developed after the enactment of the utility's moratorium.[7]

B. Any Government Restriction of First Amendment Rights of Expression Must Be Viewpoint-Neutral

As noted above, one of the bases for Log Cabin's associational standing is the ongoing harm to its military members that is caused by DADT's requiring those individuals to capitulate to the threat of discharge by concealing the expression of their identity. That implicates their First Amendment rights, because DADT's inhibition of speech targets only speech and expression that states that a servicemember is homosexual. DADT does not constrain servicemembers from stating, or expressing nonverbally, their heterosexuality: a servicemember may without fear of consequence express affection to an opposite-sex partner, display a family photograph of his or her opposite-sex partner and their children, and so

[7] Accord, Craigmiles v. Giles, 2000 U.S. Dist. Lexis 22435, No. 1:99-CV-304 (E.D. Tenn. July 18, 2000) (on substantive due process challenge, summary judgment denied due to genuine issue of material fact as to "whether defendant's asserted reasons for [legislation] are rationally related to the requirement that funeral merchandise be sold to the public only by a licensed funeral director operating from a licensed funeral establishment").

forth. Regardless of any considerations of deference owed to military judgment, "regulations restricting speech on military installations may not discriminate against speech based upon its viewpoint...a regulation is viewpoint based if it suppresses the expression of one side of a particular debate." Nieto v. Flatau, No. 7:08-CV-185 (E.D.N.C. March 31, 2010) at 12 (citations omitted) (opinion available at http://ia311020.us.archive.org/0/items/gov.uscourts.nced.96700/gov.uscourts.nced.96700.33.0.pdf). The military may not restrict speech "in a manner that allows one message while prohibiting the messages of those who can reasonably be expected to respond." Id at 14-15. DADT does just that, and therefore causes First Amendment harm to members of the military by unconstitutionally restricting their speech and expression, not simply their conduct.

C. The Government Relies on Cases That Are Not Good Law

As the Court noted, both at the hearing and in its July 24, 2009 Order (Dkt. 91), Phillips v. Perry, 106 F.3d 1420 (9th Cir. 1997), on which the government places great reliance, is no longer good law after Lawrence v. Texas. The same is true of Holmes v. California Army National Guard, 124 F.3d 1126 (9th Cir. 1997), as the Court observed in its June 9, 2009 Order (Dkt. 83 at 17-18). Cook v. Gates, 528 F.3d 42 (1st Cir. 2008), which expressly declined to follow Witt v. Department of the Air Force, 527 F.3d 806 (9th Cir. 2008), similarly, is not the law in this Circuit and does not govern the analysis in this case. And as the Ninth Circuit expressly recognized in Witt, Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980) is no longer good law in this Circuit, having been "effectively overruled by intervening Supreme Court authority." Witt, 527 F.3d at 819-21. The Court should disregard the government's arguments from all of these cases.

Dated: May 3, 2010

WHITE & CASE LLP

By: Dan Woods
Dan Woods
Attorneys for Plaintiff

ATTACHMENT A

THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

APR 30 2010

The Honorable Ike Skelton
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing in response to your letter of April 28 requesting my views on the advisability of legislative action to repeal the so-called "Don't Ask Don't Tell" statute prior to the completion of the Department of Defense review of this matter.

I believe in the strongest possible terms that the Department must, prior to any legislative action, be allowed the opportunity to conduct a thorough, objective, and systematic assessment of the impact of such a policy change; develop an attentive comprehensive implementation plan, and provide the President and the Congress with the results of this effort in order to ensure that this step is taken in the most informed and effective manner. A critical element of this effort is the need to systematically engage our forces, their families, and the broader military community throughout this process. Our military must be afforded the opportunity to inform us of their concerns, insights, and suggestions if we are to carry out this change successfully.

Therefore, I strongly oppose any legislation that seeks to change this policy prior to the completion of this vital assessment process. Further, I hope Congress will not do so, as it would send a very damaging message to our men and women in uniform that in essence their views, concerns, and perspectives do not matter on an issue with such a direct impact and consequence for them and their families.

Admiral Michael G. Mullen
Chairman of the Joint Chiefs of Staff

Robert M. Gates
Secretary of Defense

cc:
The Honorable Howard P. "Buck" McKeon
Ranking Member

Attachment A

ATTACHMENT B

Welcome to the online source for the District of Columbia Official Code

DC ST § 29-301.05
Formerly cited as DC ST 1981 § 29-505

DC ST § 29-301.05

Formerly cited as DC ST 1981 § 29-505

District of Columbia Official Code 2001 Edition Currentness
Division V. Local Business Affairs
Title 29. Corporations. (Refs & Annos)
Chapter 3. Nonprofit Corporations. (Refs & Annos)
Subchapter I. General.
➡§ 29-301.05. General powers.

Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;
(2) To sue and be sued, complain, and defend, in its corporate name;
(3) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
(4) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
(6) To lend money to and otherwise assist its employees other than its officers and directors;
(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;
(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;
(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
(10) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this subchapter in any part of the world;
(11) To elect or appoint officers and agents of the corporation, and define their duties and fix

Attachment B

their compensation;
(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation;
(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized;
(14) To indemnify any director, or officer, or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise;
(15) To cease its corporate activities and surrender its corporate franchise; and
(16) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

CREDIT(S)

(Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 5.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 29-505.

1973 Ed., § 29-1005.

DC CODE § 29-301.05

Current through January 3, 2010

END OF DOCUMENT

Docs In Sequence

Attachment B

Welcome to the online source for the District of Columbia Official Code

DC ST § 29-301.06
Formerly cited as DC ST 1981 § 29-506

DC ST § 29-301.06

Formerly cited as DC ST 1981 § 29-506

District of Columbia Official Code 2001 Edition Currentness
Division V. Local Business Affairs
Title 29. Corporations. (Refs & Annos)
Chapter 3. Nonprofit Corporations. (Refs & Annos)
Subchapter I. General.
➡§ 29-301.06. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;
(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation; or
(3) In a proceeding by the Mayor, as provided in this subchapter, to dissolve the corporation, or in a proceeding by the Mayor to enjoin the corporation from the transaction of unauthorized acts.

CREDIT(S)

(Aug. 6, 1962, 76 Stat. 269, Pub. L. 87-569, § 6.)

HISTORICAL AND STATUTORY NOTES

Attachment B

Prior Codifications

1981 Ed., § 29-506.

1973 Ed., § 29-1006.

Change in Government

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

DC CODE § 29-301.06

Current through January 3, 2010

END OF DOCUMENT

Docs In Sequence

Attachment B

Welcome to the online source for the District of Columbia Official Code

DC ST § 29-301.12
Formerly cited as DC ST 1981 § 29-512

DC ST § 29-301.12

Formerly cited as DC ST 1981 § 29-512

District of Columbia Official Code 2001 Edition Currentness
Division V. Local Business Affairs
Title 29. Corporations. (Refs & Annos)
Chapter 3. Nonprofit Corporations. (Refs & Annos)
Subchapter I. General.
➡§ 29-301.12. Members.

A corporation may have 1 or more classes of members or may have no members. If the corporation has 1 or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein.

CREDIT(S)

(Aug. 6, 1962, 76 Stat. 271, Pub. L. 87-569, § 12.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 29-512.

1973 Ed., § 29-1012.

DC CODE § 29-301.12

Current through January 3, 2010

END OF DOCUMENT

Attachment B

Docs In Sequence

Attachment B