GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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SPECIAL BOARD MEETING

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FRIDAY

NOVEMBER 9, 2018

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The District of Columbia Board of Elections convened a Special Board Meeting in Room 7051, 1015 Half Street, S.E., Washington, D.C., 20003, pursuant to notice at 2:00 p.m., Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

MICHAEL BENNETT, Chair
MICHAEL D. GILL, Member
DIONNA MARIA LEWIS, Member

BOARD OF ELECTIONS STAFF PRESENT:

ALICE P. MILLER, Executive Director
KENNETH MCGHIE, General Counsel
RENEE CHRISTENSEN, Attorney Advisor
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2:25 p.m.

MR. BENNETT: Good afternoon. My name is Michael Bennett, Chair of the D.C. Board of Elections. And we are opening up to have a hearing to, we're opening a meeting -- do we have a court reporter here? Can you hear us okay? Okay.

We're opening a meeting to have a hearing on the referendum regarding the repeal of the minimum wage provision that was passed and then repealed by the city council.

Let me introduce the persons that are here, to my far right, Ms. Alice Miller, Executive Director of Board of Elections, to her left, my right, Mr. Ken McGhie, General Counsel, Board of Elections, to my left, Board member, Michael Gill, and on the phone is Board member, Dionna Lewis. So we officially have a quorum.

I'd like to open up the meeting.

There was -- we received a letter regarding this hearing not having been given timely notice. And
so we wanted to at least address that initially prior to proceeding. So I'd like for Renee to --

UNIDENTIFIED PARTICIPANT:

Christensen.

MR. BENNETT: -- I'm sorry, Renee Christensen to open up and to address the letter, please.

MS. CHRISTENSEN: Good afternoon, Board members. My name is Renee Christensen, a staff attorney for the Office of the General Counsel for the Board of Elections.

The Office of the General Counsel recommends that the Board continue with today's scheduled hearing concerning the referendum that was filed.

Notice of the Receipt and Intent to Review was submitted to the D.C. Register on November 1st for publication today, November 9th, to comply with Board regulation concerning publication of Notice of Intent, Notice of Receipt and Intent to Review.

Notice of the hearing was placed on
the Board's website last week, Friday, November 2nd. Notice was also directly provided to various public officials and interested parties. Those interested parties have been identified from our record of those who participated in the Initiative 77 process. That particular notice was delivered to parties on November 1st.

MR. BENNETT: Okay. We've received and read the letter. Would the parties from --

UNIDENTIFIED PARTICIPANT: Barrison.

MR. BENNETT: -- yeah, Barrison law firm like to add anything to their, to the letter if they're here? Okay, if they're not here, it's done, everything.

Do the proponents of the initiative have anything to add to the issue around timeliness of the hearing?

MR. SANDLER: Mr. Chairman and members of the Board, I'm Joe Sandler. With me is Erin Tibe. We represent the proposer. Yuen Chung is also here, and the committee, Save Our Votes.

We believe that the notice was in
today's register, that it was, you know, it was, it is timely --

MR. BENNETT: Okay.

MR. SANDLER: -- and that, in any event, the requirements of the statute on administrative procedure have been satisfied through the notice on the Board's website.

MR. BENNETT: Joe, thank you. Do I have any questions from the Board members? Ms. Lewis, do you have any questions?

MS. LEWIS: No questions from me. Thank you.

MR. BENNETT: Mr. Gill?

MR. GILL: No questions.

MR. BENNETT: Okay. Since we have no other questions, the Board believes that timely notice was provided. And we'd like to, we will proceed accordingly. Okay. Mr. McGhie.

MR. MCGHIE: Okay. We are here for a proper subject determination hearing on whether or not the proposed referendum on a law repealing Initiative 77, Minimum Wage Amendment Act of
2018, is a proper subject for a referendum in the
District of Columbia.

I've given out a handout, well, which
determines on how a proper subject matter
determination is made. If you don't have this
handout, you can get one in the front or you can
follow along with that easel.

It says initiative that is the same
ten factors, or the same eight factors that, for
an initiative is for a referendum.

So you can have a referendum in the
District of Columbia on any law that you would
like to suspend or suspend an act of the council
from as long as it does not violate any of these
eight provisions.

I'll just go through it real quick.

This says, as long as it is not contrary to the
terms of the Home Rule Act. It does not seek to
amend the Home Rule Act. It would not
appropriate funds. It would not violate the U.S.
Campaign Finance filing requirements.
It is not in the proper legislative form, whether it would lawfully discriminate, or would not negate or eliminate a budget act.

So that is the only determination that we're making today. We're not talking about anything on the merits of the referendum. It's simply an issue of whether or not any of these provisions apply that would preclude the referendum from going forward. And that would be it.

MR. BENNETT: Okay. Does the proponent of the proposed measure, let's see, I'm sorry, yeah, proponent of the proposed measure have any comments to make?

MR. SANDLER: Mr. Chairman, we agree and fully support the conclusion of the Office of Attorney General that it's a proper subject matter for referendum. Thank you.

MR. BENNETT: Okay. I'm sorry?

MR. MCGHIE: I was going to say, since he mentioned the Office of the Attorney General, I was going to say that the, I would like to have
the comments of the Office of the Attorney General submitted to the record. The Attorney General is, has concluded that it is a proper subject for referendum.

MR. BENNETT: Okay. And I think we have also the recommendation from the Board of Election General Counsel office that also indicates that it's a proper subject.

MR. MCGHIE: Yes, Ms. Christensen prepared that opinion. And would you like to state it now or --

MS. CHRISTENSEN: Yes, in short, the Office of the General Counsel has reviewed the measure and recommends that the Board accept the measure as a proper subject for referendum for the following reasons.

First, the proposer has satisfied the filing requirements specified under law. Five copies of the full text, Summary Statement, and Short Title of the measure were filed with the Board on October 31st. A statement of organization was filed with the Office of
Campaign Finance on October 30, 2018.

Second, the measure does not seek to suspend an act categorically or substantively exclude it from the referendum process. The part of the act which the measure seeks to suspend, mainly the repeal of Initiative 77, is not an emergency act, an act levying taxes, or an act appropriating funds for the general operation budget.

And substantively, Initiative 77 provided for the gradual increase of the minimum wage for tipped employees to match the minimum wage of non-tipped employees by 2026.

The Board previously considered the subject matter of Initiative 77 and determined that it was a proper subject of initiative. That particular administrative order is enumerated Administrative Order 16-005. Specifically, the Board found that Initiative 77 did not appropriate funds.

Further, the measure does not violate or amend the Home Rule Act, authorize
1 discrimination contrary to the District of
2 Columbia Human Rights Act, or negate or limit a
3 budget act of the council.
4
5 MR. MCGHIE: Okay. Would the proposer
6 or the counsel for the proposer like to be heard
7 on whether or not this is a proper subject for
9
10 Is there anybody that would like to be
11 heard opposing the referendum, that it's not a
12 proper subject? Nope.
13
14 MR. BENNETT: Any questions from Board
15 members? Ms. Lewis, on the phone?
16
17 MS. LEWIS: No, thank you.
18
19 MR. BENNETT: Mr. Gill?
20
21 MR. GILL: Nope.
22
23 MR. BENNETT: Okay.
24
25 MR. MCGHIE: Okay. At this time, I
26 would ask the Board to entertain a motion to
27 accept this as a proper subject for referendum in
28 the District of Columbia.
29
30 MR. BENNETT: Can I get a motion, Mr.
31 Gill?
MR. GILL: Motion to, for the Board to accept this as a proper referendum.

MR. BENNETT: Ms. Lewis, can I get a second?

MS. LEWIS: Second.

MR. BENNETT: Okay. It has been properly moved and seconded.

MR. MCGHIE: Okay. With that said, this being found to be a proper subject for a referendum --

MR. BENNETT: And voted upon.

MR. MCGHIE: -- and voted upon --

MR. BENNETT: As we are in unanimous decision on it. Thank you.

MR. MCGHIE: Okay.

MR. BENNETT: For the record.

MR. MCGHIE: All right. Then the next step would be to formulate the language that would appear on the ballot and be on the petition.

We have, my office has prepared a draft Summary Statement, Short Title and Summary
Statement for the Board's consideration. And,

Ms. Christensen, do you have more?

MS. CHRISTENSEN: I do --

MR. MCGHIE: Can you hand some out to the public?

(Off mic comments.)


As I indicated, the law office has prepared a draft for the Board's consideration, which I will read into the record. Our draft proposal reads as follows.

The referendum measure number 008, Short Title, Referendum on Law Repealing Initiative 77, Minimum Wage Amendment Act of 2018.

Summary Statement, a majority of District of Columbia voters approved Initiative 77 on June 19, 2018. Initiative 77 gradually increases the minimum wage for tipped employees from the current rate, $3.89 an hour, to the same minimum wage as non-tipped employees by 2026.
In October 2018, the Council of the District of Columbia enacted a law to repeal Initiative 77. Referendum 008, if approved, would preserve Initiative 77 as originally passed and reject the repeal.

Vote for Referendum 008 to keep Initiative 77 in effect and reject the repeal.
Vote against Reference 008 to permit the repeal to become law and repeal Initiative 77.

That Summary Statement and Short Title comes out to 97 words. The requirement is no more than 100.

Would anybody from the public like to be heard on whether, on the Short Title or the Summary Statement, either for or against?

MR. SANDLER: Thank you. Yes, on behalf of the proposer and the committee, we strongly support the revised language that your office has recommended. It's a formulation that was also endorsed by the Office of Attorney General.

It's much clearer to the voter than,
in fact, what we had proposed. And so we appreciate your revisions and strongly support it, because it makes clear that if you vote for, you're voting for the, to retain the initiative, and if you vote against, you're voting the opposite way.

We hope the Board will adopt this revised formulation of the Summary Statement.

Thank you.

MR. BENNETT: Thank you.

MR. MCGHIE: Is there anybody else that would like to be heard on, I mean, offer any comments or edits to the proposed Summary Statement?

MR. BENNETT: Okay. That's it.

MR. MCGHIE: So I would, if the Board members have any other questions, then I would ask the Board members entertain a motion to adopt the proposed --

MR. BENNETT: I'm sorry.

MR. GILL: May I make a motion that the Board adopt the language that was proposed by the General Counsel?

MR. BENNETT: Ms. Lewis, do you have a second?

MS. LEWIS: Second.

MR. BENNETT: All in favor?

(Chorus of aye.)

MR. BENNETT: Okay. Thank you. It's adopted.

MR. MCGHIE: I don't have anything further except to mention that now that the Board has adopted the summary language, the Board is required to publish it in the D.C. Register and at least one newspaper of general circulation.

Once it is published in a newspaper of general circulation, ten days from the publication date any registered, qualified elector can challenge the language and say it's misleading or for whatever reason. And if they do challenge the language, they have to go to D.C. Superior Court to challenge the formulation.
of the language.

If nobody challenges the language within those ten days, it's deemed to be approved. And the Board will schedule another hearing to give you your petition. Does anybody have any questions?

MR. BENNETT: Hearing none --

MS. LEWIS: No, thank you.

MR. BENNETT: Mr. Gill, do you have any questions, comments?

MR. GILL: Just the comment for the proposers, if this goes through its process, you're going to have the opportunity to gather signatures to put this on the ballot. You are aware of the rules of gathering signatures, correct? Thank you.

MR. BENNETT: Okay. Any other comments or anything? Thank you, Mr. Gill, and most appropriate considering the last few months.

We thank you for your time. Apologize for your having to wait for a few minutes. But we thank you for the opportunity to speak with
you on this. And this meeting is hereby
adjourned. Thank you.

(Whereupon, the above-entitled matter
went off the record at 2:39 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Special Board Meeting

Before: Board of Elections

Date: 11-09-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]
Court Reporter

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