

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

**In Re:
DC Full Minimum Wage
For Tipped Workers Amendment
Act of 2022**

**Administrative Order
No. 21-001**

**Re: Proper Subject Hearing on
Initiative Measure**

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections (“the Board”) on Thursday, August 26, 2021 pursuant to D.C. Official Code § 1-1001.16(b). It involves a finding by the Board that the proposed measure, “the DC Full Minimum Wage for Tipped Workers Amendment Act of 2022” (“the Initiative”) is a proper subject of initiative under D.C. Official Code § 1-1001.16(b)(2). Ryan O’Leary, the proposer of the Initiative, appeared before the Board. Board Chairman D. Michael Bennett and Board Members Michael Gill and Karyn Greenfield presided over the hearing. The Board’s Executive Director, Monica Holman Evans, its General Counsel, Terri D. Stroud, and the Director of the D.C. Office of Campaign Finance (“OCF”), Cecily Collier-Montgomery, were also present. This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

Background

On June 22, 2021, Mr. O’Leary submitted the Initiative in the proper form to the Board

pursuant to D.C. Official Code § 1-1001.16(a).¹ Consistent with D.C. Official Code § 1-1001.16(a)(2)(C), the filing included a copy of the supporting verified statement of contributions that had been filed with OCF on June 21, 2021.

According to its summary statement, the Initiative seeks to amend section 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Code § 32-1003), to gradually increase the tipped minimum wage to the same minimum wage that is required to be paid to non-tipped employees. The Initiative would maintain the existing tipped minimum wage (as determined by the Department of Employment Services (“DOES”)) for 2021.² The Initiative would not apply to District government employees or to “employees employed to perform services provided under contracts” with the District of Columbia government.

The Board conducted an independent review of the Initiative, and concluded that it presents a proper subject for initiative. Specifically, the Initiative does not illegally appropriate funds, or violate either the District of Columbia Home Rule Act (“the District Charter”) or the United States Constitution. It does not authorize or have the effect of authorizing any form of discrimination. It was also filed properly with the necessary accompanying documents.

¹ D.C. Official Code § 1-1001.16(a) provides that:

(a)(1) Any registered qualified elector, or electors of the District of Columbia, who desire to submit a proposed initiative measure to the electors of the District of Columbia, or who desire to order that a referendum be held on any act, or on some part or parts of an act, that has completed the course of the legislative process within the District of Columbia government in accordance with [§ 1-204.04\(e\)](#), shall file with the Board 5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative, or of the act or part thereof on which a referendum is desired.

(2) The proposed initiative measure, or the act or part thereof, on which a referendum is desired shall be accompanied by:

(A) The name and address of the proposer;

(B) An affidavit that the proposer is a registered qualified elector of the District of Columbia; and

(C) A copy of the verified statement of contributions that the proposer has filed with the Director of Campaign Finance.

² See <https://does.dc.gov/service/office-wage-hour-compliance-0>. (last visited August 25, 2021).

Pursuant to D.C. Official Code § 1-1001.16(b)(1A)(A),³ the Board requested advisory opinions regarding the propriety of the Initiative from the Office of the Attorney General for the District of Columbia (“OAG”) and the General Counsel for the Council of the District of Columbia (“the General Counsel for the Council”). The OAG and the General Counsel for the Council both concurred that the Initiative presents a proper subject for initiative.

At its regular Board meeting on August 26, 2021, the Board held a hearing on the question of whether the Initiative presented a proper subject. During the hearing, the Board heard from Mr. O’Leary and three other witnesses. The entirety of the testimony presented was in support of the Initiative. The Board did not receive any oral or written statements in opposition to the Initiative.

Analysis

Pursuant to D.C. Official Code § 1-1001.02(10), “[t]he term ‘initiative’ means the process by which electors of the District of Columbia may propose law (except laws appropriating funds) and present such laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.”⁴ The Board may not accept an initiative measure if it finds that it is not a proper subject of initiative under the terms of Title IV of the District Charter or upon any of the following grounds:⁵

- The verified statement of contributions has not been filed pursuant to D.C. Code §§ 1-1163.07 and 1-1163.09;⁶
- The petition is not in the proper form established in D.C. Code § 1-1001.16(a);

³ The Board received an advisory opinion from the OAG on July 6, 2021. The Board received an advisory opinion from the Office of the General Counsel for the Council of the District of Columbia on July 15, 2021.

⁴ D.C. Official Code § 1-204.101(a).

⁵ D.C. Official Code § 1-1001.16(b)(1).

⁶ The verified statement of contributions consists of the statement of organization required by D.C. Official Code § 1-1163.07 and the report of receipts and expenditures required by D.C. Official Code § 1-1163.09.

- The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2 of the D.C. Code;⁷ or
- The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to D.C. Code § 1-204.46.⁸

A measure is deemed to appropriate funds if it “would intrude upon the discretion of the Council to allocate District government revenues in the budget process[.] This is true whether or not the initiative would raise new revenues.” *Hessey v. District of Columbia Board of Elections and Ethics, et al.*, 601 A.2d 3 at 19 (D.C. 1991). In order for an initiative measure to pass muster with respect to the prohibition on laws appropriating funds; the measure must not: block the expenditure of funds requested or appropriated; directly appropriate funds; require the allocation of revenues to new or existing purposes; establish a special fund; create an entitlement enforceable by private right of action; or directly address and eliminate any revenue source. The key element of a “law appropriating funds,” as noted by the Court in *District of Columbia Board of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 794 (2005), is that it “intrude[s] upon the discretion of the Council to allocate District government revenues in the budget process.”

The exclusion of District employees and contractors prevents the Initiative from being an impermissible “law appropriating funds.” As the OAG noted:

⁷ Chapter 14 of Title 2 of the D.C. Official Code contains the District of Columbia Human Rights Act, the intent of which is to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking. D.C. Official Code § 2-1401.01.

⁸ D.C. Official Code § 1-1001.16(b)(1).

“The carve-out of District employees and contractors prevents this Measure from being an improper subject of initiative because it prevents it from being impermissible law appropriating funds.”⁹

The Board further finds that the Initiative is proper in all other respects. The measure conforms with both the District Charter and U.S. Constitution. Its call to gradually increase the tipped minimum wage to the same minimum wage that is required to be paid to non-tipped employees would not negate or limit a budgetary act of the Council under D.C. Official Code § 1-204.46. The Initiative does not authorize or have the effect of authorizing any form of discrimination. The Initiative was submitted in the proper form and its proposer timely filed the supporting verified statement of contributions.

Conclusion

In conclusion, the Board finds that the “DC Full Minimum Wage for Tipped Workers Amendment Act of 2022” presents a proper subject for initiative in accordance with District law.

Accordingly, it is hereby:

ORDERED that the Initiative, the “DC Full Minimum Wage for Tipped Workers Amendment Act of 2022” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2).

The Board issues this written order today, which is consistent with its oral ruling rendered on August 26, 2021.

Date: August 31, 2021



D. Michael Bennett
Chairman

⁹ Opinion of the Attorney General for the District of Columbia, Karl A. Racine, Esq. (July 6, 2021) p. 2