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June 6, 2024

Terri D. Stroud  
General Counsel  
District of Columbia Board of Elections  
1015 Half Street, S.E., Suite 750  
Washington, D.C. 20003

Re: Proposed Initiative, the “DC Cash Payment Reparations Act”

Dear Ms. Stroud:

D.C. Official Code § 1-1001.16(b)(1A) requires that the General Counsel of the Council of the District of Columbia provide an advisory opinion to the District of Columbia Board of Elections (“Board”) as to whether proposed initiatives are a proper subject of initiative. I have reviewed the “DC Cash Payment Reparations Act” (“Proposed Initiative”) for compliance with the requirements of District law, and based on my review, it is my opinion that the Proposed Initiative is a proper subject of initiative.

**I. Applicable Law**

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.”<sup>1</sup> The Board may not accept a proposed initiative if it finds that the measure is not a proper subject of initiative under the terms of Title IV of the District of Columbia Home Rule Act or upon any of the following grounds:

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

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<sup>1</sup> D.C. Official Code § 1-204.101(a) (emphasis added).

- The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2 of the D.C. Official Code; or
- The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to D.C. Official Code § 1-204.46.<sup>2</sup>

The District of Columbia Court of Appeals (“Court”) has interpreted the prohibition on the use of the initiative process to propose “laws appropriating funds” very broadly, holding that it “extend[s] . . . to the full measure of the Council’s role in the District’s budget process . . .”<sup>3</sup> Accordingly, the Court has deemed unlawful any initiative that (1) blocks the expenditure of funds requested or appropriated,<sup>4</sup> (2) directly appropriates funds,<sup>5</sup> (3) requires the allocation of revenues to new or existing purposes,<sup>6</sup> (4) establishes a special fund,<sup>7</sup> (5) creates an entitlement, enforceable by private right of action,<sup>8</sup> or (6) directly addresses and eliminates a source of revenue.<sup>9</sup>

## II. The Proposed Initiative

The Proposed Initiative would require the Council of the District of Columbia (“Council”) to conduct a study “showing how a one-time payment of 300,000 to every Black household in DC, over the next 15 years would benefit Black DC residents.” The Proposed Initiative would also require the Council to hold a public hearing regarding the study, at which the public could testify.

## III. The Proposed Initiative is a Proper Subject of Initiative

While I continue to believe that initiatives that would have a cost to implement, such as the Proposed Initiative, are impermissible “laws appropriating funds”, under the Board’s recent decisions, the Proposed Initiative would be a proper subject of initiative if it contained a

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<sup>2</sup> D.C. Official Code § 1-1001.16(b)(1).

<sup>3</sup> *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (quoting *Hessey v. District of Columbia Bd. of Elections & Ethics* (“*Hessey*”), 601 A.2d 3, 20 (D.C. 1991)).

<sup>4</sup> *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 913-14 (D.C. 1981).

<sup>5</sup> *District of Columbia Bd. of Elections & Ethics v. Jones* (“*Jones*”), 481 A.2d 456, 460 (D.C. 1984).

<sup>6</sup> *Hessey*, 601 A.2d at 19-20.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 20 n. 34.

<sup>9</sup> *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d at 677.

subject-to-appropriations clause, such that the Proposed Initiative would not apply unless and until the Council elected to fund it.

In addition, the Proposed Initiative conforms with both the District Charter and the U.S. Constitution. The Proposed Initiative does not authorize or have the effect of authorizing any form of discrimination. While the actual payment of reparations as described in the Proposed Initiative might present legal issues, conducting the study and holding the hearing required by the Proposed Initiative would not.

The Court has said that “absent express or implied limitation, the power of the electorate to act by initiative is coextensive with the power of the legislature to adopt legislative measures.”<sup>10</sup> In the instant case, no such express or implied limitation exists. Accordingly, the Proposed Initiative is a proper subject of initiative.

I am available if you have any questions.

Sincerely,

*Nicole L. Streeter*

Nicole L. Streeter  
General Counsel, Council of the District of Columbia

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<sup>10</sup> *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 99 (D.C. 2010) (quoting *Convention Center Referendum Committee*, 441 A.2d at 897) (emphasis omitted).