

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

**In Re:  
The New Modern Day  
Criminal Justice Cannabis  
Reform Act of 2020**

**Administrative Order  
#20-028**

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

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the Board of Elections (“the Board”) on Wednesday, September 2, 2020, pursuant to D.C. Official Code §1-1001.16(b). It involves a finding by the Board that the proposed initiative, “The New Modern Day Criminal Justice Cannabis Reform Act of 2020” (“the Initiative”) is not a proper subject of initiative under D.C. Official Code §1-1001.16(b)(2) because it constitutes an impermissible law appropriating funds. The proposer of the Initiative, Ms. Dawn Lee-Carty, appeared before the Board *pro se*. Chairman Michael D. Bennett and Board Members Michael Gill and Karyn Greenfield presided over the hearing. Pursuant to Title 3 D.C. Mun. Regs. (D.C.M.R.) §§ 103.2(e) and 419.1(i), the Board adjourned the hearing and entered into Executive Session to engage in deliberations on the Initiative. This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

**Background**

On July 14, 2020, Ms. Lee-Carty submitted the Initiative in the proper form pursuant to D.C. Official Code §1-1001.16(a).<sup>1</sup> On the previous day, Ms. Lee-Carty submitted a verified statement of contributions to the D.C. Office of Campaign Finance (“OCF”) in support of the Initiative pursuant to D.C. Official Code §1-1001.16(b)(1)(A). According to its summary statement, the Initiative seeks to “(1) terminate all investigations and prosecutions regarding cannabis, as it applies to recreational use, legal

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<sup>1</sup> The initial version of the Initiative was initially filed with the Board on June 23, 2020, but was later withdrawn. The current version was filed on July 14, 2020. The Initiative was thereafter published in the D.C. Register on July 31, 2020.

cultivation, sales, and consumption; (2) make unlawful search, seizure, arrest of person or vehicle, pertaining to cannabis, prohibit arrests, searches, seizures of citizens, property, based on reasonable suspicion, probable cause indicating the presence of cannabis; (3) retroactively apply to persons currently arrested, previously convicted for possession, sale, purchase of cannabis be expunged; and (4) create an Execution Board that will propose amendments in existing law and rules for the execution of this initiative.”<sup>2</sup>

In response to a request from the Board, the Office of the Attorney General (“OAG”) submitted a written opinion to the Board on the propriety of the Initiative under D.C. Official Code §1-1001.16(b)(2). The OAG opinion concluded that the Initiative does not present a proper subject for initiative because “it is an impermissible ‘law[] appropriating funds.’”<sup>3</sup> On September 2, 2020, the Board convened a special board meeting, during which it heard testimony from Ms. Lee-Carty and numerous other witnesses, all of whom spoke in support of the Initiative but not to the question of whether it presents a proper subject. The Board also heard a summary of the OAG opinion, as well as the recommendation from its Office of the General Counsel that the Initiative be rejected on the grounds that it does not present a proper subject because it amounts to a law appropriating funds. Other than the OAG opinion, the Board did not receive any other oral or written testimony 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 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.” 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 of Columbia Home Rule Act (“the District Charter”) or upon any of the following grounds:<sup>4</sup>

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<sup>2</sup> See proposed summary statement “The Modern Day Criminal Justice Cannabis Reform Act of 2020.”

<sup>3</sup> See generally Racine Opinion Letter. p. 1

<sup>4</sup> See D.C. Official Code §1-1001.16 (b)(1).

- (A) The verified statement of contributions has not been filed pursuant to §§ 1- 1163.07 and 1-1163.09;<sup>5</sup>
- (B) The petition is not in the proper form established in subsection (a) of this section;<sup>6</sup>
- (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2;<sup>7</sup>
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.<sup>8</sup>

The Initiative was submitted in the proper form, and the proponent timely filed the verified statement of contributions. However, the measure is not a proper subject for initiative because it would appropriate funds and, as such, is inconsistent with the terms of the District Charter.

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*, 601 A.2d 3 at 19 (D.C. 1991) (“*Hessey*”). 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. *See District of Columbia Board of Elections and Ethics and District of Columbia Campaign for Treatment v. District of Columbia*, 866 A.2d 788, 794 (D.C. 2005) (“*Campaign Treatment*”).

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<sup>5</sup> 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.

<sup>6</sup> Subsection (a) of D.C. Official Code §1-1001.16 provides that initiative measure proposers must 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[.]”

<sup>7</sup> 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 individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex (including pregnancy, childbirth, related medical conditions, breastfeeding, or reproductive health decisions), age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, political affiliation, disability, matriculation, familial status, genetic information, source of income, place of residence or business, status as a victim of an intrafamily offense, credit information, or status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking. D.C. Official Code §2-1401.

<sup>8</sup> D.C. Official Code §1-204.46 deals with budgetary acts of the D.C. Council.

The Initiative runs afoul of the proscriptions cited in *Hessey* and *Campaign Treatment*. By establishing that “[a]ny resources currently in use for the purposes of investigating and prosecuting cannabis and Cannabidiol (CBD) shall instantly be diverted towards violent crimes and murders,”<sup>9</sup> that “[d]ogs previously trained to detect cannabis will be retrained to detect explosives, weapons of mass destruction, and firearms so as to protect our schools, malls, mass gatherings, from foreign and domestic foreign terrorism,”<sup>10</sup> and that, “[a]ny past or recent seizure, freezing, and forfeiture of property, in furtherance of the investigation, prosecution, or judgment shall immediately be restored to the rightful owner,”<sup>11</sup> the Initiative would interfere with the “management of the District’s financial affairs.”<sup>12</sup> It requires the allocation of revenues to new or existing purposes, which is inconsistent with the prohibition on laws appropriating funds. Notwithstanding that the Initiative could generate new revenues, it may not dictate how such revenue will be allocated.

### Conclusion

The Board agrees with the OAG opinion’s conclusion that the Initiative is a law appropriating funds because it “requires that funds be spent on new purposes, and constrains the spending of existing revenues[.]” Because it is a law appropriating funds, it does not present a proper subject and must be rejected. Accordingly, it is hereby

**ORDERED** that the proposed initiative, the “The New Modern Day Criminal Justice Cannabis Reform Act of 2020” is **RECEIVED BUT NOT ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2).

Date: December 2, 2020



D. Michael Bennett  
Chairman

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<sup>9</sup> See Initiative, Section 3.

<sup>10</sup> Initiative, Section 3(c).

<sup>11</sup> Initiative, Section 7(b).

<sup>12</sup> *District of Columbia Board of Elections and Ethics v. Jones*, 481 A.2d 456, 460 (D.C. 1984).