

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

In Re: “Entheogenic Plant and Fungus Policy Act of 2020”
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Administrative Hearing  
No. 20-001

Re: Approval of Proposed  
Initiative Measure

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the Board of Elections (“the Board”) on Wednesday, February 5, 2020, pursuant to D.C. Official Code § 1-1001.16(b). It involves a finding by the Board that the proposed initiative, the “Entheogenic Plant and Fungus Policy Act of 2020” (“the EPFPA”), is a proper subject of initiative under D.C. Official Code § 1-1001.16(b)(2). Joseph Sandler, Esq. appeared before the Board as counsel for Melissa Lavasani, the proposer of the initiative. Board Chairman D. Michael Bennett and Board Member Karyn Greenfield presided over the hearing. The Board’s Executive Director, Alice Miller, its General Counsel, Terri Stroud, and the Director of Campaign Finance, Cecily Collier-Montgomery, were also present. This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

**Statement of Facts**

On December 20, 2019, Mrs. Lavasani filed the EPFPA pursuant to D.C. Official Code §1-1001.16(a).<sup>1</sup> The proposed initiative, in brief, “would declare as the policy of the District of

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<sup>1</sup> On December 27, 2019, Ms. Lavasani submitted a statement of organization for her political committee in support of the initiative and her verified statement of contributions to the D.C. Office of Campaign Finance (“OCF”) pursuant to D.C. Official Code §1-1001.16(b)(1)(A).

Columbia that the Metropolitan Police Department make investigation and arrest of adults for non-commercial planting, cultivating, purchasing, transporting, distributing, possessing or engaging in practices with entheogenic plants and fungi among its lowest law enforcement priorities.”<sup>2</sup> The proposed measure contains three sections: Section 1 lists findings and declares the policy of the EPFPA; Section 2 amends the D.C. Official Code to include a definition of “entheogenic plants and fungi,” and states that the Metropolitan Police Department shall make entheogenic plant and fungi-related investigations and arrests of persons 18 years or older their lowest priority; and Section 3 calls upon the Attorney General of the District of Columbia (“the Attorney General”) and the United States Attorney for the District of Columbia (“the U.S. Attorney”) to “cease prosecution of residents of the District of Columbia” for the activities delineated in the summary statement.

On January 10, 2020, the Board’s General Counsel requested that the Office of Documents and Administrative Issuances (“ODAI”) publish in the D.C. Register a “Notice of Public Hearing: Receipt and Intent to Review” (“the Notice”) with respect to the EPFPA. The Notice was published in the D.C. Register on January 24, 2020. *See* 67 D.C. Reg. 4 (2020). Also on January 10, 2020, the General Counsel sent the Notice to the Attorney General and the General Counsel for the Council of the District of Columbia (“the Council”) inviting them to comment on the issue of whether the EPFPA presented a proper subject for initiative.

On January 31, 2020, the Attorney General submitted comments to the Board stating that the EPFPA is likely a proper subject for initiative. The Attorney General noted that the right of initiative is to be liberally construed,<sup>3</sup> and that while the EPFPA is designed to limit enforcement

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<sup>2</sup> *See* EPFPA proposed summary statement.

<sup>3</sup> *Convention Center Referendum Cmte., et al. v. Bd. of Elections and Ethics (“Convention Center II”)*, 441 A.2d 889, 913 (D.C. 1981).

with respect to Schedule I substances referred to as “entheogenic plants and fungi,” the proposed measure does not prohibit enforcement.

The Board received no written or oral testimony in opposition to EPFPA. In addition to the written comments received regarding the propriety of the measure from Mr. Sandler and the Attorney General, the Board received written comments in support of the merits of the measure from: Mrs. Lavasani; the Entheogenic Research, Integration, and Education (“ERIE”) Board; Marcus Capone, US Navy Seal (Ret.), on behalf of Veterans Exploring Treatment Solutions, Inc.; Queen Adesuyi, on behalf of the Drug Policy Alliance; Major Neil Franklin (Ret.), on behalf of the Law Enforcement Action Partnership; Jesse Gould, on behalf of Heroic Hearts Project, Inc.; Wyly Gray, Executive Director of Veterans of War; Daniel Carcillo, Founder of Chapter 5 Foundation; Evan A. Parke, Esq.; and Mikhail Kogan, MD, Medical Director of GW Center for Integrative Medicine. During the hearing, the Board heard testimony regarding the propriety of the measure from Mr. Sandler, and testimony in support of the merits of the measure from Mrs. Lavasani, Ms. Geneva Hogan, and Messrs. Gould, Gray, Carcillo, Parke, and Matthew Faulk.

### **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 or upon any of the following grounds:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;<sup>4</sup>

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<sup>4</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.

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

D.C. Official Code §1-1001.16 (b)(1).

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) (“*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. Finally, the mandatory provisions of the initiative may not be precluded by any lack of funding. *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> 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>6</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>7</sup> D.C. Official Code §1-204.46 deals with budgetary acts of the D.C. Council.

The EFPFA does not run afoul of any of the proscriptions cited in *Campaign Treatment*.

As the Attorney General opined:

The Measure does not require the allocation of revenues or make any other affirmative effort to appropriate or block the appropriation of funds. Nor does it intrude upon the discretion of the Council to allocate revenues in the budget process. The proposed initiative does not create any new office, new funds, or impose new duties on the government. Any impact upon the allocation of revenues would be speculative.<sup>8</sup>

Accordingly, the Board concludes that the EFPFA does not appropriate funds.

The Board further finds that the proposed measure is proper in all other respects. It conforms with both the District Charter and the U.S. Constitution. Its call for the MPD to make the enforcement of laws against entheogenic plants and fungi among its lowest priorities would not negate or limit a budgetary act of the Council under D.C. Official Code §1-204.46. It does not authorize or have the effect of authorizing any form of discrimination. It 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 EFPFA presents a proper subject for initiative in accordance with District law.

Accordingly, it is hereby:

**ORDERED** that the proposed initiative, the “Entheogenic Plant and Fungus Policy Act of 2020” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2).

Date: February 14, 2020



D. Michael Bennett  
Chairman

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<sup>8</sup> Opinion of the Attorney General for the District of Columbia, Karl A. Racine, Esq. (Jan. 31, 2020) p. 4.