

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

In Re:

“University Incubator  
Initiative.”

Administrative Hearing  
No. 18-012

Re: Rejection of Proposed  
Initiative Measure

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the Board of Elections (“the Board”) on Wednesday, July 11, 2018, pursuant to D.C. Official Code § 1-1001.16(b)(1). It involves a finding by the Board that the proposed initiative, “University Incubator Initiative,” (the “UII Act”) is not a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1). The Board’s General Counsel provided a summation of the Attorney General’s opinion that the UII Act is an improper subject for initiative. Staff Attorney Rudolph McGann provided testimony on behalf of the Board’s Office of the General Counsel opining the measure as drafted is entirely too vague to make a determination regarding its true aim or efficacy absent private funding. The proposer of the initiative, Mr. Ameer Flippin, appeared before the Board *pro se*. Chairman Michael Bennett and Board Members Dionna Lewis and Michael Gill presided over the hearing. Executive Director, Alice Miller, General Counsel Kenneth McGhie, and the Director of the Office of Campaign Finance, Cecily Collier-Montgomery were also present.

## Statement of the Facts

On May 1, 2018, Ameer Flippin filed the UII Act initiative pursuant to D.C. Official Code § 1-1001.16(a). In summary, the UII “will create a *Universal Inclusion Startup Incubator* connected to all colleges and universities creating and requiring a startup environment at graduation.”<sup>1</sup> The measure specifically eschews public funding and relies upon private funding to initiate the program contemplated within the measure.

On May 8, 2018, the Board’s General Counsel requested that the Office of Documents and Administrative Issuances (“ODAI”) publish in the D.C. Register a “Notice of a Public Hearing: Receipt and Intent to Review” (“the Notice”) with respect to the Initiative. The Notice was published in the D.C. Register on May 25, 2018. *See* 65 D.C. Reg. 21 (2018). On May 8, 2018, the General Counsel’s office also sent the Notice to the Attorney General for the District of Columbia (“the Attorney General”), the Office of the Mayor’s Legal Counsel, and the General Counsel for the Council of the District of Columbia (“the Council”) inviting them to comment on the issue of whether the Initiative presented a proper subject.

During the Proper Subject Hearing convened on July 11, 2018, there were no witnesses in opposition to the UII Act. The Board’s General Counsel summarized the Attorney General’s submitted comments to the Board dated July 5, 2018, which asserted “the proposal does not set out a proper subject of initiative because it is not legislative.”<sup>2</sup> The proponent of the measure, Mr. Flippin, explained this was a companion measure intended to work in conjunction with his recently approved measure entitled “Money Supply Increase (+\$3,000) Initiative.” His prior initiative

---

<sup>1</sup> *See* Proposed Summary Statement UII.

<sup>2</sup> *See* Racine Opinion Letter. p.2 (Jul. 5, 2018).

“seeks to increase the Maximum Asset Levels by \$3,000.00 to allow recipients of Social Services to participate in Equity Offerings associated with the Jumpstart Our Business Startups Act, 112 Pub. L. 106, 126 Stat. 306.”<sup>3</sup> The UII Act creates “Universal Inclusion Start-up Incubators” in connection with local colleges and universities. Mr. Flippin asserted that the UII Act would not appropriate funds nor negate or limit a current Budget Request Act because funding would come from private investment.

### **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>
- (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

---

<sup>3</sup> Summary Statement of the Money Supply Increase (+\$3,000) Initiative.

<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.

<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, age, marital

(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). The proponent submitted the UII Act in the proper form, and he filed the verified statement of contributions. Moreover, the measure does not authorize or have the effect of authorizing any form of discrimination nor does the measure negate or limit a budget request act. However, The UII Act is very scant on specifics, and the measure is silent as to what the incubator program is seeking to accomplish. It is impossible to actually ascertain whether this measure is legislative because, as the Attorney General opined, “The *legislative text* in the proposal simply states a question and restates a definition in federal law. If [the UII Act] was approved by the electorate, it would have no effect whatsoever.”<sup>8</sup>

The right of initiative is to be construed liberally, and “only those limitations expressed in the law or clear[ly] and compelling[ly] implied” are to be imposed upon that right.<sup>9</sup> “Absent expressed or implied limitation, the power of the electorate to act by initiative is coextensive with the power of the [Council] to adopt legislative measures.”<sup>10</sup> However, each initiative measure must propose a law and not merely be administrative in nature. While policy considerations submitted to the electorate in the form of an initiative were sanctioned in the case *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889,

---

status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business.

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.

<sup>8</sup> See Racine Opinion Letter. p.2 (Jul. 5, 2018).

<sup>9</sup> *Convention Center Referendum Committee v. DCBOEE*, 441 A.2d 889, 913 (D.C. 1981)(“*Convention Center II*”).

<sup>10</sup> *Convention Center II* at 897.

909 (D.C. 1981). “This jurisdiction [] has recognized the ‘policy’ basis of the distinction between legislative and administrative powers,” *Convention Center* distinguished measures that are legislative from administrative in form. While legislative measures are proper subjects, administrative measures have been found to be improper subjects for initiatives. “The test of ‘legislative’ and ‘administrative’ matters that other jurisdictions most frequently have employed is whether the proposition is one to make new law or to execute law already in existence.” *Id.* at 908. The proposed legislative text in the UII Act poses a question “[s]hould a revision and/or amendment. . . be approved to include a Universal Inclusion Startup incubator at the college and university level?” As aforementioned, even if the electorate were to vote in the affirmative, the proposed measure would have no effect.

In conclusion, the UII Act does not appropriate funds nor negate or limit a Budget Act. However, it is not legislative in nature because the measure does not accomplish anything by its terms. For the foregoing reasons, it is hereby:

**ORDERED** that the proposed initiative, the “University Incubator Initiative” is **“RECEIVED BUT NOT ACCEPTED”** pursuant to D.C. Code § 1-1001.16(b)(2).

Date August 1, 2018



D. Michael Bennett  
Chairman,  
Board of Elections