

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

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In Re:  
“United States of America  
Recovery Act for the  
District of Columbia”

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Administrative Hearing  
No. 20-008

Re: Rejection of Proposed  
Initiative Measure

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the Board of Elections (“the Board”) on Wednesday, May 6, 2020, pursuant to D.C. Official Code §1-1001.16(b). It involves a finding by the Board that the proposed initiative, the “United States of America Recovery Act for the District of Columbia” (“the USARADC”), is not a proper subject of initiative under §1-1001.16(b)(2) because the measure exceeds the Council’s legislative authority, provides benefits based upon race, and constitutes a law appropriating funds. The proposer of the initiative, Mr. John Cheeks, appeared before the Board *pro se*. Chairman Michael D. Bennett and Board Members Michael Gill and Karyn Greenfield presided over the hearing. Executive Director, Alice Miller, General Counsel, Terri Stroud, and Director of Campaign Finance, Cecily Collier-Montgomery were also present. 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 USARADC. On May 28, 2020, the Board reconvened to vote on the measure in a public hearing. This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

## Statement of Facts

On February 24, 2020, John Cheeks filed the USARADC pursuant to D.C. Official Code §1-1001.16(a).<sup>1</sup> The proposed initiative seeks to enforce repayment of unpaid wages or denied benefits for the living D.C. descendants of the Transatlantic Slave Trade in the United States of America. The measure precludes payment for injuries by the District of Columbia residents or government, but defines the group of actors who are ostensibly responsible for the payment of injuries as “payers.” This group includes: “Religious Organizations, International Countries, Agriculture, Textile, Manufacturing, Retail Building Material Industries, Financial, Academic Institutions, Utility Companies and States who participated or benefited from enslaving Afro Descendant people in the United States of America.”<sup>2</sup>

The USARADC is composed of two sections. Title I provides the following: a list of definitions of key terms used; a list of supporting injuries detailing the atrocities of the Transatlantic Slave Trade; the DNA eligibility requirements for primary users of the USARADC; the identification criteria for responsible payers; new public disclosure requirements for public officials detailing any associations to secret racial societies or lineage to confederate militia service members; a schedule of fines for violations; an establishment of a fund to distribute collected proceeds to beneficiaries; a fiscal impact statement estimating no government cost to enact the USARADC; an establishment of a fund to distribute the proceeds collected for primary users; and a sunset provision date of January 08, 2272.

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<sup>1</sup> On February 24, 2020, Mr. Cheeks also submitted a statement of organization for his political committee in support of the initiative and his 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).

<sup>2</sup> See USARADC proposed enactment preface.

Title II provides for the following: DNA identification of matching individuals throughout the United States of America to grief and/or trauma counseling of forced separation; removal of public fixtures commemorating the figures known for treason against the United States of America (Civil War) and enslaving human beings; a definition of those individuals and entities that are not classified as payers; enlistment of various federal government agencies as partners to enforce and assist with collections from payers; the deposit of proceeds from payers into a private nonprofit corporation known as the American Recovery Trust Corporation; identification of eligible applicants who refuse any financial restitution or benefits; new causes of action for both the local and federal court system to adjudicate redress sought by beneficiaries under the measure; independent legal representation for beneficiaries seeking redress; restitution available to primary users; distinguishable benefits available to the three types of qualifying citizens including but not limited to Tax Immunity or Exemption; termination of rights of users for certain criminal and civil offenses; a sunset provision date of January 8, 2272; and an effective date following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

On February 24, 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 USARADC. The Notice was published in the D.C. Register on April 17, 2020. *See* 67 D.C. Reg. 16 (2020). Also on February 24, 2020, the General Counsel's Office 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 USARADC presented a proper subject for initiative.

While neither the Attorney General nor the General Counsel for the Council submitted an opinion on the current version of the USARADC, the Attorney General did submit an opinion on the propriety of an earlier iteration of the USARADC, which does not differ materially from the current version. The Attorney General submitted comments to the Board stating that the USARADC is not a proper subject for initiative. “After careful review, we conclude that the Measure is not a proper subject of initiative, for at least two reasons: (1) it exceeds the Council’s authority, and (2) it is an impermissible law appropriating funds.”<sup>3</sup> The Attorney General noted the USARADC violates section 602(a) of the Home Rule Act, which precludes the Council (and, therefore, the public by initiative) from enacting any act that is not restricted in its application in or to the District, under D.C. Code § 1-206.02(a)(3). The Attorney General additionally noted the USARADC is an impermissible law appropriating funds because it requires the allocation of District revenues to new purposes.

The Board received no other written testimony or public comments in opposition to USARADC; however, there was an outpouring of support for the proposed measure in the form of public testimony during the hearing. The Board received written comments from the Office of the Attorney General and Mark A. Johnson Sr., Chairman of the U.S. Adjustment and Recovery Act of Prince George’s County, Md. During the hearing, the Board heard testimony in support of the USARADC from Mr. John Cheeks, the proposer of the measure; James Shabazz, representing the Organized Vendors for Economic Cooperation (OVEC); William Jordan; Reginald Black, owner and CEO of Rahlowtistry; Dr. Roussan Etienne Jr., Vice President of the

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<sup>3</sup> Opinion of the District of Columbia Attorney General, Karl A. Racine, Esq. (Mar. 27, 2020) p. 1.

United States Citizens Recovery Initiative Alliance; Francelle Neal, member of One Million Conscious and Conscientious Black Voters and the National African American Association; Mark Anthony Johnson, Sr.; Minister Fredrick Norman; Reverend Cynthia Ashley; Raynelle Hall; Virgil Young, Chief Executive Officer of the True Business Intelligence Corporation; and Michael Sindram.

### **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
- (D) The measure presented would negate or limit an act of the Council of the

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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.

<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 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.

District of Columbia pursuant to § 1-204.46.<sup>7</sup>

D.C. Official Code §1-1001.16 (b)(1). The USARADC 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 seeks to enact legislation that is not restricted in its application in or to the District, limits beneficiaries on the basis of race, imposes speech restrictions on private property, and requires allocation of District revenues to new purposes.

**A. The Proposed Measure Seeks to Enact Legislation That the Council Could Not Enact**

With the passage of the Initiative, Referendum, and Recall Charter Amendments Act in 1978 (“the Charter Amendments Act”),<sup>8</sup> electors in the District of Columbia were granted the “power of direct legislation”,<sup>9</sup> putting them on a par with the District’s legislative body, the Council of the District of Columbia (“the Council”).<sup>10</sup> As a result of the Charter Amendments Act, any registered qualified elector may use the initiative process to propose a law by presenting it to the electorate for its approval or disapproval. Upon voter approval, a proposed initiative measure will become “an act of the Council,” and, if it survives the Congressional review period to which acts of the Council are subjected, a law in the District of Columbia.<sup>11</sup> However, initiatives may not enact legislation that the Council cannot enact. For example, the Council

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<sup>7</sup> D.C. Official Code §1-204.46 deals with budgetary acts of the D.C. Council.

<sup>8</sup> D.C. Law 2-46, 24 D.C. Reg. 199 (1978) (codified as amended at D.C. Official Code § 1-204.101 et seq.).

<sup>9</sup> *Marijuana Policy Project v. United States*, 304 F.3d 82 (D.C. Cir. 2002) (“Marijuana Policy Project”).

<sup>10</sup> See *Convention Ctr. Comm. v. D.C. Board of Elections and Ethics*, 441 A.2d 889, 897 (D.C. 1981)(“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>11</sup> See D.C. Official Code §§1-204.105, 1-206.02(c).

cannot enact any act which is not restricted in its application exclusively in or to the District.<sup>12</sup> The Council also cannot enact any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts).<sup>13</sup> Additionally the Council cannot enact any act or regulation relating to the duties or powers of the United States Attorney.<sup>14</sup>

The Board finds that the USARADC contains provisions that violate each of these legislative prohibitions. As the Attorney General noted in his opinion:

[The USARADC] regulates companies and religious organizations that operate outside the District, including those operating in foreign countries. It regulates federal agencies by directing them to “enforce and assist collection” of claims. And it regulates the composition of the courts (one component of Title 11) by providing that, contrary to Title 11, a judge who refuses to identify his or her heritage shall be “removed from the bench.”<sup>15</sup>

The USARADC identifies foreign insurance companies and religious institutions as “responsible payors” for the fund established for restitution.<sup>16</sup> Indeed, one of the witnesses during the hearing, Mr. William Jordan, testified regarding the merits of seeking recompense from foreign responsible payors as opposed to District residents. “The ingenuity of this measure is that it seeks to make restitution without direct taxpayer payments, but from the institutions and international countries which participated and benefitted from our system of slavery.”<sup>17</sup> The D.C. Code prohibits the Council, and by extension the electorate, from legislating on matters

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<sup>12</sup> See D.C. Official Code §1-206.02(a)(3).

<sup>13</sup> See D.C. Official Code §1-206.02(a)(4).

<sup>14</sup> See D.C. Official Code §1-206.02(a)(3).

<sup>15</sup> Opinion of the District of Columbia Attorney General, Karl A. Racine, Esq. (Mar. 27, 2020) p. 2.

<sup>16</sup> See USARADC Title I. § 5(h) and (j)

<sup>17</sup> Board Hearing Transcript May 5, 2020 Regular Board Meeting p. 73.

outside of the District. This provision is inconsistent with that prohibition.

Title II, § 3(c) of the USARADC enlists federal government agencies for enforcement of the act. Those agencies include:

Department of Justice (DOJ), Department of Commerce (DOC), Department of Defense (DOD), Federal Bureau of Investigations (FBI), Internal Revenue Service (IRS), Department of Education (DOE) [federal or local], National Security Administration (NSA), Defense Intelligence Agency, the U.S. Department of State, [and] U.S. Department of Interior.<sup>18</sup>

The mandatory language in this section regulates the aforementioned federal agencies, requiring them to enforce and assist with the collection of claims arising under the USARADC. Such power is not available to the Council. Accordingly, it is not available to the public through the initiative process.

Pursuant to D.C. Official Code §11-1526, the District of Columbia has specific requirements and procedures for the removal of judges. The USARADC attempts to add a cause for removal. Title I §6(d) of the USARADC provides that judges on the Superior Court and the D.C. Court of Appeals may be removed for failing to disclose their heritage “relating to secret racial societies, religious affiliation of slave ownership or labor, lineage to confederate militia service members, etc.” Pursuant to D.C. Code § 1-206.02(a)(4), the Council cannot change the organization and jurisdiction of the District of Columbia Courts. Similarly, the District’s electorate may not so legislate.

The USARADC also has sweeping censorship provisions that extend to private property, with attendant fines for failure to observe the restrictions in violation of the First Amendment to the United States Constitution. Title I §7(l) lists sanctions for “[p]ublic fixtures, names or statues temporary or permanent located on federal or private land or District property, outdoor fixtures in plain view of residents or guests at public visual site of any fixture or statue” that display

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<sup>18</sup> USARADC Title II §3(c).

enumerated messages deemed racially offensive. As the Attorney General noted, “[t]he government ‘may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable,’ nor may it attach a fee specifically to speech it disfavors.”<sup>19</sup> The provisions of the USARADC that impose financial sanctions for displaying certain names or statues on private land are plainly inconsistent with the Constitution and its guarantee of free speech, and thus render the USARADC an improper subject for initiative.

**B. The Proposed Measure Discriminates on the Basis of Race in Violation of the Human Rights Act**

Another clear restriction on the right of initiative is that proposed measures may not be used to authorize discrimination prohibited under the Human Rights Act (HRA).<sup>20</sup> Enacted in 1977, the stated purpose of the HRA 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 status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business.<sup>21</sup> The HRA prevents discrimination in public benefits, among other areas. Pursuant to D.C. Code § 2-1402.67, “All permits, licenses, franchises, *benefits*, exemptions, or advantages issued by or on behalf of the government of the District of Columbia, shall specifically require and be conditioned upon full compliance with the provisions of this chapter.” (emphasis added).

Due to the nature of the USARADC’s purpose of restitution for District residents

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<sup>19</sup> Opinion of the District of Columbia Attorney General, Karl A. Racine, Esq. (Mar. 27, 2020) p. 3. (citations omitted).

<sup>20</sup> See D.C. Official Code § 1-1001.16 (b)(1)(C); D.C. Official Code § 2-1401.01 et seq.

<sup>21</sup> D.C. Official Code § 2-1401.01.

descended from the Transatlantic Slave Trade, beneficiaries are determined by DNA testing. Mandatory DNA qualifications require “35% African bloodline lineage with ancestry to enslavement in the country of origin.”<sup>22</sup> Non-eligible spouses can be of any “ethnic group, domestic or international, for use of benefits in any category of Users while marriage is fully granted, as without a sanctioned separation or divorce of marriage by District of Columbia Superior Court.”<sup>23</sup> These provisions contemplate differing levels of benefits based upon racial DNA percentages. Moreover, non-eligible spouses share in benefits they would not be entitled to except for their marriage to an eligible beneficiary as determined by their racial DNA makeup. While the Board understands that identification of those directly affected by the horrors of slavery is the intrinsic purpose for the measure, the Board cannot authorize the acceptance of a measure that conflicts with D.C. Code § 2-1402.67. Despite the altruistic intentions of USARADC, not even the Council can enact legislation that bestows benefits on District citizens based upon their racial DNA makeup.

### **C. The Proposed Measure Impermissibly Appropriates Funds**

The Board is foremost concerned with the allocation and control of revenues when determining whether a proposed measure is a proper subject; “[t]his means that a measure which would intrude upon the discretion of the Council to allocate District government revenues in the budget process is not a proper subject for initiative. This is true whether or not the initiatives would raise new revenues.” *Hessey v. District of Columbia Board of Elections and Ethics, et al.*, 601 A.2d 3, 19 (D.C. 1991). For an initiative measure to pass muster, the measure may not block the expenditure of funds requested or appropriated; it may not directly appropriate funds; it may not require the allocation of revenues to new or existing purposes; it may not establish a special

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<sup>22</sup> USARADC Title I §3.

<sup>23</sup> USARADDC Title I §4(d).

fund; it may not create an entitlement enforceable by private right of action; it may not 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).

The USARADC runs afoul of many of the proscriptions cited in *Campaign Treatment*. The USARADC clearly appropriates funds based on its primary purpose to establish a fund and direct disbursements to eligible beneficiaries. As the Attorney General opined:

[T]he Measure impermissibly regulates the District's financial affairs. For example, Title II, Section 6 of the Measure guarantees certain individuals the right to a court-appointed attorney in a range of civil cases, which would require expenditures by the courts. Similarly, Title I, Section 7 of the Measure requires employees of the Department of Parks and Recreation, the Metropolitan Police Department, and the Department of Motor Vehicles to obtain (and, presumably, use) body-worn cameras to record violations of that section, which would require expending funds. In sum, because the Measure requires an array of financial outlays, it is improper.<sup>24</sup>

Accordingly, the Board concludes that the USARADC intrudes upon the Council's discretion to allocate funds generated by the sanctions in the USARADC.

Essentially, the USARADC establishes a fund to distribute proceeds from sanctions to eligible beneficiaries based upon their racial DNA makeup. Funds are directed to public and private entities to dispense benefits, including a trust fund operated by the proponent, John Cheeks Volunteer Effort for Recovery Trust – Washington, DC.<sup>25</sup> To the extent that USARADC would establish new funds and direct how those funds are disbursed, the proposed initiative is an improper subject of initiative, even if the measure raises new revenues.

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<sup>24</sup> Opinion of the District of Columbia Attorney General, Karl A. Racine, Esq. (Mar. 27, 2020) p. 3.

<sup>25</sup> USARADC Title I §7(o)(4).

During the hearing before the Board, Mr. Cheeks protested the General Counsel's interpretation that the USARADC requires additional unforeseen expenditures for DNA testing requirements and adjudications for determining beneficiaries' qualifications for the new programs envisioned by the measure. While the test for initial eligibility will be paid by individual applicants seeking relief under the terms of Title I §3(f), the Identity Repair section of the USARADC Title II § 1(d) "shall include DNA identification of matching individuals throughout the United States of America to grief and/or trauma counseling of forced separation." This provision presents a mandatory provision of the initiative that may not be precluded by any lack of funding. Unlike the eligibility requirement in Title I, the remedy established in Title II does not have a similar provision requiring that the costs of DNA identification be paid by individual applicants throughout the United States. Moreover, the provision for grief and/or trauma counseling is also not funded. As a mandatory remedy, the USARADC Identity Repair section is an improper subject of initiative because it includes unfunded mandates.

### Conclusion

The USARADC is an improper subject for initiative because it seeks to enact legislation that exceeds the Council's authority to pass legislation and attempts to bestow benefits on the basis of DNA racial makeup in violation of the D.C. Human Rights Act. Moreover, the USARADC impermissibly creates a fund, directs the use of proceeds in the fund, and distributes proceeds to public and private entities, including a fund established by the proponent. The USARADC also includes several unfunded mandatory provisions.

For the foregoing reasons, it is hereby:

**ORDERED** that the proposed initiative, the "United States Adjustment and Recovery Act for the District of Columbia" is **RECEIVED BUT NOT ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2).

Date June 17, 2020

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", with a long horizontal flourish extending to the right.

D. Michael Bennett, Esq.  
Chairman