

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

In Re:

**Support for a Public
Hospital in the Nation's
Capital of 2002**

**Administrative Hearing
No. 02-015**

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics (hereinafter “The Board”) on Wednesday, June 5, 2002, and involved a determination by the Board that the proposed initiative—“Support for a Public Hospital in the Nation’s Capital of 2002”—could not be accepted on the grounds that it does not meet the “proper subject” requirements set in the District of Columbia’s statutes providing for initiatives.

District of Columbia law provides that an initiative “is the process by which [its] electors...may propose law *except laws appropriating funds* and present such laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.” D.C. CODE §1-204.101 (*emphasis added*). The District of Columbia courts have consistently interpreted this restriction as “measure[s] which would intrude upon the discretion of the Council to allocate District government revenues in the budget process [are] not proper subjects for initiative. *Hessey v. Board of Elections & Ethics*, 601 A. 2d 3, 19 (D.C. 1991).¹ The initiative process can however be used to “authorize a substantive program,” *Convention Center Referendum Committee v. Board of Elections and Ethics*, 441 A. 2d 889, 912 (D.C. 1989)(*en banc*). In the instant case, the proposed

¹ This restriction “reflect[s] a decision...by the Congress and the Council that the power of the purse which Congress had delegated to the District government in the Self-Government Act would remain with the elected officials and not be subjected to control by the electorate through an initiative.” *Hessey*, 601 A. 2d at 15.

measure intends to establish a public hospital in the District of Columbia. The initiative measure further establishes a trust funded through public and private sources. Although the proponent of the measure went to great lengths to distinguish the trust funding from the District's general fund, it still involves appropriated funds. Specifically, the D.C. Code categorizes all such grants as part and parcel of the annual budget request from the District of Columbia government:

[T]he Mayor shall prepare and submit to that Office [of Management and Budget] a schedule showing an estimate of all funds which will be available to any agency, department, or instrumentality of the District of Columbia government, during the fiscal year for which such financial or budgetary information and data are submitted, for grants from any federal agency, department, or instrumentality, or from any private source.

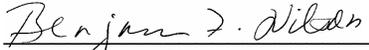
D.C. CODE § 47-214. This provision, insofar as it attempts to wrest control of the allocation of District government revenues in violation of the "laws appropriating funds" exception, render this measure defective.

Since the Board may not process any initiatives that would have the effect of establishing a law which would appropriate funds, the Board is compelled to reject the "Support for a Public Hospital in the Nation's Capital of 2002" initiative.

Accordingly, it is hereby

ORDERED that the “Support for a Public Hospital in the Nation’s Capital of 2002” initiative be rejected on the grounds that it seeks to establish a law which would appropriate funds in violation of District of Columbia law.

June 11, 2002


Benjamin Wilson, Chairman,
D.C. Board of Elections and Ethics