

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re: "No Worker Shall Make Less than The Minimum Wage Act of 2014"
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Administrative Hearing
No. 14-009

Re: Approval of Proposed
Initiative Measure

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections ("the Board") on Wednesday, June 4, 2014, pursuant to D.C. Official Code § 1-1001.16(b)(1) (2012 Repl.). It involves a finding by the Board that the proposed initiative, the "No Worker Shall Make Less than the Minimum Wage Act of 2014" ("the NLtMW"), is a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1) (2012 Repl.). Daniel Nudelman and Jonathan Berkon of Perkins Coie appeared before the Board as counsel for the proposer of the initiative. Chairman Deborah K. Nichols and Board Members Devarieste Curry and Stephen I. Danzansky presided over the hearing. Also present were Executive Director Clifford Tatum, General Counsel Kenneth McGhie, and Director of the Office of Campaign Finance, Cecily Collier-Montgomery.

Statement of the Facts

On April 7, 2014, Stephanie Roth filed the NLtMW pursuant to D.C. Official Code § 1-1001.16(a) (2012 Repl.). The proposed initiative, in brief, would increase incrementally on a yearly basis the required minimum wage. The initiative incorporates the minimum wage for most workers in the District now in effect through the year 2016. The initiative would increase the regular minimum wage in 2017 to \$12.50 per hour, or the increase could be the minimum

established in the initiative. In contrast, the NLtMW does not apply to an employee who receives gratuities unless they have been informed of the provision and all gratuities received are not retained by the employee.

On April 10, 2014, 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 NLtMW. The Notice was published in the D.C. Register on April 18, 2014. *See* 61 D.C. Reg. 15 (2014). On April 10, 2014, the General Counsel's Office sent the Notice to the Attorney General for the District of Columbia ("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 NLtMW presented a proper subject for initiative.

On May 28, 2014, the Attorney General submitted comments to the Board stating that the NLtMW was a proper subject for initiative. The Attorney General opined that: "it does not appear that the initiative allocates District funds and, in my opinion, the Initiative does not represent an improper attempt to appropriate funds."¹

Analysis

Pursuant to D.C. Official Code § 1-1001.02(10) (2012 Repl.), "[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:

¹ Opinion of the District of Columbia Attorney General, Irvin B. Nathan, Esq. (May. 28, 2014) p. 4.

District of Columbia, 866 A.2d 788, 794 (D.C. 2005) (“Campaign Treatment”).

In the instant case, the proposed measure does not appropriate any funds because the measure excludes employees and contractors of the District from the minimum wage requirement. Section i(1) of the measure obviates any concern that the District of Columbia government would have to appropriate additional funds to pay employees and contractors additional wages as a result of the No Worker Shall Make Less than the Minimum Wage Act of 2014.

Conclusion

The proposed measure avoids the appropriation of funds prohibition by excluding the class of workers that could presumably raise costs for the District of Columbia government. The Board sees no reason to reject the measure as it does not conflict with any of the prohibitions codified in the Initiative Procedures Act and applicable case law.

Accordingly, the No Worker Shall Make Less than the Minimum Wage Act of 2014 is a proper subject for initiative pursuant to the Initiative Procedures Act.

For the foregoing reasons, it is hereby:

ORDERED that the proposed initiative, the “No Worker Shall Make Less than the Minimum Wage Act of 2014,” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2) (2012 Repl.).

6/10/2014

Date



Deborah K. Nichols, Esq.

Chairman, Board of Elections