GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Brian Schwalb
Attorney General

November 19, 2026

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Referendum, "Referendum on the Fairness and Accountability in Initiative Reform Amendment Act of 2026"

Ms. Terri Stroud
General Counsel
Board of Elections
1015 Half Street, S.E.
Washington, D.C. 20003
ogc@dcboe.org

Dear Ms. Stroud:

This memorandum responds to your November 12, 2026, request, on behalf of the Board of Elections ("Board"), that the Office of the Attorney General (the "Office") provide an advisory opinion on whether the proposed referendum, the "Referendum on the Fairness and Accountability in Initiative Reform Amendment Act of 2026" ("Proposed Referendum"), is a proper subject of referendum in the District of Columbia, pursuant to D.C. Official Code § 1-1001.16(b)(1A)(B)(ii). For the reasons set forth in this letter, the Proposed Referendum is a proper subject of referendum.

STATUTORY BACKGROUND

As initially enacted by Congress, Title IV of the District of Columbia Home Rule Act ("Home Rule Act"), also known as the District Charter, vested the District's legislative authority in the Council.[1] Shortly afterward, pursuant to the Home Rule Act, the Council adopted, and District voters ratified, an amendment to the District Charter: the Initiative, Referendum, and Recall Charter Amendments Act of 1977 ("Charter Amendment").[2] The Charter Amendment authorized the voters to propose their own laws to the electorate

[1] D.C. Official Code § 1-204.04.
[2] Effective March 10, 1978 (D.C. Law 2-46; 24 DCR 199) (codified at D.C. Official Code § 1-204.101 *et seq.*). The Home Rule Act authorizes the District Charter to be amended by Council act ratified by the voters. D.C. Official Code § 1-203.03. When Congress modified the Charter amendment procedure in 1984, it affirmatively ratified the Initiative, Referendum, and Recall Charter Amendments of 1977 by act. Joint Resolution Making continuing appropriations for the fiscal year 1985, and for other purposes, § 131(k), approved October 12, 1984 (Pub. L. No. 98-473; 98 Stat. 1974) (providing that the amendment to D.C. Official Code § 1-203.03 "shall not be applicable with respect to any law, which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act, and such laws are hereby deemed valid, in accordance with the provisions thereof notwithstanding such amendment[]").

by initiative, and to refer Council acts that have not yet become law to the electorate by referendum.[3] So, although the District Charter "originally contained no right of initiative, referendum, or recall," the Charter Amendment "granted the electorate these long-recognized instruments of direct control of legislative decisions and decisionmakers."[4]

Specifically, in a referendum, District voters may "suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection."[5] In accordance with the Charter Amendment, the Council adopted section 16 of the Election Code of 1955 ("Election Code")[6] as an implementing statute detailing the initiative and referendum process.[7] Under this statute, any registered qualified elector may begin the referendum process by filing the full text of "the act or part thereof on which a referendum is desired," a summary statement of not more than 100 words, and a short title with the Board.[8] After receiving a proposed referendum, the Board must refuse to accept it if the Board determines that it is not a "proper subject" of referendum.[9]

A proposed referendum is not a proper subject for referendum if it is not in the proper form, or if it would:

- Appropriate funds;
- Violate or seek to amend the Home Rule Act ;
- Violate the U.S. Constitution;
- Authorize or have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977; or
- Negate or limit an act of the Council enacted pursuant to section 446 of the Home Rule Act.[10]

If the Board determines that a proposed referendum is a proper subject of referendum, it must accept the measure and, within 20 calendar days, prepare and adopt a true and impartial summary statement, prepare a short title, and prepare the proposed referendum in the proper legislative form.[11] The Board must then adopt the summary statement, short title, and legislative form at a public meeting.[12] Within 24 hours after adoption, the Board must publish its formulation.[13] If no registered qualified elector objects to the Board's formulation by seeking review in Superior Court within 10 days after publication in a newspaper of general circulation, the Board must certify the measure and provide the proposer with a petition form for use in securing the required signatures to place the proposed referendum on the ballot at an election.[14]

Upon the presentation of a signed referendum petition, the Board must notify the President of the Senate and the Speaker of the House of Representatives, and they shall "return such act or portion of such act to the Chairman," and "[n]o further action may be taken upon such act or portion of such act until after a

[3] D.C. Official Code § 1-204.101; *see also id.* § 1-206.02(c) (requiring a Council act to complete passive congressional review period before becoming law).
[4] *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 896 (D.C. 1981) (en banc) (plural op.).
[5] D.C. Official Code § 1-204.101(b).
[6] Effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.16).
[7] D.C. Official Code § 1-204.107.
[8] *Id.* § 1-1001.16(a)(1).
[9] *Id.* § 1-1001.16(b)(1).
[10] *Id.* §§ 1-204.101(a); *id.* § 1-1001.16(b)(1); 3 DCMR § 1000.5.
[11] D.C. Official Code § 1-1001.16(c).
[12] *Id.* § 1-1001.16(d)(1).
[13] *Id.* § 1-1001.16(d)(2).
[14] *Id.* § 1-1001.16(e)–(i); *see also id.* § 1-204.102(a) (requiring, under the District Charter, a referendum petition to be signed by 5 percent of the registered electors in the District, including 5 percent of registered electors in each of five or more wards).

referendum election is held."[15] If the requisite number of valid signatures from registered electors is obtained,[16] the Board must hold an election on the referendum within 114 days, and may present the referendum at a previously scheduled general, primary, or special election within 54 and 114 days.[17] If the voters reject the act in the referendum, it will not become law, and the Council may not act on the matter for 365 days.[18] If the voters approve the act, it must be retransmitted to Congress and will become law after completing review.[19]

FACTUAL BACKGROUND

The Fairness and Accountability in Initiative Reform Amendment Act of 2026 ("FAIR Act")[20] would amend section 16 of the Election Code to make several changes to the voter-proposed ballot measure process. Specifically, it would require the Board to reject an initiative that "addresses more than one subject," meaning that it "contains provisions that are sufficiently separable such that the provisions, when separated, can be reasonably considered on their own merits by a voter without reference to the measure's other provisions."[21] It also would extend the time periods for the Board to consider proposed initiatives and for voters to seek judicial review of proposed initiatives.[22] Further, the legislation would require the Board to prepare a fiscal impact summary of a proposed initiative and include it in the ballot language.[23] Finally, the legislation would require the Board to post all required notices on its website contemporaneously with publication in the *D.C. Register*.[24]

The FAIR Act was adopted by the Council on second reading on October 6, 2026, and signed by the Mayor on November 9, 2026. Upon transmission to Congress, the FAIR Act will begin the 30-day congressional review period required by the Home Rule Act, after which it will become law unless disapproved by Congress or rejected by the voters in a referendum.[25]

On November 10, 2026, the Board received the Proposed Referendum. If placed on the ballot, the Proposed Referendum would ask the voters to approve the FAIR Act—which would allow that act to become law upon completing congressional review—or reject it, which would prevent the FAIR Act from becoming law and thereby maintain the current language of section 16 of the Election Code.

ANALYSIS

"[A]bsent 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."[26] This right must be construed "liberally," and "only those limitations expressed in the law or clear[ly] and compelling[ly] implied" may be imposed on

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[15] *Id.* § 1-204.102(b)(1); *id.* § 1-1001.16(m).
[16] If the Board, after counting and validating signatures, determines that the referendum petition failed to meet the signature requirements, the act must be retransmitted to Congress to become law after completing review. *Id.* § 1-1001.16(m).
[17] *Id.* §§ 1-204.103, 1-1001.16(p)(1).
[18] *Id.* § 1-204.104.
[19] *Id.* § 1-204.105; *see Bliley v. Kelly*, 23 F.3d 507, 512 (D.C. Cir. 1994) (observing that "if the challenged legislation is approved by the District's voters [in a referendum], the Chairman of the Council must resubmit it to Congress, and the legislation 'shall take effect upon the expiration of the [statutory thirty-day period] beginning on the day such [legislation] is transmitted by the Chairman to the [Congress]'" (quoting D.C. Official Code § 1-206.02(c)(1))).
[20] Enacted on November 9, 2026 (D.C. Act 26-469; 73 DCR ___).
[21] *Id.* § 2(a)(1)(C).
[22] *See, e.g.*, *id.* § 2(a)(6).
[23] *See, e.g.*, *id.* § 2(b)(2).
[24] *Id.* § 2(k).
[25] *See* D.C. Official Code § 1-206.02(c)(1); *id.* § 1-204.104.
[26] *Convention Ctr. Referendum Comm.*, 441 A.2d at 897.

that power.[27] These principles apply to both initiatives and referenda, because both processes arise from the same grant of legislative power under the Charter Amendment.[28]

The Proposed Referendum does not violate any limitations on the use of the referendum power. The FAIR Act, which the Proposed Referendum would refer to the voters to approve or reject, is not an emergency act, does not levy taxes, and does not appropriate funds for the general operation budget—the three types of acts that the Charter expressly prohibits the voters from referring.[29] It also does not "authorize[], or . . . have the effect of authorizing, discrimination prohibited under" the Human Rights Act of 1977, and it is not a budget act adopted pursuant to the Home Rule Act.[30] The FAIR Act concerns only how the District conducts elections for voter-proposed initiatives under the Election Code. This is squarely within the legislative authority that Congress granted to the District through the Home Rule Act, which the Council then broadly shared with the electorate through the powers of initiative and referendum under the Charter Amendment. Accordingly, the Proposed Referendum on the FAIR Act is a proper subject.

Because we think the Proposed Referendum is a proper subject, we recommend the below revisions to the summary statement to ensure that it is "true and impartial" and does not "create prejudice for or against the measure."[31]

SUMMARY STATEMENT

> The Council ~~of the District of Columbia enacted~~ **adopted** the "Fairness and Accountability in Initiative Reform Amendment Act of 2026" (FAIR Act), which ~~significantly~~ changes how **voter-proposed** ballot initiatives are conducted in the District by **prohibiting any initiative that addresses more than one subject.** ~~imposing a single-subject rule prohibiting ballot initiatives from addressing more than one legislative topic.~~ The FAIR Act also increases the length of time required to **place an initiative on the ballot** ~~initiate a ballot measure~~ by more than 60 days, allows for additional legal challenges, and requires each petition sheet and voter ballot include a fiscal impact summary. Vote YES to permit the Council's changes. Vote NO to reject the Council's changes.

CONCLUSION

For the reasons above, it is the opinion of this Office that the *Referendum on the Fairness and Accountability in Initiative Reform Amendment Act of 2026* is a proper subject of referendum.

Sincerely,



Brian L. Schwalb
Attorney General for the District of Columbia

[27] *Id.* at 913 (internal citations and quotations omitted).
[28] *See id.* at 909 n.38 (recognizing that "the two processes of initiative and referendum overlap").
[29] D.C. Official Code § 1-204.101(b).
[30] *Id.* § 1-1001.16(b)(1)(C)–(D).
[31] *Id.* § 1-1001.16(c)(1).