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Terri D. Stroud
General Counsel
District of Columbia Board of Elections
1015 Half Street, S.E., Suite 750
Washington, D.C. 20003

Re: Proposed Initiative, the "Prohibiting the Force-Feeding of Birds Act of 2026"

Dear Ms. Stroud:

D.C. Official Code § 1-1001.16(b)(1A) requires that the General Counsel of the Council of the District of Columbia provide an advisory opinion to the District of Columbia Board of Elections ("Board") as to whether a proposed initiative is a proper subject of initiative. I have reviewed the "Prohibiting the Force-Feeding of Birds Act of 2026" ("Proposed Initiative") for compliance with the requirements of District law, and based on my review, it is my opinion that the Proposed Initiative is a proper subject of initiative.

I. Applicable Law

The 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."¹ The Board may not accept a proposed initiative if it finds that the measure 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:

- The verified statement of contributions has not been filed pursuant to D.C. Official Code §§ 1-1163.07 and 1-1163.09;
- The petition is not in the proper form established in D.C. Official Code § 1-1001.16(a);

¹ D.C. Official Code § 1-204.101(a).

- The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2 of the D.C. Official Code; or
- The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to D.C. Official Code § 1-204.46.²

The District of Columbia Court of Appeals (“Court”) has interpreted the prohibition on the use of the initiative process to propose “laws appropriating funds” very broadly, holding that it “extend[s] . . . to the full measure of the Council’s role in the District’s budget process . . .”³ Accordingly, the Court has deemed unlawful any initiative that (1) blocks the expenditure of funds requested or appropriated,⁴ (2) directly appropriates funds,⁵ (3) requires the allocation of revenues to new or existing purposes,⁶ (4) establishes a special fund,⁷ (5) creates an entitlement, enforceable by private right of action,⁸ or (6) directly addresses and eliminates a source of revenue.⁹

II. The Proposed Initiative

The Proposed Initiative would prohibit a person from:

- Force-feeding a bird, or hiring or directing another person to force-feed a bird, for the purpose of enlarging the bird’s liver beyond its normal size;
- Selling, offering for sale, distributing, or otherwise providing any fattened bird liver product within the District, whether as a standalone item or as an ingredient in any product or dish;
- Importing, transporting, or receiving a fattened bird liver product into the District for sale, distribution, or any other commercial purpose, regardless of where the product was produced or originated.

The Proposed Initiative would authorize the Director of the Department of Energy and Environment (“Director”) to administer and

² D.C. Official Code § 1-1001.16(b)(1).

³ *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (quoting *Hessey v. District of Columbia Bd. of Elections & Ethics* (“*Hessey*”), 601 A.2d 3, 20 (D.C. 1991)).

⁴ *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 913-14 (D.C. 1981).

⁵ *District of Columbia Bd. of Elections & Ethics v. Jones* (“*Jones*”), 481 A.2d 456, 460 (D.C. 1984).

⁶ *Hessey*, 601 A.2d at 19-20.

⁷ *Id.*

⁸ *Id.* at 20 n. 34.

⁹ *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d at 677.

enforce the provisions of the Proposed Initiative and require the Director to ensure compliance with the Proposed Initiative during routine inspections of food service establishments and retail establishments. A person violating a provision of the Proposed Initiative would be subject to civil penalties, and repeated violations may result in suspension or revocation of the violator's business license.

III. The Proposed Initiative is a Proper Subject of Referendum

The Proposed Initiative does not constitute a "law appropriating funds" because it contains a subject-to-appropriations clause, such that any provisions of the Proposed Initiative that would have a cost to implement would only apply upon the Council's inclusion of the fiscal effect in an approved budget and financial plan. In addition, the Proposed Initiative conforms with both the District Charter and the U.S. Constitution. The Proposed Initiative does not authorize or have the effect of authorizing any form of discrimination.

The Court has said that "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."¹⁰ In the instant case, no such express or implied limitation exists. Accordingly, the Proposed Initiative is a proper subject of initiative.

I am available if you have any questions.

Sincerely,

Nicole L. Streeter

Nicole L. Streeter
General Counsel, Council of the District of Columbia

¹⁰ *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 99 (D.C. 2010) (quoting *Convention Center Referendum Committee*, 441 A.2d at 897) (emphasis omitted).