

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

In Re:  
“No Worker Shall Make Less than the  
Minimum Wage of 2016”

Administrative Hearing  
No. 14-020

Re: Approval of Proposed  
Initiative Measure

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the Board of Elections (“the Board”) on Wednesday, September 10, 2014, pursuant to D.C. Official Code § 1-1001.16(b)(1). It involves a finding by the Board that the proposed initiative, the “No Worker Shall Make Less than the Minimum Wage Act of 2016” (“the Initiative”), is a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1). 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 Member Stephen I. Danzansky presided over the hearing. Also present was General Counsel Kenneth McGhie

**Statement of the Facts**

On July 30, 2014, Stephanie Roth filed the Initiative pursuant to D.C. Official Code § 1-1001.16(a) (2012 Repl.). The Initiative incrementally increases the minimum wage codified at D.C. Official Code § 32-1003(a) in July of 2015 and 2016. The Initiative further provides for additional specific increases in the minimum wage in the years 2017-2019 with prospective adjustments comporting with changes in the local Consumer Price Index beginning in the year 2020. The Initiative also increases the minimum wages for tipped employees provided that the employee receives gratuities in an amount at least equal to the difference between the cash wage paid

and the minimum wage established in the initiative. Beginning in 2024, the minimum wage for tipped employees would be the same as the regular minimum wage.

On August 6, 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 Initiative. The Notice was published in the D.C. Register on August 15, 2014. *See* 61 D.C. Reg. 34(2014). On August 6, 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 Initiative presented a proper subject.

On September 5, 2014, the Attorney General submitted comments to the Board stating that the Initiative was a proper subject. “The proposed initiative [] does not appear to violate the prohibition against the use of an initiative to appropriate funds, or for any purposes that would negate or limit any Council budget act.”<sup>1</sup>

### 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:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-

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<sup>1</sup> Opinion of the District of Columbia Attorney General, Irvin B. Nathan, Esq. (Sept. 5, 2014) p. 1.

- 1163.07 and 1-1163.09;<sup>2</sup>
- (B) The petition is not in the proper form established in subsection (a) of this section;<sup>3</sup>
  - (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2;<sup>4</sup> or
  - (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.<sup>5</sup>

D.C. Official Code § 1-1001.16 (b)(1) (2012 Repl.).

The District of Columbia Court of Appeals has determined 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 initiative would raise new revenues.” *Hessey v. District of Columbia Board of Elections and Ethics, et al.*, 601 A.2d 3 at 19 (D.C. 1991) (“*Hessey*”). In order for an initiative measure to pass muster, the measure cannot not: block the expenditure of funds requested or appropriated; directly appropriate funds; require the allocation of revenues to new or existing purposes; establish a special fund; create an entitlement enforceable by private right of action against the District of Columbia; or directly address and eliminate any revenue source. Finally, the mandatory provisions of the initiative may not be precluded by any lack of discretionary funding by the District. *See District of Columbia Board of Elections and Ethics and District of Columbia Campaign for Treatment v. District of*

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<sup>2</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 § 1-1102.06.

<sup>3</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>4</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 § 2-1401.01 (2012 Repl.).

<sup>5</sup> D.C. Official Code § 1-204.46 (2012 Repl.) deals with budgetary acts of the D.C. Council.

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

In the instant case, the proposed measure does not appropriate any funds. The Initiative leaves unchanged the current exemption from the local minimum wage law for the District government. It does not lead to increased amounts for services provided to District government by contractors. Many District contractors are already required to pay their employees more than the regular minimum wage. *See* D.C. Official Code § 2-220.03 (a)-(c) (2012 Repl.) (requiring certain businesses to pay the living wage and requiring the government to adjust the wage annually based on changes in the Consumer Price Index). Because the living wage is adjusted annually for contractors, it will likely exceed the minimum wage established by the proposed initiative. Therefore, the proposed initiative is not likely to increase the affected contractors’ costs or costs for the District.

**Conclusion**

The proposed measure avoids the appropriation of District of Columbia funds by specifically exempting the District of Columbia from the definition of “employer.” Further it does not on its face appear to conflict with any of the prohibitions codified in the Initiative Procedures Act and applicable case law.

Accordingly, the No Worker Shall Makes Less than Minimum Wage Act of 2016 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 Makes Less than the Minimum Wage Act of 2016,” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2) (2012 Repl.).

Sept. 17, 2014

Date



Deborah K. Nichols

Chairman, Board of Elections