

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

**In Re:  
Elizabeth Davis Education  
Equity Pathway Policy Act of 2022**

**Administrative Order  
#21-002**

**Re: Proper Subject Hearing on  
Initiative Measure**

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the Board of Elections (“the Board”) on Wednesday, July 7, 2021 and August 26, 2021 under D.C. Official Code §1-1001.16(b)(1).<sup>1</sup> It involves a finding that the proposed measure, the “Elizabeth Davis Education Equity Pathway Policy Act of 2022” (“Proposed Measure”) is not a proper subject of initiative under D.C. Official Code § 1-1001.16(b)(2) because it constitutes an impermissible law appropriating funds. Board Chairman D. Michael Bennett and Board Member Karyn Greenfield presided over the July 7, 2021 hearing, and Board Chairman Bennett and Board Members Greenfield and Mike Gill presided over the August 26, 2021 hearing. This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

**Statement of the Facts**

On April 23, 2021, Charles Boston, (“the Initiative Proposer”) filed a Verified Statement of Contributions in support of the Proposed Measure with the District of Columbia Office of Campaign Finance (“OCF). On April 28, 2021, the Initiative Proposer submitted the Proposed

---

<sup>1</sup> The hearing was continued to August 26, 2021 to allow the Initiative’s proposer, Charles Boston, to review and respond to the advisory opinions submitted by of the Attorney General for the District of Columbia and the Office of the General Counsel for the Council of the District of Columbia.

Measure in the proper form under D.C. Official Code §1-1001.16(a). On May 14, 2021, in accordance with D.C. Mun. Regs. tit. 3, § 1000.4, the Board published the Proposed Measure in the District of Columbia Register.

The Proposed Measure's Summary Statement notes that it

[w]ould declare as the policy of the Office of the State Superintendent of Education (OSSE) to allow students to take fewer traditional credit courses in exchange for allied health, agricultural, environmental, and professional trades education credit courses, aligned with work-based learning for grades 6<sup>th</sup> through 12<sup>th</sup> with grades 8<sup>th</sup> through 12<sup>th</sup> promotion/graduation requirements.

*See* 68 D.C. Reg. 5,228 (May 14, 2021). The Summary Statement further notes that

[t]he Initiative would specifically require OSSE to give schools autonomy or flexibility to set their own policies 'that promote equitable access' while restricting the use of criteria that disproportionately exclude students in protected classes and place a stronger emphasis on apprenticeships for middle and high school students. Th[e] Initiative would reduce the drop-out[ ] rate, align closely with employer needs, and increase the number of high school graduates qualified for in high demand labor market sectors.

*Id.*

Under D.C. Code § 1-1001.16(b)(1A)(A), the General Counsel for the Board requested advisory opinions from the Attorney General for the District of Columbia and the General Counsel for the Council of the District of Columbia on whether the Proposed Measure was a proper subject of initiative. Both the Attorney General for the District of Columbia and the General Counsel for the Council of the District of Columbia opined that the Proposed Measure was not a proper subject of initiative because it was an impermissible law appropriating funds. *See* Op. D.C. Att'y Gen. at 1 (May 17, 2021); Op. D.C. Council Gen. Counsel at 1 (May 24, 2021).

During the proper subject hearing on July 7, 2021, the Initiative Proposer testified that the Proposed Measure was a proper subject of initiative. *See, e.g.*, Meeting Tr. 11-17, 18-23, Jul. 7, 2021. Following the testimony, the General Counsel for the Board provided summaries of the

advisory opinions from the Attorney General for the District of Columbia and the General Counsel for the Council of the District of Columbia. *Id.* at 25-27. The General Counsel for the Board also provided a recommendation to the Board that was consistent with the advisory opinions. *See id.* at 27. Specifically, the General Counsel recommended that the Proposed Measure did “not present a proper subject of initiative.” *Id.* The Board continued this matter to afford the Initiative Proposer an opportunity to review the advisory opinions provided by the Attorney General for the District of Columbia and the General Counsel for the Council of the District of Columbia. *See id.* at 28-30. On August 6, 2021, the Initiative Proposer submitted his response to the Board. The submission restated his assertion that the Proposed Measure was a proper subject of initiative.

During the continuation of the proper subject hearing on August 26, 2021, the Initiative Proposer provided additional testimony in support of the Proposed Measure. *See Meeting Tr.* 14-18, Aug. 26, 2021. The General Counsel for the Board again noted the advisory opinions, as well as her recommendation, each of which noted that the Proposed Measure was not a proper subject of initiative because was an impermissible law appropriating funds. *See id.* at 21. The Board did not receive any other oral or written testimony concerning the Proposed Measure.

### **Analysis**

Under D.C. Official Code §§ 1-204.101 and 1-1001.02(10), “[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 (“the District Charter”) or on any of the following grounds:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 11163.09;<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>
- (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).

A measure is deemed to appropriate funds if it “would intrude upon the discretion of the Council to allocate District government revenues in the budget process[.]” *Hessey v. District of Columbia Bd. of Elections and Ethics*, 601 A.2d 3, 19 (D.C. 1991). Consistent with the Court’s interpretation of “laws appropriating funds[.]” in *Hessey*, it deemed unlawful any initiative that: 1) blocks the expenditure of funds requested or appropriated; 2) directly appropriates funds; 3) requires the allocation of revenues to new or existing purposes; 4) establishes a special fund; 5) creates an entitlement, enforceable by private right of action; or 6) directly addresses and eliminates a source of revenue. D.C. Official Code § 1-204.101(a); *see District of Columbia Bd. of Elections and Ethics v. District of Columbia*, 866 A.2d 788, 794-95 (D.C. 2005); *see also Hessey*, 601 A.2d at 19.

---

<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 § 1-1163.09.

<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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.” D.C. Official Code § 2-1401.01.

<sup>5</sup> This provision discusses the enactment of a local budget by the Council of the District of Columbia.

The Board finds that the Proposed Measure is an impermissible law appropriating funds because it requires new expenditures on the new graduation program it would create and require schools to provide to students. Although the Proposed Measure presents an “incredibly compel[ing]” program, initiative power cannot be used to require spending on new programs, or to constrain or otherwise regulate the spending of existing funds. *See* Meeting Tr. 22-23:13, Aug. 26, 2021. Again, “laws appropriating funds” reach initiative measures that require the allocation of revenues to new or existing purposes. *District of Columbia Bd. of Elections and Ethics v. District of Columbia*, 866 A.2d at 794-95; *see also Hessey*, 601 A.2d at 19-20. Consequently, the Proposed Measure is impermissible because it allocates appropriated funds of public schools and public charter schools to the creation and implementation of a new pathway to graduation. Accordingly, the Proposed Measure is not a proper subject of initiative.

### **Conclusion**

In sum, the Board determines that the “Elizabeth Davis Education Equity Pathway Policy Act of 2022” does not present a proper subject of initiative in accordance with District of Columbia law. Accordingly, it is hereby:

**ORDERED** that the Proposed Measure, the “Elizabeth Davis Education Equity Pathway Policy Act of 2022” is **RECEIVED BUT NOT ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2). The Board issues this written order today, which is consistent with its oral ruling rendered on August 26, 2021.

Dated: September 28, 2021



---

D. Michael Bennett  
Chairman