DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

In Re:	Administrative Hearing No. 25-018
"Prohibiting Force-Feeding of Birds Act"	Acceptance of Proposed Initiative Measure

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections ("the Board") at a hearing convened on Wednesday, November 5, 2025 to determine whether a proposed initiative measure, the "Prohibiting Force-Feeding of Birds Act" ("the Measure")," presents a proper subject for initiative under applicable District of Columbia law. Board Chairman Gary Thompson and Board member Karyn Greenfield presided over the hearing. The Board's General Counsel, Terri Stroud, and the initiative proposer, Cady Witt ("the Proposer"), were also present.

Statement of Facts

On October 2, 2025, the Proposer, a D.C. registered voter, filed the Measure and supporting documents at the Board's offices. According to its summary statement and legislative text, the Measure would, if enacted, "[p]rohibit any person from force-feeding a bird for the purpose of enlarging the bird's liver beyond normal size; and … ban the sale or distribution of any product resulting from force-feeding a bird[.]" The Measure also provides civil penalties for violations of its requirements and mandates that the Department of Energy and Environment ("DOEE") undertake enforcement of its requirements.

On October 3, 2025, the Board's Office of General Counsel requested advisory opinions regarding the propriety of the Measure from the Office of the Attorney General for the District of Columbia ("the OAG") and General Counsel for the Council of the District of Columbia ("the

CGC").[1]

On October 27, 2025, both the OAG and the CGC provided advisory opinions to the Board. The OAG opined that, while the Measure implicated three proper subject requirements, it did not at the end of the day violate those requirements and therefore the Measure constituted a proper subject for initiative. The CGC was unable to reach a conclusion as to whether the Measure is a proper subject.

Meanwhile, notice of a proper subject hearing was published in the D.C. Register and was posted on the Board's website. In response to that notice, nearly two dozen members of the public offered written comments as to whether the Measure constituted a proper subject for initiative.

During the duly noticed public hearing held on the matter on November 5, 2025, the Board's General Counsel described the conclusions reached in the advisory opinions and submitted the opinions for the record. The Chair then offered any opponent of the Measure an opportunity to speak. No person opposing the measure came forward. While the Chair noted that the Board had been provided with the written comments that had been submitted, he opened the floor to supporters of the Measure to comment further. Most of the individuals who filed written comments had appeared and commented on the record. Following their remarks, the Proposer and her counsel contended that the Measure complied with proper subject requirements.

After hearing from the Proposer, Board Chair Thompson requested that the General Counsel provide her recommendation as to whether the Measure met proper subject requirements. The General Counsel recommended that the Board accept the Measure given the lack of record evidence that the Measure would violate any proper subject requirement and in light of the preference in

[1] D.C. Official Code § 1-1001.16(b)(1A)(b)(i) requires the OAG and CGC to provide advisory opinions regarding the propriety of proposed initiative measures.

favor of ballot access. The Board Chair reiterated that the Board cannot consider the merits of the Measure and that the Board's role, by law, is limited to deciding whether the Measure violates any statutory limitations on the scope of initiative matters and whether the Measure was properly filed. He then made a motion that the Measure be accepted for the reason that it cannot be said that the Measure did not constitute a proper subject for an initiative. The motion was duly seconded and passed unanimously.

Analysis

The term "initiative" refers to the process by which the voters of the District of Columbia may propose certain laws. The District's statutory framework establishes this Board as the gatekeeper of the initiative process. A threshold Board determination in that process is whether the proposed initiative meets "proper subject" requirements. D.C. Official Code §1-1001.16(b). The Board's regulations concisely state the statutory and legal proper subject requirements for proposed initiatives:

> A measure does not present a proper subject for initiative . . . and must be refused by the Board, if:
> (a) The measure presented would violate the Home Rule Act;
> (b) The measure presented seeks to amend the Home Rule Act;
> (c) The measure presented would appropriate funds;
> (d) The measure presented would violate the U.S. Constitution;
> (e) The statement of organization and the report(s) of receipts and expenditures have not been filed with the Office of Campaign Finance;
> (f) The form of the measure does not include legislative text, a short title, or a summary statement containing no more than one hundred (100) words;
> (g) The measure authorizes or would have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977 or any subsequent amendments; or
> (h) The measure would negate or limit an act of the Council enacted pursuant to § 446 of the Home Rule Act ["Enactment of Local Budget by Council"].

3 DCMR 1000.6. In applying these restrictions on initiative proposals, "[w]e are required to construe the right of initiative liberally . . . and may impose on the right only those limitations expressed in the law or clearly and compellingly implied."[2] We will not, therefore, interfere with the right of initiative based on speculative concerns.[3]

Both the OAG and the CGC raised potential concerns with respect to the above-requirement that initiative proposals not interfere with the Council's power of the purse. In addition, the OAG considered whether the Measure violated the U.S. Constitution's dormant Commerce Clause and a Home Rule Act prohibition on legislation that is "not restricted in its application exclusively in or to the District." For the reasons set forth below, we conclude that the Measure meets proper subject requirements.

The Requirement That Initiative Proposals Not Appropriate Funds

The CGC noted that the D.C. Court of Appeals has found that initiatives violate the proper subject limitation against proposals that appropriate funds when they 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 that is enforceable by private right of action or directly address and eliminate a source of revenue.[4] She points out that the Measure mandates that the Director of the DOEE must ensure compliance with the Measure's prohibition

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[2] *Hessey v. Burden*, 584 A.2d 1, 3 (D.C. 1990), *remanded*, 615 A.2d 562 (D.C. 1994) (citations and quotations omitted).

[3] *In re: "Make All Votes Count Act of 2024,"* BOE Case No. 23-007 at p. 9 (issued 7/25/2023).

[4] October 27, 2025 Advisory Opinion of the General Counsel to the Council at p. 2.

on the use, sale, and distribution of products banned under the Measure's terms and that it authorizes civil penalties that may cause the revocation of a violator's business license. The CGC, however, concludes that only the Chief Financial Officer ("CFO") could say whether the Measure would have a fiscal impact or its costs could be absorbed by the District Government. Therefore, the CGC did not reach a conclusion as to whether the Measure presents a proper subject for initiative.

While the OAG similarly noted that "[w]hether [the Measure's] mandate creates unbudgeted costs is a factual question that may be determined conclusively only by the OCFO through a fiscal impact statement," he took a different approach. As he has maintained with respect to prior initiative matters, the OAG suggested that "subject to appropriations" type language be read into every proposal as it should be understood that the funding of any law is at the discretion of the Council and/or alternatively that the proposed legislative text could be modified to expressly include such language.

With respect to the CGC's position, the statutory process provides for the production of a FIS only after the Board has made a proper subject determination. D.C. Official Code §1-1001.16(c)(4) (providing that, if the Board finds that an initiative proposal does not present a proper subject matter issue, part of the process for moving the proposal along the ballot access path includes obtaining a FIS from the CFO). Accordingly, we have a statutory obligation to proceed and render a proper subject determination without the benefit of a FIS.[5]

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[5] Recently, we found that a measure that would essentially exempt the District from daylight savings time was a proper subject for initiative, including for the reason that it would not have a budget impact. *In re: "The District of Columbia Time Stability Act",* BOE Case No. 25-012 (issued

As to the OAG's position that subject-to-appropriations language can be automatically read into all initiative proposals, we believe that the legislation that the OAG relies upon applies only with respect to Council drafted legislation. *See In Re: "DC Cash Payment Reparations Act,"* BOE Case No. 24-014 at 7-8 (issued 7/11/2024).[6] Further, and contrary to OAG's position, the

June 9, 2025). In their advisory opinions with respect to that measure, both the OAG and the CGC agreed that there would be no costs associated with not changing the clocks in the District to follow daylight savings time adjustments. Subsequently, as required by law, the Board sought and obtained a FIS from the CFO and that FIS advised of costs associated with software and other adjustments that did in fact implicate the Council's budgetary authority. The statute, however, sets out rigid time-driven procedures for the Board to follow in overseeing the ballot access process for initiatives. Once we accept a measure as a proper subject, the law mandates that we move on. Notably, following proper subject acceptance, the Board has 20 days to prepare the measure's formulations and to request a FIS from the CFO, and then the CFO will have 15 days from the date of the Board's request to issue the FIS, and then the Board must convene a duly-noticed meeting at which to adopt the formulations. The Board has 24 hours after adoption at the meeting to submit the formulations for publication. After the formulations are published in the D.C. Register, voters have ten days to bring court challenges. D.C. Official Code §1-1001.16(c)-(e). As there is no statutory mechanism for the Board to halt this process, the best reading of the law, we believe, is that a conflict between a Board finding that a measure does not satisfy the appropriations-related proper subject requirement and a subsequently-issued FIS be addressed through the voter challenge step in the statutory process; and not through some *sua sponte* derailment of a measure by the Board. Given, *inter alia*, that no voter, in the case of the Time Stability Act, sought judicial review of the Board's proper subject decision for the reason that the FIS was inconsistent with the Board's decision, we have moved forward with the ballot access process for what is now Initiative Measure No. 84.

[6] In that case, we explained that the OAG's position that all measures be necessarily be subject to appropriations is based on section 4a(b) of the General Legislative Procedures Act (D.C. Official Code § 1-301.47a(b)), which provides that "[p]ermanent and emergency acts which are accompanied by fiscal impact statements which reflect unbudgeted costs, shall be subject to appropriations." As we have previously noted, however, Section 4a(b) is a provision of a Congressional act (the 2005 District of Columbia Omnibus Authorization Act, October 16, 2005 (Public Law 109-356, 120 Stat. 2019)) that amends an act of the Council, the General Legislative Procedures Act of 1975 ("the GLPA") and the GPLA was intended "[t]o define certain terms for all acts and resolutions of the *Council*[.]" The GPLA is also necessarily silent with respect to initiative measures, as it was enacted prior to the passage of the Initiative, Referendum, and Recall Charter Amendment Act of 1977 ("the CAA"), which provided the right of initiative. If it were the case that the GLPA provided that all legislation is effectively subject to appropriations, there

Board is not authorized to engage in formulation of the Measure at this juncture by re-writing the Proposer's legislative text and therefore cannot modify the Proposer's language to address a possible defect with respect to a proper subject requirement.[7] By law, tinkering with a measure's proposed language cannot occur until after the proper subject determination is made. Thus, the omission of subject-to-appropriations type language in a measure as originally proposed may be fatal.[8]

That said, in the instant case, the potential prospects for a budgetary impact lie in the enforcement requirements of the Measure. No evidence has been presented on this record that demonstrates that the enforcement program will have any cost. We have no idea where foie gras or other offending products are sold in the District, if anywhere, and no clue as to the likely enforcement needs. No evidence was presented that these products are on the menu in any restaurant. Indeed, the proponents of the Measure did not make representations as to any notable level of would-be prohibited conduct in D.C. Rather, one proponent commented, "[f]oie gras is a niche luxury item with minimal economic footprint in D.C. Restaurants and distributors can easily

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would have been no need to specify in the CAA that the right of initiative is to propose legislation except laws appropriating funds.

[7] As noted in *In Re: "DC Cash Payment Reparations Act,"* the Board's authority to prepare initiative measures in the "proper legislative form" in accordance with D.C. Official Code §1-1001.16(c)(3) applies after a proper subject finding is made.

[8] Such would likely have been the case with a May 17, 2023 predecessor to Initiative Measure No. 83 (concerning ranked choice voting and opening of primaries) that lacked subject–to-appropriations type language. Following the issuance of OAG and CGC advisory opinions with respect to that proposal that found that the measure, as written, would fail to meet the proper subject limitation on measures that violate the Council's budgetary authority, the proposer withdrew it and re-submitted it with curative subject-to-appropriations language.

substitute other high-end dishes without financial loss."[9] Another noted that the prohibited force-feeding does not occur in D.C. and contended that, "[e]nforcement simply falls within routine food-safety inspection authority, as with many other product restrictions in the District."[10] So, while the Measure creates enforcement authorities, we have no information showing that those authorities would ever likely be exercised or that a web page covering the tracking of penalties would trigger any cost beyond the trivial expense of its creation.

Indeed, the CGC notes that she cannot say whether the costs of the Measure can be absorbed by the D.C. Government such that it would not interfere with the Council's budgetary authority. On its face, the Measure does not expressly 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 that is enforceable by private right of action or directly address and eliminate a source of revenue. Given the preference for ballot access, the mere chance that the Measure would have one of these prohibited fiscal effects should not form the basis for rejecting it as a proper subject.

Along these lines, we have declined to reject initiatives where an alleged budgetary impact is speculative. *In re: Entheogenic Plant and Fungus Policy Act of 2020,* BOE Case No. 20-001 at p. 5 (2/14/2020) (quoting AG's finding that initiative presented no proper subject appropriations defect where "[a]ny impact on the allocation of revenues would be speculative."); *In re: D.C. Bike Life Access and Use of Non-Traditional Vehicles Act of 2018,* BOE Case No. 18-009 at p. 10

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[9] Written comment of Bina Greenspan at item 5. *See also* written comment of Mike Accardi (foie gras has "virtually no effect on the local economy").

[10] Comments of Raphaelle Martinez.

(05/18/2018) (rejecting alleged proper subject appropriations defect where there was no evidence that the Council relied on certain projected revenue in developing its budget)).[11] There is before us on this record no evidence that any possible costs of the Measure would necessitate the appropriation of funds. It would be speculative to conclude that the instant Measure will fail proper subject matter requirements for appropriations-related reasons. Given that and because we cannot alter the statutory process and issue a proper subject decision after a FIS issues, the Measure must be found to meet the proper subject requirement that initiatives not interfere with the Council's power over the purse.

The Remaining Proper Subject Requirements

As noted by the OAG, the Measure does not improperly interfere with interstate commerce in violation of the U.S. Constitution's dormant Commerce Clause, given importantly that it is not driven by economic protectionism.[12] Notably, the Ninth Circuit has upheld a similar ban on force-fed bird liver products against such a constitutional challenge.[13] Nor, as the OAG correctly concluded, does it violate the Home Rule Act prohibition on legislation that is "not restricted in its application exclusively in or to the District" given that its commerce-related provisions apply

[11] In *DC Cash Payment Reparations Act*, we were confronted with a proposal for a study and public hearings on providing reparations to D.C. residents. There, the CGC opined that she believed that the proposal would have costs. More importantly, we relied on an earlier opinion rejecting a measure that required hearings where it was found that such activity would have a budgetary impact. Accordingly, it was not speculative to conclude that the DC Cash Payment Reparations Act proposal would require Council funding.

[12] October 27, 2025 OAG Advisory Opinion at pp. 3-4 (citing, *inter alia, Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023).

[13] *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Bonta*, 33 F4th 1107, 1117-20 (9th Cir. 2022), *cert. denied* 143 S. Ct. 2493 (2023).

only to those goods brought into the District.[14] Clearly, the Measure does not implicate the Human Rights Act. Finally, the Proposer complied with the campaign finance-related filing requirements and submitted her proposal in the proper form.

Conclusion

For the foregoing reasons, the Board finds that the "Prohibiting Force-Feeding of Birds Act" presents a proper subject for an initiative. Accordingly, it is hereby:

ORDERED that the "Prohibiting Force-Feeding of Birds Act" is ACCEPTED pursuant to D.C. Official Code § 1-1001.16(b)(2). The Board issues this written order today, which is consistent with its oral ruling rendered on November 5, 2025.

Dated: November 6, 2025

Gary Thompson
Chair
Board of Elections

[14] *Id.* at 4 and cases cited at n. 28.