

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

In Re:

“The Vermelle Paid Maternity Leave Act”

Administrative Hearing  
No. 24-012

**MEMORANDUM OPINION AND ORDER**

This matter came before the Board of Elections (“the Board”) at a hearing convened on Wednesday, June 12, 2024 to determine whether the proposed initiative measure, “The Vermelle Paid Maternity Leave Act (“the Measure”),” presents a proper subject for initiative under applicable District of Columbia (“District”) law. Board Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. The Board’s General Counsel, Terri Stroud, and the initiative proposer, Addison Sarter (“the Proposer”), were also present.

**Statement of Facts**

On April 26, 2024, the Proposer, a registered voter in the District, filed the Measure and supporting documents at the Board’s offices. According to its summary statement and legislative text, the Measure, if enacted, would “[i]ncreas[e] maternity paid leave”<sup>1</sup> by: 1) “[a]llow[ing] pregnant women working in [the District] to receive one year of full paid maternity leave, once they start their third trimester[;]” 2) “[a]llow[ing] pregnant women working in [the District] to receive nine months of full paid leave after giving birth[;]” and 3) “[a]llow[ing] the significant other/spouse of a pregnant woman who works in the District to receive full pay while working only

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<sup>1</sup> The legislative text of the Measure states that “[a]s of right now DC only allows for two weeks of paid prenatal leave and three months of paid leave to care for a newborn.”

half-days during the third trimester to care for their spouse.”<sup>2</sup> In addition, the Measure asserts that “[the Measure] does not appropriate funds because it is the same funds that would already be used for employees if they were not on leave.”

On April 29, 2024, the Board’s Office of General Counsel (“the OGC”) 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”).<sup>3</sup>

On or about April 29, 2024, the OGC requested that the Office of Documents and Administrative Issuances publish in the D.C. Register a “Notice of a Public Hearing: Receipt and Intent to Review” (“the Notice”) with respect to the Measure. The Notice, published on May 10, 2024, advised that there would be a public hearing on June 12, 2024 to determine whether the Measure is a proper subject matter for initiative.<sup>4</sup>

On May 19, 2024, the CGC provided an advisory opinion to the Board.<sup>5</sup> That opinion concluded that the Measure is not a proper subject for an initiative because it would require the funding of additional employment benefits to District government employees and is thus an impermissible “law appropriating funds.” The opinion also concluded that the Measure

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<sup>2</sup> The Summary Statement for the Measure.

<sup>3</sup> 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.

<sup>4</sup> See 71 DCR 005394 (May 10, 2024).

<sup>5</sup> Nicole L. Streeter, General Counsel, Council of the District of Columbia, Letter to Terri D. Stroud, General Counsel, Board of Elections (May 20, 2024).

contravened section 602(a)(3) of the Home Rule Act, which prohibits the enactment of “any act ... which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District[.]”<sup>6</sup>

On May 20, 2024, the OAG provided an advisory opinion to the Board.<sup>7</sup> That opinion concluded that the Measure is not a proper subject of initiative because it is not legislative in nature. Instead, the opinion states, the Measure merely “seeks to enact a policy that, in three situations, entitles a woman or her significant other/spouse to a certain duration of paid maternity leave before or after a triggering event”<sup>8</sup> but “does not provide enough specificity to ‘set[] in motion the effectuation of that policy[,]”<sup>9</sup> particularly given the context of other District paid leave statutes. Similar to the CGC’s advisory opinion, the OAG’s opinion also concluded that the Measure violated section 602(a)(3) of the Home Rule Act because it would “entitl[e] pregnant women and their significant others/spouses ‘working in DC’ to paid leave, without exception, [which] would necessarily require the federal government to provide paid leave to its employees working in the District.”<sup>10</sup>

During the hearing held on the matter on June 12, 2024, the Board’s General Counsel discussed the conclusions reached in the advisory opinions and submitted the opinions for the

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<sup>6</sup> See D.C. Official Code § 1-206.02(a)(3).

<sup>7</sup> Brian Schwalb, Attorney General for the District of Columbia, Letter to Terri D. Stroud, General Counsel, Board of Elections (May 20, 2024).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

record. Upon being provided an opportunity to comment on the advisory opinions, the Proposer questioned the conclusion that the Measure appropriated funds since the funds in question are already allocated and would be disbursed to the employee regardless of whether the employee is at work or on leave. In response, the Board's General Counsel reiterated that the advisory opinions raised additional concerns about the Measure, including whether it met the threshold requirement of proposing a law.

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 refuse to accept the Measure because it fails to propose a law and because, to the extent that it could be construed as proposing a law, it contains provisions that would violate the Home Rule Act's prohibitions on laws appropriating funds and laws that would impermissibly legislate concerning functions of the United States.

### **Analysis**

"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."<sup>11</sup> The District's statutory framework establishes this Board as the gatekeeper of the initiative process; D.C. Official Code § 1-1001.16(b)(1) provides that,

[u]pon receipt of each initiative ... measure, the Board shall refuse to accept the measure if the Board 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:

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<sup>11</sup> D.C. Official Code §§ 1-204.101 and 1-1001.02(10).

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;
- (B) The petition is not in the proper form established in subsection (a) of this section;
- (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2; or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.

An initiative presents a proper subject under the terms of Title IV of the Home Rule Act if it proposes a law<sup>12</sup>, does not appropriate funds<sup>13</sup>, and does not violate or seek to amend the Home Rule Act.<sup>14</sup> A proposed initiative measure, then, cannot be accepted by the Board unless it meets all of the aforementioned requirements, including the threshold requirement of proposing a law.

As explained below, the Measure does not propose a law, and to the extent that it could be construed to propose a law, we find that it contains provisions that violate the Home Rule Act's prohibitions on laws appropriating funds and laws that would impermissibly legislate concerning functions of the United States. Accordingly, the Board is compelled to reject the Measure.

As noted above, an initiative must propose a law or, in other words, legislation. The District of Columbia Court of Appeals has stated that "an initiative will be deemed to be legislative in character if it 'clearly includes an action which adopts a policy affecting the public generally and

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> D.C. Official Code § 1-1001.16(b)(1).

sets in motion the effectuation of that policy.’”<sup>15</sup> The Measure before us presents a policy statement instead of a substantive law. Specifically, while the Measure indicates a preference for a policy that would "allow" for expanded benefits to pregnant women and their significant others/spouses who are working in D.C., it lacks the necessary details to "set in motion the effectuation of that policy,"<sup>16</sup> details that would clarify matters such as program eligibility and participants’ rights. Indeed, a heightened degree of detail is required in instances such as this one where a measure seeks to legislate in an area marked by an existing statutory scheme as complex as the one governing paid leave.<sup>17</sup>

To the extent that the Measure could be construed as proposing a law, it impermissibly contains provisions that would appropriate funds. 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[.]”<sup>18</sup> The Measure aims to expand benefits for District employees, which would require expenditures and thus impact the discretionary process by which the Council identifies and allocates resources.<sup>19</sup> And, unlike the "Ranked Choice Voting and Open the Primary Elections to

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<sup>15</sup> *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992)(“*Hessey II*”) (*quoting Woods v. Babcock*, 185 F.2d 508, 510 (D.C. Cir. 1950)).

<sup>16</sup> *Id.*

<sup>17</sup> Paid leave in the District of Columbia is governed by several statutes, including the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code 1-601.01 *et seq.*) and the District Government Paid Leave Enhancement Amendment Act of 2022 (D.C. Law 24-0212, D.C. Official Code 1-601.01 *et seq.*).

<sup>18</sup> *Hessey v. D.C. Board of Elections and Ethics, et al.*, 601 A.2d 3, 19 (“*Hessey I*”)(D.C. 1991).

<sup>19</sup> As the OAG noted in its opinion, the Office of the Chief Financial Officer (OCFO) concluded in its fiscal impact review of the "District of Columbia Paid Leave Enhancement Amendment Act of 2022" that expanding paid maternity leave would require the District government to allocate additional funds. While that Act increased maternity leave by four weeks, the Measure would increase leave by an additional nine months. *See Memorandum*

Independent Voters Act of 2024” measure that we previously approved, the Measure contains no language that indicates that it would not be implemented unless the required funding was provided for in an approved financial plan and budget.<sup>20</sup> Thus, we must reject the Measure as it violates the prohibition on initiatives that intrude upon the Council’s appropriation and budgeting authority.

Finally, while the right of initiative granted to the voters of the District of Columbia is “very broad,”<sup>21</sup> it is inherently limited to the legislative scope of authority that the Council of the District of Columbia possesses. The Council cannot delegate through the initiative process powers that it does not itself hold. The Home Rule Act restricts the Council from legislating on matters concerning the “functions or property of the United States[.]” By its terms, the Measure would require the federal government to provide paid leave to those of its employees who are working in the District. As such, it necessarily constitutes an attempt to enact a law that concerns the functions of the United States and is invalid under the law.

### **Conclusion**

For the foregoing reasons, the Board finds that the “Vermelle Paid Maternity Leave Act” does not present a proper subject for an initiative<sup>22</sup>. Accordingly, it is hereby:

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from Fitzroy Lee, Chief Financial Officer, to Chairman Phil Mendelson, Fiscal Impact Statement – District Government Paid Leave Enhancement Act of 2022, (July 13, 2022), [https://lms.dccouncil.gov/downloads/LIMS/48620/Committee\\_Report/B24-0615-Committee\\_Report1.pdf?Id=144323](https://lms.dccouncil.gov/downloads/LIMS/48620/Committee_Report/B24-0615-Committee_Report1.pdf?Id=144323) (stating that legislation expanding the type of qualifying events and duration of paid leave for District government employees is expected to increase personnel costs).

<sup>20</sup> In re: *Make All Votes Count Act of 2024*, BOE Case No. 23-007 (July 25, 2023) at 7. *Make All Votes Count Act of 2024* was the previous title for the *Ranked Choice Voting and Open the Primary Elections to Independent Voters Act of 2024*.

<sup>21</sup> *Id.* at 12.

<sup>22</sup> We find that the Measure meets all other requirements not discussed herein.

**ORDERED** that the “Vermelle Paid Maternity Leave Act” 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 June 12, 2024.

Dated: June 17, 2024



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Gary Thompson  
Chair  
Board of Elections