

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:
“Fair Minimum Wage Act of 2014”

Administrative Hearing
No. 14-06

Re: Approval of Proposed
Initiative Measure

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections (“the Board”) on Thursday, May 7, 2014, pursuant to D.C. Official Code § 1-1001.16(b)(1) (2012 Repl.). It involves a finding by the Board that the proposed initiative, the “Fair Minimum Wage Act of 2014” (“the FMWA”), is a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1) (2012 Repl.). Joseph Sandler, Esq. appeared as counsel for the proposer of the initiative before the Board. Chairman Deborah K. Nichols and Board Member Stephen I. Danzansky presided over the hearing.

Statement of the Facts

On March 27, 2014, Rev. Jones filed the FMWA pursuant to D.C. Official Code § 1-1001.16(a) (2012 Repl.).¹ The proposed initiative, in brief, would increase incrementally on a yearly basis the required minimum wage. The increase could be from \$10 per hour in 2015 up to \$12.50 per hour in 2017; or the increase could be the minimum wage set by the United States Government pursuant to the Fair Labor Standards Act plus \$2—whichever is greater. Starting in

¹ On November 25, 2013, Rev. Jones submitted his verified statement of contributions to the D.C. Office of Campaign Finance (“OCF”) pursuant to D.C. Official Code § 1-1001.16(b)(1)(A) (2012 Repl.). On November 29, 2013, Rev. Jones supplemented his verified statement of contributions with the name and address of the bank designated by the committee as the committee’s depository pursuant to D.C. Official Code § 1-1.1163.07(1)(D) (2012 Repl.).

2018, the minimum wage shall be the greater of the wage in effect the prior year increased in proportion to any rise in the Consumer Price Index, or the minimum wage set by the United States Government pursuant to the Fair Labor Standards Act plus \$2. Employees earning more than \$30 a week in gratuities would receive a base wage increase incrementally on a yearly basis from \$4 per hour in 2015 up to \$9 per hour in 2020, provided 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. If the employee receives less in gratuities than the difference then the employer shall pay the amount of that difference in minimum wages. The minimum wage would also extend coverage to live-in household workers and newly hired persons 18 years of age and older as well; however, it will not apply to employees and contract workers of the District of Columbia government.

On March 27, 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 FMWA. The Notice was published in the D.C. Register on April 4, 2014. *See* 61 D.C. Reg. 15 (2014). On March 31, 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 FMWA presented a proper subject for initiative.

On April 28, 2014, the Attorney General submitted comments to the Board stating that the FMWA was a proper subject for initiative. "The Initiative does not increase the amount that the District must pay its employees or the amount that District contractors must pay their

employees (which could, presumably, lead to higher contract costs for the District).”²

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 §§ 1-1163.07 and 1-1163.09;³
- (B) The petition is not in the proper form established in subsection (a) of this section;⁴
- (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2;⁵ or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.⁶

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

² Opinion of the District of Columbia Attorney General, Irvin B. Nathan, Esq. (Apr. 28, 2014) p. 3.

³ 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.

⁴ 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[.]”

⁵ 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.).

⁶ D.C. Official Code § 1-204.46 (2012 Repl.) deals with budgetary acts of the D.C. Council.

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 with respect to the prohibition on laws appropriating funds, the measure must 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; or directly address and eliminate any revenue source. Finally, the mandatory provisions of the initiative may not be precluded by any lack of funding. *See District of Columbia Board of Elections and Ethics and District of Columbia Campaign for Treatment v. District of Columbia*, 866 A.2d 788, 794 (D.C. 2005) (“*Campaign Treatment*”).

In the instant case, the proposed measure does not appropriate any funds because the measure excludes employees and contractors of the District from the minimum wage requirement. Section 1(d) of the measure obviates any concern that the District would have to appropriate additional funds to pay employees and contractors additional wages as a result of the Fair Minimum Wage Act of 2014.

Conclusion

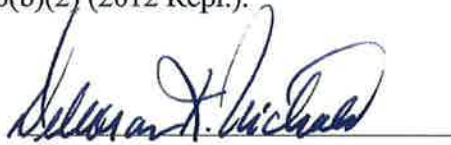
The proposed measure avoids the appropriation of funds prohibition by excluding the class of workers that could presumably raise costs for the District of Columbia. The Board sees no reason to reject the measure as it does not conflict with any of the prohibitions codified in the Initiative Procedures Act and applicable case law.

Accordingly, the Fair Minimum Wage Act of 2014 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 "Fair Minimum Wage Act of 2014,"
is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2) (2012 Repl.).

May 19, 2014
Date

A handwritten signature in blue ink, appearing to read "Deborah K. Nichols", written over a horizontal line.

Deborah K. Nichols, Esq.
Chairman, Board of Elections

