SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CHARLES E. WILSON *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS,

Defendant

and

LISA D. T. RICE and GROW DEMOCRACY D.C.,

Intervenor-Defendants.

Civil Action No. 2023 CAB 005414
Before Carl E. Ross, Associate Judge

Next Event: Status Conference
Scheduled for August 15, 2025 at 10:00 a.m.

INTERVENOR-DEFENDANTS LISA D. T. RICE AND GROW DEMOCRACY D.C.'S MOTION FOR SUMMARY DISPOSITION AND/OR TO DISMISS FOR FAILURE TO STATE A CLAIM

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INTRODUCTION

Seven months ago, District of Columbia voters adopted the Ranked Choice Voting and Open the Primary Elections to Independent Voters Act of 2024 ("Initiative 83") by an overwhelming margin of 73 to 27 percent. Today, Initiative 83 is officially District law. *See* D.C. Law 25-295, 72 D.C. Reg. 3106 (Mar. 25, 2025). Once implemented, Initiative 83's pro-voter reforms will end disenfranchisement for nearly 75,000 independent D.C. voters by allowing them to vote in the District's primary elections. Initiative 83 will also help ensure that District politicians are accountable to voters by implementing ranked choice voting, which, among other things, will guarantee the election of candidates supported by a majority of D.C. voters. In adopting Initiative 83, more than 212,000 District voters used the power of the initiative process to bypass the majority political party's resistance to changing the electoral system that resulted in its own officeholders' election. Having failed to convince the people of the District to vote against Initiative 83, that majority political party now invites this Court to undermine the will of the voters and defeat Initiative 83 for it.

This Court should reject that invitation. The Complaint challenges the July 2023 decision of Defendant D.C. Board of Elections ("Board") that Initiative 83 is a "proper subject of initiative," which under District law is a prerequisite for placement on the ballot. The Board's decision—which is entitled to significant deference—was correct and, in any event, Plaintiffs' complaint fails to state a claim upon which relief may be granted for a violation of any of the proper-subject criteria at issue. First, District case law plainly indicates that Initiative 83 does not improperly appropriate funds, because the initiative's implementation remains subject to appropriations by the D.C. Council. Second, under U.S. Supreme Court precedent, opening the District's primary elections to independent voters will not infringe on Plaintiffs' or any voters' associational rights.

Third, Initiative 83 also does not violate the Home Rule Act's requirement that the District hold partisan primary elections, which will continue under the new law. Finally, Initiative 83 does not authorize discrimination under the D.C. Human Rights Act, but instead, will help make District elections more representative and inclusive.

For these reasons, the Board's decision should be summarily affirmed or, alternatively, the Complaint dismissed for failure to state a claim.

BACKGROUND

I. Legal Background

A. The Importance of Ballot Initiatives to Democracy

Citizen-led ballot initiatives empower voters to bypass legislative inaction or resistance and participate directly in the democratic process, voting together to enshrine binding legislation.[1] Ballot initiatives are critically important to our democracy because they allow people to create a more honest, ethical government that puts the people's interests first—not politicians or special interests.[2] Indeed, a ballot initiative that proposes *electoral* reform—like the initiative at issue in this case—is perhaps the most appropriate use of the initiative power imaginable. *Cf. League of Women Voters of Utah v. Utah Legislature*, 554 P.3d 872, 879 (Utah 2024) (holding that right to reform government through a citizen initiative is a fundamental right). It allows citizens to decide how their elections should be conducted without interference from incumbent elected officials,

[1] *See* Glen Staszewski, *Rejecting the Myth of Popular Sovereignty and Applying an Agency Model to Direct Democracy*, 56 VAND. L. REV. 395, 396 (2003).

[2] Anna Skiba-Crafts, *Conditions on Taking the Initiative: The First Amendment Implications of Subject Matter Restrictions on Ballot Initiatives*, 107 MICH. L. REV. 1305, 1309 (2009) (citing David B. Magleby, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES 28 (1984); Philip P. Frickey, *The Communion of Strangers: Representative Government, Direct Democracy, and the Privatization of the Public Sphere*, 34 WILLAMETTE L. REV. 421, 431 (1998)).

who naturally have a status-quo bias in favor of the system that led to their election. Sending electoral reform questions straight to the people is the paradigmatic example of a good use of direct democracy.

B. The District's Ballot Initiative Process

Under the Home Rule Act, "the qualified registered voters of the District of Columbia generally may approve through initiative any law that the Council may enact through legislation." *Brizill v. D.C. Bd. of Elections & Ethics*, 911 A.2d 1212, 1214 (D.C. 2006) (citing D.C. Code § 1-204.101(a)). The D.C. Court of Appeals has described this initiative power as "co-extensive with the power of the legislative branch of government to pass legislative acts, ordinances, and resolutions." *Id.* (internal quotation marks omitted). Given the importance of the initiative, the D.C. Court of Appeals has also recognized that courts 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." *Hessey v. Burden*, 584 A.2d 1, 3 (D.C. 1990) (internal quotation marks omitted).

Defendant Board of Elections is the independent agency of the District responsible for the administration of voter registration, elections, and ballot access, *see* D.C. Code § 1-1001.01 *et seq*., including for initiatives and referenda, *id.* § 1-1001.16. The Board's regulations implement certain statutory requirements that proposed initiatives must satisfy to be placed on the ballot, including the requirement that a measure be a "proper subject for initiative." 3 D.C.M.R. § 1000.5. Specifically, the Board must deny a proposed initiative placement on the ballot if it would, among other things, violate the Home Rule Act, appropriate funds, violate the U.S. Constitution, or authorize discrimination prohibited under the Human Rights Act of 1977. *See id.* If the Board

decides that an initiative is not a proper subject, the Proposer may seek review of that decision in Superior Court within 10 days. D.C. Code § 1-1001.16(b)(3).

If the Board decides that an initiative is a proper subject, D.C. Code § 1-1001.16(b)(2), the Board must formulate and publish a short title, summary statement, and the legislative text of the measure, *see id.* § 1-1001.16(c)-(f). The Proposer must then gather and file with the Board valid signatures in support of the petition appearing on the ballot from five percent of District voters, including five percent of the voters in at least five of the District's eight wards. *See id.* § 1-1001.16(i)-(j). After a review period, if the Board determines that the petition has sufficient valid signatures, the Board must approve the initiative for the general election ballot. *See id.* § 1-1001.16(k)-(o). To pass, an initiative measure must be ratified by a majority of voters casting ballots on the measure. *See id.* § 1-1001.16(r)(1).

C. Congressional Review Period

Before taking effect, a ratified initiative must be submitted to Congress for the 30-day congressional review period. D.C. Code § 1-1001.16(r)(1). A ratified initiative shall take effect as District law if "during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving" of the ratified initiative. *Id.*

II. Factual and Procedural Background

A. Initiative 83

In November 2024, more than 72 percent of District voters casting ballots voted to adopt Initiative 83. Initiative 83 has since become law and, if funded, will implement two key pro-democracy reforms in the District.

First, Initiative 83 will end voter disenfranchisement for nearly 75,000 independent D.C. voters—roughly one out of every six District voters—by allowing them to vote in the District's

primary elections. Before Initiative 83's adoption, D.C. had a closed partisan primary system in which voters must register with a political party to vote in a primary election. Nearly 75,000 D.C. voters, however, are not registered with a political party and thus could not vote in D.C.'s closed partisan primary elections.[3] Research demonstrates that primaries open to independent voters promote greater voter participation, have higher voter turnout rates,[4] result in more representative and accountable officeholders,[5] and eliminate barriers to voting for certain voters who disproportionately register as independents, such as Hispanics, young voters, and veterans.[6] Acknowledging the detriments of closed primaries, 40 states have moved from closed primaries to more inclusive primary systems, and seven of those states have embraced Initiative 83's proposed reform of opening party primaries to independent voters.[7]

Second, Initiative 83 also establishes ranked choice voting for all District elections, promoting voter choice and representative, accountable government. Specifically, Initiative 83

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[3] *See Open The Primaries to Independent Voters*, Make All Votes Count D.C., https://perma.cc/V9FX-Z3KK (archived July 25, 2024); *Letting Independents Vote*, Make All Votes Count D.C., https://www.makeallvotescountdc.org/let-independents-vote (last visited Apr. 17, 2025).

[4] *See, e.g.*, Joshua Ferrer & Michael Thornig, *2022 Primary Turnout: Trends and Lessons for Boosting Participation*, BIPARTISAN POL'Y CTR. 17 (Mar. 2023), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2023/03/Primary-Turnout-Report_R03.pdf.

[5] Elizabeth Gerber & Rebecca Morton, *Primary Election Systems and Representation*, 14 J. OF L., ECON., & ORG. 304, 322 (1998). In contrast, closed primaries "force[] legislators to be accountable only to their partisan base and not the general electorate." Jeremy Gruber et. al., *Let All Voters Vote: Independents and the Expansion of Voting Rights in the United States*, 35 TOURO L. REV. 649, 652 (2019).

[6] Carlo Macomber & Tyler Fisher, *Not Invited to the Party Primary*, UNITED AM. INST. 11 (Feb. 2024), https://docsend.com/view/kz8jkfxixy727fds.

[7] Arizona, Colorado, Maine, Massachusetts, New Hampshire, North Carolina, and Rhode Island. *State Primary Election Types*, National Conference of State Legislatures, https://www.ncsl.org/elections-and-campaigns/state-primary-election-types#to (last visited Apr. 17, 2025).

allows voters to rank up to five candidates according to their preferences in each District election (other than for political party offices). A candidate with a majority of first-choice rankings wins. But if no candidate wins such a majority, then an "instant runoff" occurs: the candidate who received the fewest first-choice preferences is eliminated, and voters who ranked the now-eliminated candidate first have their ballots added to the totals of their next-choice candidate. This process repeats until one candidate receives a majority of the votes and is declared the winner.

Studies show that ranked choice voting has several beneficial effects for democracy and broad civic participation.[8] Ranked choice voting's tabulation process ensures that no vote is wasted and every ballot counts. Ranked choice voting likewise promotes majoritarian outcomes and ensures fair minority representation.[9] Under ranked choice voting, more candidates may run without fear of splitting votes with other like-minded candidates. Candidates from underrepresented communities with similar platforms, for example, need not compete for voters and may instead all run for office and work together to ensure representation for the group. Ranked choice voting's structure thus benefits minority candidates, including candidates of color and women, as numerous studies have confirmed.[10] Recognizing these many benefits, more than sixty jurisdictions across the country—including two states, three counties, and 47 cities (now, including

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[8] *See generally, e.g.*, Alexandra Copper & Ruth Greenwood, *The Civic Benefits of Ranked Choice Voting: Eight Ways Adopting Ranked Choice Voting Can Improve Voting and Elections*, CAMPAIGN LEGAL CTR. (Aug. 17, 2018), https://perma.cc/SA7F-8FL4.

[9] *Id.* at 5-6 (citing studies).

[10] *See, e.g.*, Cynthia R. Terrell, Courtney Lamendola & Maura Reilly, *Election Reform and Women's Representation: Ranked Choice Voting in the US*, 9 POLITICS AND GOVERNANCE 332-34 (2021), https://perma.cc/55AT-83AR; Sabrina Laverty & Deb Otis, *Ranked Choice Voting Elections Benefit Candidates and Voters of Color: 2024 Update*, FairVote (2024), https://perma.cc/7QYZ-4AXJ; Cynthia R. Terrell et al., *In Ranked Choice Elections, Women WIN: RCV in the United States: A Decade in Review*, RepresentWomen (July 2020), https://representwomen.app.box.com/s/9m839giwkro4wuhej2ponaytk98xqnzn.

the District)—have adopted ranked choice voting for use in some or all elections.[11] Moreover, experience proves that voters who use ranked choice voting understand it, are satisfied with it, and have confidence in its results.[12]

B. Initiative 83 Proposer Lisa D. T. Rice and Make All Votes Count D.C.

Intervenor-Defendant Lisa D. T. Rice is the Proposer of Initiative 83. *See* Agency Rec. at 1 (Nov. 16, 2023) ("Rec."). As Initiative 83's Proposer, Rice led Make All Votes Count D.C., a grassroots ballot initiative campaign dedicated to achieving placement of Initiative 83 on the ballot and promoting its adoption into law by the voters of the District. Ex. A (Declaration of Lisa D. T. Rice [hereinafter "Rice Decl."] ¶¶ 3-12.[13]

Rice was born in the District and resides in Ward 7, where she is registered as an Independent voter. Rice Decl. ¶ 2. Rice formed Make All Votes Count D.C. and proposed Initiative 83 because previously, only voters registered with a political party could vote in primary elections in D.C., even though those elections are funded by taxpayer dollars. Rice Decl. ¶ 14. Rice believes that voting is a precious right and that voters should not have to join any political party to exercise that right, particularly to vote in the party primary that ultimately determines who will be elected. *Id.* Rice also supports Ranked Choice Voting because she believes that the District's

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[11] *See* Deb Otis & Matthew Oberstaedt, *Where Is Ranked Choice Voting Used?*, FairVote, https://fairvote.org/where-is-ranked-choice-voting-used/?gad_source=1&gclid=Cj0KCQjwzYLABhD4ARIsALySuCSwfRuDTg9EZq-u45oRd7TwdZ8H_YE29Q8SsRvaWFkCvwt3X9qzRAgaAj4xEALw_wcB (last visited April 17, 2025).

[12] *See, e.g.*, Copper & Greenwood, *supra* note 8 at 10-11 (collecting sources); *see also, e.g.*, Deb Otis, *Exit Surveys: Voters Love Ranked Choice Voting*, FairVote (Jan. 30, 2025), https://fairvote.org/report/exit-surveys-report-2025/; Rachel Hutchinson, *New Surveys: Voters Love Ranked Choice Voting*, FairVote (Feb. 6, 2025), https://fairvote.org/new-surveys-voters-love-ranked-choice-voting/.

[13] Ex. A is the same declaration from Lisa D. T. Rice previously attached to Intervenor-Defendants' Motion to Intervene as Ex. B. It is reattached here as Ex. A for the Court's convenience.

representatives should have the support of a majority of their constituents and attain office with only a plurality of the vote. *Id.* ¶ 15. In Rice's view, Ranked Choice Voting results in representatives who are more responsive to their constituents and allow voters to more fully express their preferences. *Id.*

C. The Board's Approval of Initiative 83 as a Proper Subject of Initiative

On behalf of Make All Votes Count D.C., Rice submitted her proposed initiative to the Board on June 16, 2023. Rec. at 1-12. The Board then notified Rice and the public that it would consider whether the initiative satisfied the proper subject requirements at a public Board meeting on July 18, 2023. Rec. at 29-35. At that meeting, the Board considered advisory opinions submitted by the Attorney General and Counsel to the D.C. Council, written comments submitted by organizations and individuals, and statements from the Proposer and members of the public present at the meeting. Rec. at 36-240.

Four days later, on July 21, the Board reconvened and announced that it had unanimously determined that Initiative 83 is a proper subject of initiative pursuant to D.C. Code § 1-1001.16(b)(1). *See* Rec. 241-52. On July 25, the Board issued a Memorandum Opinion and Order memorializing its determination. Rec. 269-80 ("Proper-Subject Order"). The Proper-Subject Order rejects claims that Initiative 83 is not a proper subject matter of initiative, explaining that the initiative does not appropriate funds, is not unconstitutional, does not violate the Home Rule Act, and does not authorize discrimination. Rec. at 273-80; *see also Wilson v. Bowser*, 330 A.3d 993, 997 (D.C. 2025) (describing Board's ruling). Given the Board's conclusion, it explained that "assuming that the Proposer collects the requisite number of voter signatures, it is the voters who will decide whether to accept the Measure's proposals for ranked choice voting and opening primaries in D.C. to voters who have not registered with any party." Rec. at 270.

One month later, on August 23, 2023, the Board held a public hearing where it adopted Initiative 83's official formulations—*i.e.*, the measure's short title, summary statement, and legislative form. Rec. at 294-41; *Wilson*, 330 A.3d at 997. On September 1, 2023, those formulations were published in the D.C. Register, *see* Rec. at 356-65, thus triggering a 10-day period during which any qualified District elector could challenge the Board's formulations in Superior Court, *see* D.C. Code § 1-1001.16(e)(1)(A).

D. Plaintiffs File this Lawsuit

On August 31, 2023, Plaintiffs District of Columbia Democratic Party, party chair Charles E. Wilson, and Keith Silver filed this lawsuit against the Board, the District of Columbia, and Mayor Muriel E. Bowser. *See* Compl. for Declaratory J., and Injunctive Relief, Objecting to the Summ. Statement, Short Title, and Legislative Form of Proposed Initiative 83 with a Jury Demand for One Count of the Four Counts Embodied in this Compl. (Aug. 31, 2023) ("Compl."). The Complaint is styled as a challenge to the Board's formulations; however, the substance of the Complaint's claims take issue with the Board's decision that Initiative 83 is a proper subject of initiative. *See id.* Defendants moved to dismiss on October 23, 2023. See Defs.' Mot. to Dismiss Pls.' Compl. (Oct. 23, 2023). The Board filed the administrative record on November 16, 2023. *See* Def. Board of Elections' Certified Designation of Agency Record (Nov. 16, 2023).

On March 28, 2024, this Court granted the Board's motion to dismiss. *See* Order (Mar. 28, 2024). The Court dismissed on the ground that the Complaint was untimely because Plaintiffs filed it before the start of the 10-day period to challenge the Board's formulations under D.C. Code § 1-1001.16(e)(1)(A). *See id.* at 5-9.

Nearly one year later, on February 6, 2025, the D.C. Court of Appeals affirmed in part and vacated in part. *See Wilson*, 330 A.3d 993. The Court of Appeals affirmed this Court's dismissal

in favor of the District and the Mayor for lack of standing. *Id.* at 1006-07. But the Court of Appeals otherwise vacated and remanded for further proceedings on Plaintiffs' claims against the Board, holding that "under its general equity jurisdiction, the Superior Court had the power to adjudicate appellant's challenges to the Board's 'proper-subject' determination." *Id.* at 996.

On April 8, 2025, the D.C. Court of Appeals issued its mandate to this Court. On that same day, the Board filed a motion for summary disposition or to dismiss. *See* Def. Board of Elections' Mot. for Summ. Disposition and/or for Dismissal for Faliure to State a Claim and, in the Alternative, Opposition to Jury Demand and Mot. to Dismiss the D.C. Democratic Party (Apr. 8, 2025) ("Board's Motion to Dismiss"). After Plaintiffs filed—and the Court granted—two motions for extension of time, Plaintiffs filed their response in opposition to the Board's Motion to Dismiss on June 5, 2025. Under the updated scheduling order, the Board's reply in support of its Motion is due July 7, and a status hearing is set for August 15.

E. The Board's Approval of Initiative 83 for the November 2024 Ballot and Subsequent Adoption by District Voters

While Plaintiffs' suit has been pending, Initiative 83 completed the process to achieve placement on the November 2024 general election ballot. On July 1, 2024, after six months of grassroots outreach, Rice and Make All Votes Count D.C. submitted to the Board more than 40,000 signatures from voters in all eight District wards who supported Initiative 83 appearing on the ballot—far in excess of the approximately 22,500 signatures required. *See* Press Release, Make All Votes Count D.C., *The YES on 83 Campaign Submits Over 40,000 Signatures to the D.C. Board of Elections Today* (July 1, 2024), https://perma.cc/B9DJ-GLBN. On August 2, 2024, the Board's Executive Director issued a report recommending that the Board certify Initiative 83 for ballot access after finding that the petition contained sufficient valid signatures. That same day,

the Board unanimously adopted the Executive Director's recommendation and certified Initiative 83 for ballot access.

On November 5, 2024, D.C. voters overwhelmingly approved Initiative 83 with 72.89 percent voting in favor. *See* D.C. Board of Elections, General Election 2024—Certified Results, https://perma.cc/T95K-E2K4; *see also Wilson*, 330 A.3d at 995 n.1. On or about March 7, 2025, the Congressional layover period for Initiative 83 expired without Congress issuing a joint resolution of disapproval and, as a result, Initiative 83 became District of Columbia Law 25-295. *See* Council of the District of Columbia Notice, D.C. Law 25-295, https://perma.cc/Z4HW-UY7L; *see also* 72 D.C. Reg. 3106 (Mar. 25, 2025).

F. Rice's Founding of Grow Democracy D.C. to Support Initiative 83's Implementation

Following the passage of Initiative 83 in November 2024, Rice worked with other members of the Steering Committee of Make All Votes Count D.C. to form Grow Democracy D.C. to support the implementation of Initiative 83. Rice Decl. ¶ 18. Grow Democracy D.C. is a nonpartisan, D.C.-rooted nonprofit with a mission to expand democracy and change systems to put voters first and make it easier to hold politicians accountable. *Id.* ¶ 19. Rice's founding Grow Democracy D.C. was a natural outgrowth of the work of Make All Votes Count D.C. *Id.* While Make All Votes Count D.C. existed to run the campaign to pass Initiative 83, Grow Democracy D.C. is focused on ensuring that the Initiative is properly funded and implemented by the D.C. Council as part of the larger mission of reforming democracy in the District. *Id.* Rice and Grow Democracy D.C. filed a motion to intervene as of right on April 22, 2025. After no response was filed, the Court granted the motion on June 9, and Rice and Grow Democracy D.C. are now Intervenor-Defendants in this suit.

LEGAL STANDARD

I. Summary Disposition of the Board of Elections's Decisions

"The standard for summary disposition is well-established: the movant must show that the basic facts are both uncomplicated and undisputed," and any trial court ruling must "rest[] on a narrow and clear-cut issue of law." *Carl v. Tirado*, 945 A.2d 1208, 1209 (D.C. 2008). At the "pretrial stage of litigation," courts must "construe the record in a light favorable to the party seeking to avoid summary disposition." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 168 (2016). That said, in reviewing agency findings of fact and conclusions of law, the D.C. Court of Appeals has instructed that a Superior Court's review must affirm such findings so long as they are "'supported by and in accordance with reliable, probative and substantive evidence' in the record as a whole." *Kegley v. District of Columbia*, 440 A.2d 1013, 1018 (D.C. 1982) (citation omitted); *see also, e.g.*, *Allen v. Bd. of Elections and Ethics*, 663 A.2d 489, 495 (D.C. 1995). Because it is "not the province of the court to substitute its judgment for that of the administrative agency, provided 'the grounds upon which the agency acted (were) clearly disclosed and adequately sustained,'" trial courts must "review the administrative record alone and not duplicate agency proceedings or hear additional evidence." *Kegley*, 440 A.2d at 1018 (quoting *Clark's Liquors, Inc. v. Alcoholic Beverage Control Board*, 274 A.2d 414, 418 (D.C. 1971)); *see also id.* (trial court's role is limited to "determin[ing] if the requirements of procedural due process are met, and whether the decision of the [] Board is supported by substantial evidence on the whole record").

In election contests, "it is the duty of the court to validate the election if possible. That is to say, the election must be held valid unless plainly illegal." *Allen*, 663 A.2d at 495 (citation omitted). Accordingly, "[i]nsofar as the Board's legal conclusions are concerned," courts 'must defer to its interpretation of the statute which it administers, and, especially, of the regulations

which it has promulgated, so long as that interpretation is not plainly wrong or inconsistent with the legislative purpose." *Id.* Likewise, in the context of a challenge to a citizen-led initiative, trial courts 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." *Hessey v. Burden*, 584 A.2d 1, 3 (D.C. 1990) *remanded on other grounds*, 615 A.2d 562 (D.C. 1994); *see also, e.g.*, *Stevenson v. Bd. of Elections and Ethics*, 683 A.2d 1371, 1377 (D.C. 1996) ("As a franchise right, the initiative right should be liberally construed in both substantive and procedural contexts so as to advance and favor franchise."). Accordingly, courts should afford deference to Board findings supporting ballot access for an initiative.

II. Failure to State a Claim Upon Which Relief Can Be Granted

Alternatively, dismissal under D.C. Superior Court Rule 12(b)(6) is appropriate where a complaint fails to allege the elements of a legally viable claim. *Jordan Keys & Jessamy v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005). In reviewing a motion to dismiss for failure to state a claim, courts must take the material allegations of the complaint as admitted and construe them in the plaintiff's favor. *Chamberlain v. American Honda Finance Corp*., 931 A.2d 1018, 1023 (D.C. 2007) (citation omitted). At the same time, "however, factual allegations must be enough to raise a right to relief above the speculative level." *Chamberlain v. Am. Honda Fin. Corp.,* 931 A.2d 1018, 1023 (D.C. 2007) (cleaned up). This pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" thus requiring "the plaintiff [to] plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged." *Id.* (citation omitted); *see also, e.g.*, *Logan v. LaSalle Bank Nat. Ass'n*, 80 A.3d 1014, 1019 (D.C. 2013) ("Bare allegations of wrongdoing that are no more than conclusions are not entitled to the assumption of truth, and are insufficient to sustain a complaint. [A] formulaic recitation of the elements of a cause of action will not do. . . .") (internal quotation marks omitted).

ARGUMENT

The Court should dismiss Plaintiffs' attempt to undermine the will of the more than 212,000 District residents who voted to adopt Initiative 83. Plaintiffs' Complaint largely asserts policy-based objections to Initiative 83, which District voters have already resoundingly rejected. As such, the Complaint fails to state a claim that Initiative 83 is not a proper subject of initiative and the Board's decision that Initiative 83 is a proper subject should be summarily affirmed. First, District case law plainly indicates that Initiative 83 does not improperly appropriate funds. Second, under U.S. Supreme Court precedent, opening the District's primary elections to independent voters will not infringe on Plaintiffs' or any voters' associational rights. Third, Initiative 83 also does not violate the Home Rule Act's requirement that the District hold partisan primary elections, which will continue under the new law. Finally, Initiative 83 does not authorize discrimination under the D.C. Human Rights Act, but instead, will help make District elections more representative and inclusive, *see supra* Part II.A.

For these reasons, the Board's Proper-Subject Order should be summarily affirmed or, in the alternative, Plaintiffs' suit dismissed for failure to state a claim.

I. Initiative 83 Does Not Appropriate Funds

The Court of Appeals has already observed that "by its terms, Initiative 83 will not be implemented unless and until the Council appropriates funds for its implementation." *Wilson*, 330

A.3d at 997. That settles the matter. Despite this, Plaintiffs' Count IV incorrectly claims that Initiative 83 improperly appropriates District funds. *See* Compl. ¶¶ 38-42, 79-80. But Initiative 83 expressly provides that "[t]his Initiative will not be implemented unless the D.C. Council separately chooses to appropriate funds for the projected cost." Rec. at 356 (Initiative 83, Summary Statement); *see also* Rec. at 361 (Initiative 83, § 3(a) ("This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.")). As the Board rightly concluded, "we cannot say that [Initiative 83] interferes with the discretion of the Council over appropriations" given that Initiative 83 contains a "provision expressly subjecting its implementation to the Council's independent budgetary process." Rec. at 275 (Proper-Subject Order at 7); *see also id.* (observing that Initiative 83 "provides on its face that it will not be implemented unless and until its fiscal impact statement is addressed by an approved financial plan and budget").

The Board's decision followed the advisory opinion of the Attorney General, who also correctly concluded that Initiative 83 does not appropriate funds because, by its own terms, Initiative 83 is subject to voluntary appropriation by the Council. Rec. at 274-75 (Proper-Subject Order at 6-7); Rec. at 44 (A.G. Advisory Op. at 8). Appropriations in this context refers to the discretionary process by which funds are identified and allocated. *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991). As the Court of Appeals has recognized, so long as an initiative includes a "subject-to-appropriations" clause that leaves the power to allocate funds with the Council, the initiative comports with District law. *See D.C. Bd. of Elections & Ethics v. District of Columbia ("Campaign for Treatment")*, 866 A.2d 788, 797 (D.C. 2005); *see also* Rec. at 41 (A.G. Advisory Op. at 5).

In contrast, in *Campaign for Treatment*, the Court of Appeals found that an initiative improperly appropriated funds where it contained multiple *mandatory* provisions requiring the allocation of funds. 866 A.2d at 795-96. The Court in that case explained that the "initiative d[id] not in any way condition" compliance with its requirements "upon funding by the Council." *Id.* at 797. The Court declined to read into the initiative the words "subject to the allocation of funds" when such language was "clearly not there." *Id.* As the Attorney General correctly explained, the *Campaign for Treatment* Court's "reliance on the lack of a subject-to-appropriations clause was central to, and necessary to explain, its holding that the initiative compelled the allocation of funds." Rec. at 41 (A.G. Advisory Op. at 5). But here, the clause missing in *Campaign for Treatment* is unequivocally present in Initiative 83. *See* Rec. at 361 (Initiative 83, § 3(a)); *see also* Rec. at 356 (Initiative 83, Summary Statement).

Plaintiffs' claims to the contrary are undermined by Plaintiffs' own authorities. In their Complaint, Plaintiffs cite the Fiscal Impact Statement that estimates the cost of implementing primaries open to independent voters and ranked choice voting in the District. Compl. ¶ 39. But this document itself makes clear that Initiative 83's implementation is subject to funding by the Council. *See* Rec. at 362 (Fiscal Impact Statement) ("The initiative's implementation is subject to the inclusion of the required financial resources in an approved budget and financial plan").

Plaintiffs also rely on *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 893 (D.C. 1981), *see* Compl. ¶ 80, but that case makes clear that the prohibition on initiatives appropriating funds "does not bar initiatives that would authorize (but not fund) a new project," *Convention Ctr. Referendum Comm.*, 441 A.2d at 893. The *Convention Center* Court conducted a detailed inquiry into the legislative history of the D.C. Charter Amendment, which established the "laws appropriating funds" exception. *Id.* at 912. This analysis

found a sharp distinction "between the power to authorize a substantive program, which the initiative right would confer on citizens, and the power to authorize expenditures, which the amendment explicitly reserved to the Council and Congress." *Id.* Initiative 83 authorizes a substantive program, while leaving the "final decision about allocating funds" for implementation up to the Council. Rec. at 42 (A.G. Advisory Op. at 6) (quoting *Hessey*, 601 A.2d at 13).

The Board's decision accords with analysis by courts in other jurisdictions. In states that similarly prohibit initiatives that appropriate funds, courts have also looked to whether, under the challenged initiative, the legislative body retains the power of appropriation. *See e.g.*, *Doyle v. Tidball*, 625 S.W.3d 459, 464 (Mo. 2021) ("An initiative that simply costs money to implement does not necessarily require the appropriation of funds so long as the General Assembly maintains discretion in appropriating funds to implement that initiative."); *Mazzone v. Att'y Gen.*, 736 N.E.2d 358, 367 (Mass. 2000) ("The legislation proposed by the petition neither makes a specific appropriation nor usurps the Legislature's authority to make specific appropriations[]" because funds remain "subject to appropriation"); *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991) (finding proper an initiative that "specifie[d] no sums that must be distributed [and] no specific purpose that must be funded"). District case law on this point thus sits comfortably alongside precedent from around the country.

Because Initiative 83 does not allocate funds, the Court should therefore summarily affirm the Board's ruling or dismiss Count IV for failure to state a claim.

II. Initiative 83 Does Not Infringe Plaintiffs' or Voters' Associational Rights

Initiative 83 is constitutional. Plaintiffs do not challenge the constitutionality of Initiative 83's ranked choice voting provisions—with good reason, as courts across the country have

recognized the constitutionality of ranked choice voting.[14] Initiative 83's primary election reforms are also constitutional and will promote the right to vote by expanding access to the primary ballot for the District's nearly 75,000 independent voters. Contrary to the assertions in Count III of Plaintiffs' Complaint, *see* Compl. ¶¶ 30-37, 73-78, 96-98, those primary reforms do not violate the associational rights of any political parties or D.C. voters; accordingly, the Board of Elections' rejection of Plaintiffs' constitutional claim must be summarily affirmed, or alternatively, Count III of the Complaint must be dismissed for failure to state a claim.

Plaintiffs claim that Initiative 83 infringes their associational rights by allowing voters lacking even "minimal . . . affiliation" with their party to help determine the identity of the party's nominees. *Id.* ¶ 96 (citing *California Democratic Party v. Jones*, 530 U.S. 567, 581-82 (2000)); *see also id.* ¶¶ 75-78 (relying on *Jones*). But Initiative 83 does no such thing: instead, it creates an "open primary. . . in which the voter is limited to one party's ballot," such that an independent voter's "act of voting in the Democratic primary fairly can be described as an act of affiliation with the Democratic Party." *Jones*, 530 U.S. at 577 & n.8 (citation and internal quotation marks omitted). Given this act of affiliation, Initiative 83's partisan primaries open to independent voters are constitutionally distinguishable from the blanket primary system struck down in *Jones*, where all voters could elect each party's nominee by "choos[ing] freely among" all primary candidates "regardless of party affiliation." *Id.* at 571.[15]

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[14] *See, e.g.*, *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011); *Baber v. Dunlap*, 349 F. Supp. 3d 68 (D. Me. 2018); *Campbell v. Bd. of Educ.*, 310 F. Supp. 94 (E.D.N.Y. 1970); *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022); *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009).

[15] Voters were effectively "allowed to participate in the primaries of more than one party on a single occasion, selecting the primary they wish to vote in with respect to each individual elective office." *Jones*, 530 U.S. at 577 n.8 (citation and internal quotation marks omitted). That is a far cry from Initiative 83, which preserves the District's separate, partisan primaries and opens them only to independent voters, not voters from other parties.

Since *Jones*, the Supreme Court has upheld the constitutionality of a partisan primary open to independent voters, where "[i]n general, anyone can join a political party merely by asking for the appropriate ballot at the appropriate time or (at most) by registering within a state-defined reasonable period of time before an election." *Clingman v. Beaver*, 544 U.S. 581, 590 (2005) (plurality op.) (cleaned up); *see also id.* at 601. The *Clingman* Court concluded that such primaries, even though open to independent voters, do not violate political parties' associational rights, but rather preserve parties "as viable and identifiable interest groups." *Id.* at 594; *see also Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 220, 225 (1986) (invalidating closed partisan primary banning parties from allowing independent voters, further confirming the constitutionality of such systems). The Ninth Circuit has likewise explained that, where a primary system "forces a voter to choose one party's primary ballot and thereby forego her opportunity to participate in a different party's primary," "choosing to vote in only one party's primary may constitute a valid form of party affiliation." *Democratic Party of Haw. v. Nago*, 833 F.3d 1119, 1125 (9th Cir. 2016).[16]

So too here. As the Board has already rightly explained, Initiative 83 "is unlike *Jones* and more like *Clingman* and other open primaries approved by courts," because Initiative 83 "simply allows voters who have not affiliated themselves with a party to vote on the ballot for *one* party's primary for government officials." Rec. at 279 (Proper-Subject Order at 11) (emphasis added). The Attorney General similarly observed that Initiative 83 limits "[u]naffiliated voters . . . to voting

[16] In *Nago*, the federal district court explicitly rejected arguments, like those made here, that requiring political parties to open their primaries burdens a party's associational rights by leaving it powerless to exclude voters indifferent to the party's beliefs, with only fleeting interest in the party, or who may even have worked to undermine or oppose the party. *Democratic Party of Haw. v. Nago*, 982 F. Supp. 2d 1166, 1177 (D. Haw. 2013). The court reasoned that a closed primary where the voter "must formally become a member of the party; and once the voter does so, he is limited to voting for candidates of that party" is "virtually indistinguishable" from an "open primary where voters can 'affiliate' with a party on the day of the primary" and then are "limited to one party's ballot." *Id.* at 1178 (cleaned up).

in only one party's primary election. By requesting a primary ballot for one party, to the exclusion of any other, they formally affiliate with that party." Rec. at 43-44 (A.G. Advisory Op. at 7-8). This reasoning undercuts Plaintiffs' claim of forced association with voters unconnected to the party; under Initiative 83, independent voters *are* associating with the party, by choosing to participate in its primary election. As a result, Initiative 83 does not force parties to associate with outsiders any more than existing District laws that already allow new voters to register to vote in a party primary on the day of the election. *See* D.C. Code § 1-1001.07(g)(5).

Plaintiffs' other contentions also fall short. Plaintiffs vaguely suggest that opening the District's primaries to independent voters threatens internal party functions. *See, e.g.*, Compl. ¶¶ 76-77. But Plaintiffs provide no basis to suggest that participation of independent voters presents a "clear and present danger" that such voters—let alone "adherents of an opposing party"—will determine the party's nominees. *Jones*, 530 U.S. at 578. Nor can they. Initiative 83 is "not proposing that independents be allowed to choose the Party's nominee without Party participation." *Tashjian*, 479 U.S. at 220. All District candidates must still collect signatures from party members to appear on the ballot in the party's primary in the first place. *See* D.C. Code §§ 1-1001.08(a)(1), (i)(1)-(2). And Initiative 83 prohibits independent voters from voting for a party's national committeeperson, delegates to a party convention or conference, alternates for those roles, and any other members or officials of the local party. *See* Rec. at 360-61 (Initiative 83, § 2(d)(2)). Initiative 83 and other existing District law thus preserve party members' right to select their own representatives and candidates; "concern that candidates selected under the Party rule will be the nominees of an 'amorphous' group using the Party's name is inconsistent with the facts." *Tashjian*, 479 U.S. at 220.

Initiative 83 also does not implicate concerns about party raiding—a practice "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario v. Rockefeller*, 410 U.S. 752, 760 (1973). Initiative 83 does not permit party raiding because it only allows "independents, who otherwise cannot vote in any primary, [to] participat[e] in the . . . primary"—not members of other parties. *Tashjian*, 479 U.S. at 219 (citation omitted); *see also Clingman*, 544 U.S. at 596-97. Further minimizing the risk of party raiding, District law prohibits voters from changing their party affiliation fewer than 21 days prior to an election. *See* D.C. Code § 1-1001.07(g)(4), (5). As the Attorney General pointed out, this is "another barrier to voters from one party 'crossing over' to affect the message of another party," making it even more "unlikely" under Initiative 83 that a party's nominee would be "'determined by adherents of an opposing party.'" Rec. at 44 (A.G. Advisory Op. at 8) (citation omitted).

In sum, allowing independent voters to participate in the District's primary elections does not violate Plaintiffs' or any voters' associational rights. The Board already recognized as much, detailing the controlling precedent discussed above, *see* Rec. at 278-79 (Proper-Subject Order at 10-11), and concluding that "the Measure does nothing to change the organization of primary ballots by party and does not allow nonparty members to vote for party officials. It simply allows voters who have not affiliated themselves with a party to vote on the ballot for one party's primary for government officials. Accordingly, this case is unlike *Jones* and more like *Clingman* and other open primaries approved by courts." Rec. at 279 (Proper-Subject Order at 11). As the Board has further explained in its Motion to Dismiss, "the grounds upon which the Board acted were clearly disclosed and adequately sustained"—especially in light of the fact that no opponents to Initiative 83, including Plaintiffs in their Complaint, have cited *any* "case where a primary structured even

somewhat similar to that which would exist under Initiative Measure No. 83 was found to violate Constitutional associational rights." Board's Motion to Dismiss at 22. Consequently, the Court should summarily affirm the Board's decision or, alternatively, dismiss Count III of the Complaint for failure to state a claim.

III. Initiative 83 Does Not Violate the Home Rule Act's Partisan Elections Requirement

Initiative 83 retains partisan elections, in compliance with the Home Rule Act. Count II of the Complaint claims that, by opening the District's primaries to independent voters, Initiative 83 violates the Home Rule Act's partisan elections requirement. *See* Compl. ¶¶ 19-29, 68-72. This is incorrect. This Court should therefore summarily affirm the Board's decision that Initiative 83 "does not . . . do away with partisan primaries," Rec. at 278 (Proper-Subject Order at 10), or in the alternative, dismiss Count II for failure to state a claim.

The Home Rule Act requires District voters to elect members of the D.C. Council, the Mayor, and the Attorney General "on a partisan basis." D.C. Code §§ 1-204.01(b)(1), 1-204.21(b)(1), 1-204.35(a). The D.C. Code defines "partisan" as "related to a political party." D.C. Code § 1-1171.01(5). Taken together, these provisions indicate that the specified D.C. elections must simply relate to political parties, meaning that candidates themselves must compete for their political party's nomination and then compete against the candidate(s) of opposing political parties for the elected position.

As the Board's proper-subject decision explains, Initiative 83 merely "changes [the] timing conditions that apply to voter affiliation with a party." Rec. at 278 (Proper-Subject Order at 10). Before Initiative 83, District law required voters to choose their party affiliation at least 21 days ahead of a primary election in order to vote in that party's primary. D.C. Code § 1-1001.7(g)(4), (5). But now under Initiative 83, instead of "requiring voters to make that affiliation twenty-one

days prior to [a primary] election," the law will "allow[] independent voters to affiliate with a party through the act of participating in a party primary election." Rec. at 278 (Proper-Subject Order at 10). Thus, under Initiative 83, "[t]here [will] still be a general election with only one nominee per political party, maintaining its essential 'partisan' election nature." Rec. at 278 (Proper-Subject Order at 10).

The Board's ruling again followed the guidance of the Attorney General, *see* Rec. at 278 (Proper-Subject Order at 10), whose Advisory Opinion explains that the Home Rule Act "does not require *closed* primaries," which mandate voters register with a political party to vote, Rec. at 42 (A.G. Advisory Op. at 6) (emphasis added).

Indeed, under Initiative 83, the District's primary system will continue to result in partisan primaries and, in turn, partisan nominees. Candidates will only compete against other candidates running in the same political party's primary. Each political party will send only one candidate to the general election. Under Initiative 83, primary election voters will not have the opportunity to choose from a slate of candidates affiliated with differing political parties, as in a nonpartisan primary system like that in Alaska. *See* Alaska Stat. Ann. § 15.15.025 (West 2021). Allowing independent voters to participate in D.C.'s primaries thus does not change the partisan structure of elections as required by the Home Rule Act. Because Initiative 83 does not violate the Home Rule Act's partisan elections requirement, the Court should summarily affirm the Board's ruling or dismiss Count II for failure to state a claim.

IV. Initiative 83 Does Not Authorize Unlawful Discrimination

Initiative 83 does not authorize discrimination—in impact or intent. Count I of the Complaint incorrectly claims, Compl. ¶¶ 1-18, 81-88, that Initiative 83's ranked choice voting provision violates the D.C. Human Rights Act, which prohibits any measure that "authorizes, or

would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2," D.C. Code § 1-1001.16(b); *see also id.* § 2-1402.68 (prohibiting "[a]ny practice which has the effect or consequence of violating any of the [Act's] provisions [against discrimination]"). Under the Act, "practices are unlawful if they bear disproportionately on a protected class and are not independently justified for some nondiscriminatory reason." *McCaskill v. Gallaudet Univ.*, 36 F. Supp. 3d 145, 157 (D.D.C. 2014) (quoting *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 29 (D.C. 1987) (the "effects clause" in D.C. Code § 2-1402.68 imports into the Act "the concept of disparate impact discrimination developed by the Supreme Court in *Griggs v. Duke Power Co.*")).

To state a disparate impact claim, Plaintiffs must "identify a specific policy or practice which the defendant has used to discriminate . . . ." *Ward v. Wells Fargo Bank, N.A.*, 89 A.3d 115, 128 (D.C. 2014) (quoting *Garcia v. Johanns*, 444 F.3d 625, 633 (D.C. Cir. 2006)). "[I]t is not enough to simply allege that there is a disparate impact . . . , or point to a generalized policy that leads to such an impact. Rather, the [plaintiff] is responsible for isolating and identifying the *specific* . . . practices that are allegedly responsible for any observed statistical disparities." *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 241 (2005) (emphasis in the original) (internal quotation marks omitted); *see also, e.g.*, *Ricci v. DeStefano*, 557 U.S. 557, 587 (2009) (establishing "a prima facie case of disparate-impact liability" requires the proponent of the claim to "essentially, [make] a threshold showing of a significant statistical disparity" caused by the challenged practice) (citation omitted); *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 373 n.36 (D.C. 1993) ("Under a disparate impact theory, . . . there is a need to show a causal connection between the disparity and some identifiable [] practice."). To state a disparate treatment claim is an even higher bar, as Plaintiffs "must prove both a disparity *and* discriminatory intent—even if

proof of intent is circumstantial and the disparity itself raises an inference of intent." *Palmer v. Shultz*, 815 F.2d 84, 115 n.23 (D.C. Cir. 1987) (emphasis added); *see also, e.g.*, *Davis v. District of Columbia*, 949 F. Supp. 2d 1, 8-9 (D.D.C. 2013) (citation omitted); *Arthur Young & Co.*, 631 A.2d at 373 n.36.

Here, the Court should summarily affirm the Board's correct decision that Initiative 83's ranked choice voting provision does not violate the D.C. Human Rights Act. Before the Board—as now in Plaintiffs' Complaint, *see infra*—were only vague and unsupported assertions that "persons with disabilities and the elderly would be disproportionately confused by ranked choice voting to the point of causing a discriminatory impact." Rec. at 277 (Proper-Subject Order at 9) (citing written comments of Ward 5 Democratic Committeewoman Hazel Bland Thomas). As the Board has since explained in its Motion to Dismiss, while "[s]ome opponents"—including Plaintiff Charles Wilson—"broadly alleged that certain groups who were protected from discrimination by the Human Rights Act would disproportionately struggle with casting their ballots under a ranked choice voting scenario . . . [o]nly two of the opponents making the claim . . . even cited to a source of any data regarding this claim." Board's Motion to Dismiss at 24-25. Moreover, the data they cited—studies of ranked choice voting in Maine and San Francisco—suggested only that "electorate populations that had a higher percent of protected classes, such as the elderly, also had a higher rate of spoiled ballots." *Id.* But, as the Board notes:

> [T]he studies mentioned by opponents below (which appear from the record to concern elections held in 2018 or before) were not provided to the Board. Further, no statistics comparing the levels of spoiled ballots across populations consisting of higher levels among protected classes versus non-protected classes was provided. No description of the structure of the ranked choice balloting practice employed in the jurisdictions studied (for example, were voters ranking more than the minimum five candidates allowed to be ranked under Initiative Measure No. 83) was offered to verify that those ranked choice practices were even similar to that proposed in Initiative Measure No. 83 or to verify that the practices for spoiling ballots in those other jurisdictions compared to that used by the Board. Opponents

> also cited no court case finding that ranked choice voting was illegally discriminatory.

Id. at 25-26. This is a far cry from the sort of "significant statistical disparity" identified in the actual jurisdiction at issue that is typically sufficient to sustain, even on its face, a disparate impact claim. *Ricci*, 557 U.S. at 587. The Court should thus affirm the Board's decision, as "the grounds upon which the agency acted (were) clearly disclosed" and "supported by substantial evidence on the . . . record," *Kegley*, 440 A.2d at 1018—namely the utter *absence* of evidence of any discriminatory impact on any protected class of voters from Initiative 83's ranked choice voting provision, *cf. Hessey*, 584 A.2d at 3 (the right of initiative may be cabined by "only those limitations . . . clearly and compellingly implied" (cleaned up)).[17]

Alternatively, Count I of the Complaint should be dismissed for failure to state a claim. Plaintiffs' allegations as to either the discriminatory impact or treatment of Initiative 83's ranked choice voting provision amount to the following: (1) a generalized assertion that "Defendant's discrimination, intentional or not, has caused and will cause ongoing harm to Plaintiffs and other residents especially those in Wards East of the Anacostia River," Compl. ¶ 10; (2) a quote from "well-known Author and Journalist, Jonetta Rose Barras," who stated that Initiative 83's provisions "could ultimately suppress the voice and influence of voters of color for decades to come," *id.* ¶ 81; and (3) a statement from the Chair of the District of Columbia Democratic Party—

[17] Moreover, as the Board correctly notes, "even if opponents had connected the dots between Initiative Measure No. 83's specific ranked choice voting system and an actual minimally statistically sufficient disparate impact, the Board would not have found that Initiative Measure No. 83 had the effect of authorizing unlawful discrimination . . . because, as a matter of law, a practice that has a discriminatory effect cannot be found unlawful where it is independently justified for some nondiscriminatory reason." Board's Motion to Dismiss at 27 n.48 (citations omitted). Initiative 83's ranked choice voting provision is independently justified by precisely such a compelling, nondiscriminatory reason: ensuring that elected officials in the District need at least 50 percent of the vote to win and are thus truly accountable to voters. *See, e.g.*, Rec. at 53-54 (Statement of Lisa D. T. Rice, Proposer).

a Plaintiff in this case—that, *inter alia*, "the under and over vote in predominantly Black wards (7 and 8) is significantly higher than other wards in the District," and "Ranked Choice Voting would introduce an additional layer of confusion to the electorate," *id.* ¶ 82 ("I have a similar concern for seniors and persons with disabilities."). But generalized worries about the potential impacts of a law, unsupported by any actual, proffered evidence or even direct allegations that the challenged provision will harm a specific class of voters, are not sufficient to sustain a claim of discriminatory impact, let alone discriminatory treatment.

The Court of Appeals has confirmed as much in *Ward*. There, even though the complaint at issue made "a number of specific allegations," it failed to adequately state a disparate impact claim under the D.C. Human Rights Act because it "d[id] not identify any specific support for a conclusion that any of the . . . specific acts alleged had a disparate impact on African Americans." *Ward*, 89 A.3d at 128. The Court offered an example: "the complaint alleges that African-Americans suffer from a higher rate of foreclosure than Caucasians in metropolitan areas 'similar to the District of Columbia,' but they provide no basis for the conclusory allegation that [the other party's] specific conduct had a disparate impact on African-Americans." *Id.* at 129. So too here. Plaintiffs offer, at most, unsupported allegations of under and over votes among certain demographic groups but do not explain how Initiative 83's ranked choice voting provision supposedly disparately impacts those demographic groups, with respect to the issue of under and over votes or more generally. Plaintiffs thus fail to identify any actual disparity, let alone offer any basis for their allegation of discriminatory *intent*. Plaintiffs do not even clearly identify what class of voters Initiative 83's ranked choice voting provision allegedly harms, or allege that they are a part of that class, *see generally* Compl. ¶¶ 1-18, 81-88—as is required to state both disparate impact and disparate treatment claims.

Initiative 83's ranked choice voting provision thus does not violate the D.C. Human Rights Act's prohibition on unlawful discrimination; accordingly, the Board's decision must be summarily affirmed or, alternatively, Count I of the Complaint dismissed for failure to state a claim.

CONCLUSION

For the foregoing reasons, the Complaint should be dismissed and the Board's proper-subject ruling summarily affirmed.[18]

Dated: June 11, 2025

Respectfully submitted,

/s/ *Kevin P. Hancock*

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** pro hac vice application pending*

[18] For the reasons stated by the Board in its Motion to Dismiss, Counts V and VI of the Complaint, Compl. ¶¶ 43-57, which allege violations of the District's Administrative Procedure Act, should also be dismissed. *See* Board's Motion to Dismiss at 31-32.

CERTIFICATE OF SERVICE

I certify that on June 11, 2025, this motion was served through this Court's electronic filing system to:

Johnny Barnes, Donald R. Dinan, Andrew Clarke, and Daraja Carroll, Counsel for Plaintiffs Charles E. Wilson, the District of Columbia Democratic Party, and Keith Silver;

Terri Stroud and Christine R. Pembroke, Counsel for Defendant District of Columbia Board of Elections; and

Pamela A. Disney, Marcus D. Ireland, and Amanda C. Pescovitz, Counsel for Defendants Mayor Muriel E. Bowser and the District of Columbia.

/s/ Kevin P. Hancock
Kevin P. Hancock

Counsel for Intervenor-Defendants

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CHARLES E. WILSON *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS,

Defendant

and

LISA D. T. RICE and GROW DEMOCRACY D.C.,

Intervenor-Defendants.

Civil Action No. 2023 CAB 005414
Before Carl E. Ross, Associate Judge

Next Event: Status Conference Scheduled for August 15, 2025 at 10:00 a.m.

PROPOSED ORDER

Upon consideration of Intervenor-Defendants Lisa D. T. Rice and Grow Democracy D.C.'s Motion for Summary Disposition and/or to Dismiss for Failure to State a Claim, any opposition, any replies, and the entire record, it is this ___ day of _____, 2025, hereby,

ORDERED that Intervenor-Defendants' motion is **GRANTED**; and it is

FURTHER ORDERED that Plaintiffs' complaint is hereby **DISMISSED WITH PREJUDICE.**

_____
Associate Judge Carl E. Ross
Superior Court, District of Columbia

COPIES OF THIS ORDER SHOULD BE SENT TO:

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