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 REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION AND/OR TO DISMISS FOR FAILURE TO STATE A CLAIM

INTRODUCTION

In the November 2024 Election, District voters overwhelmingly adopted Initiative 83. Plaintiffs, which include the D.C. Democratic Party, opposed the Initiative, but more than 72 percent of District voters—including supermajorities in every ward—cast their ballots in favor of Initiative 83 and its pro-democracy reforms. Having failed at the ballot box, Plaintiffs are now attempting to undermine the will of District voters with frivolous claims challenging Defendant D.C. Board of Elections' ("Board") correct decision—made two years ago—that Initiative 83 is a proper subject of initiative. For the reasons explained in Intervenor-Defendants' original motion and this reply, the Board's July 2023 ruling should be summarily affirmed or Plaintiffs' Complaint dismissed for failure to state a claim.

Plaintiffs' responsive brief confirms that this is the correct result. Plaintiffs make little if any attempt to show that the Board's decision was incorrect or to defend the facial sufficiency of their Complaint against Intervenors' arguments. Instead, Plaintiffs improperly invent new claims not in the Complaint, introduce alleged evidence not in the administrative record,[1] and misrepresent the law and procedural posture in this case in an apparent attempt to manufacture an opportunity for *ad hominem* attacks against Intervenors. The unseriousness of Plaintiffs' opposition must be understood for what it is: a cynical attempt to prolong litigation, which Plaintiff's members on the Council who oppose Initiative 83 are currently using as justification to delay funding and implementation of the Initiative.[2] This Court should not allow itself to be drafted

[1] On July 1, 2025, Intervenor-Defendants joined the Board's Motion to Strike the extra-record materials and improper new claims Plaintiffs have attempted to introduce.

[2] One week ago, the D.C. Council issued a budget report recommending an implementation plan for Initiative 83 that was "inclusive of the estimated timeline for final Court response to any litigation." Committee on Executive Administration and Labor, Fiscal Year 2026 Committee Budget Report, June 23, 2025 at 9. Similarly, Plaintiff Charles Wilson argued in May 2025 that

into this underhanded attack on the people's choice. The voters of D.C. have chosen Initiative 83 and one political party's disagreement with its policies is no reason for the will of the people to be undermined. The motion to dismiss and/or summarily affirm should thus be granted expeditiously.

ARGUMENT

I. Intervenors' Motion Should Be Granted Because Plaintiffs Fail to Meaningfully Respond to Intervenors' Showing that the Board's Decision Should Be Summarily Affirmed and the Complaint Dismissed.

Intervenors' motion details at length why this Court should either summarily affirm the Board's decision that Initiative 83 is a proper subject of initiative, or dismiss the Complaint under Rule 12(b)(6). In review of an agency decision, the 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." *Kegley v. District of Columbia*, 440 A.2d 1013, 1018 (D.C. 1982). Dismissal for failure to state a claim is warranted when a complaint does not "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation and citation omitted). Plaintiffs' response fails to show why their Complaint should survive under either standard.

Plaintiffs' brief effectively concedes the merits of Intervenors' motion by failing to meaningfully engage with Intervenors' arguments for why the Court should dismiss Plaintiffs' four claims.[3] *First*, as Intervenors have explained, Count IV of the Complaint fails because Initiative 83 does not appropriate funds, instead relying on Council funding for implementation.

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the Board "should never advance a ballot initiative for placement until all legal challenges are resolved in the courts." Public Roundtable before the Committee on Executive Administration & Labor, Council of the District of Columbia, Statement of Charles Wilson, Chair, D.C. Democratic Party at 2:37:27 (May 13, 2025).

[3] Plaintiffs appear to have abandoned Counts V and VI, alleging violations of the D.C. A.P.A., and in any event these should also be dismissed. *See* Bd. MTD at 31-32.

See Int. MTD at 13. This is plain from the text of the law, the decision of the Board, and the analysis from the Court of Appeals. *See Wilson v. Bowser*, 330 A.3d 993, 997 (D.C. 2025). In response, Plaintiffs baldly assert only that "the measure still requires appropriations and interferes with the Council's budgetary discretion," Bd. MTD Opp. at 19, without explaining how this is so. Indeed, Plaintiffs concede that "[t]he implementation of Initiative Measure No. 83 depends on several contingencies, including … *Council funding*." Int. MTD Opp. at 15 (emphasis added).

Second, Intervenors' motion demonstrates that Count II should be dismissed because Initiative 83 complies with the Home Rule Act's requirement of partisan elections. Int. MTD at 22-23. This showing is not refuted by Plaintiffs' unsupported speculation that Initiative 83 would "undermine[] local governance by complicating the electoral process and reducing transparency." Bd. MTD Opp. at 20-21. Plaintiffs are otherwise only able to restate their Complaint's bare allegations and offer unexplained assertions, *see* Bd. MTD Opp. at 20-21, which further underscores the meritless nature of Count II.

Third, Intervenors' motion shows that Count III should be dismissed by detailing why enfranchising the District's more than 75,000 independent voters in taxpayer-funded primary elections would not infringe the associational rights of Plaintiffs and voters. *See* Int. MTD at 17-22. Plaintiffs wholly fail to address Intervenors' arguments, either in their response to Intervenors' motion or in Plaintiffs' response to the Board's motion, which Plaintiffs claim to incorporate. Int. MTD Opp. at 15. The Court should thus find that Plaintiffs have conceded that Count III of their Complaint should be dismissed. *See, e.g.*, *Classic CAB v. D.C. Dep't of For-Hire Vehicles*, 244 A.3d 703, 706 (D.C. 2021) (petitioner "effectively conceded" issue by failing to respond to argument raised in opposing party's brief).

Fourth, as Intervenors' motion explained, Count I must be dismissed because, even accepting the allegations of the Complaint as true, the Complaint fails to state a claim under the D.C. Human Rights Act against Initiative 83 and the Board correctly rejected this allegation in its administrative proceedings. Int. MTD at 23-28. As Intervenors explained, the Complaint does not clearly identify what class of voters would be harmed by Initiative 83's ranked choice voting provisions, does not even claim Plaintiffs are part of that unidentified class of voters, and alleges no facts to support the existence of any discriminatory intent or disparate impact—as it must to state a claim for relief. Int. MTD at 27 (discussing *Ward v. Wells Fargo Bank, N.A.*, 89 A.3d 115 (D.C. 2014)). Plaintiffs' response fails to demonstrate otherwise, as it fails to respond to Intervenors' arguments or address the relevant case law and, instead, falls back on insufficient generalized policy disagreements and entirely speculative harms. *See e.g.*, Bd. MTD Opp. at 24.

Further underscoring the utter deficiency of their Complaint, Plaintiffs' response resorts to improperly asserting new—and frivolous—arguments about purported religious and public education discrimination that appear nowhere in the Complaint or administrative record. These arguments are both procedurally improper and legally meritless. As Intervenors have explained in their separate filing joining the Board's Motion to Strike, "plaintiff[s] cannot amend [their] complaint *de facto* to survive a motion to dismiss by asserting new claims for relief in [their] responsive pleadings," and the Court "cannot[] consider claims first raised in the plaintiffs[']] opposition." *Coll. Sports Council v. Gov't Accountability Off.*, 421 F. Supp. 2d 59, 71 n.16 (D.D.C. 2006); Response in Support of Mot. to Strike.[4]

[4] Plaintiffs' appeal to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), is also unavailing. *Loper Bright* addressed Article III courts' deference to agency interpretations of ambiguous statutes under the A.P.A. and says nothing about this Court's deference to the Board on straightforward legal issues clearly within its mandate to decide. *See Friends of the Field v.*

II. Unable to Defend Their Complaint, Plaintiffs Assert Irrelevant and Frivolous Claims that Fundamentally Misunderstand the Procedural Posture of This Case.

Though Intervenors have moved for summary affirmance of the Board's ruling or for dismissal for failure to state a claim, Plaintiffs' response treats this case as if it were on an entirely different procedural footing, for the apparent purpose of introducing improper and frivolous arguments, which the Court should reject. *First*, no party has moved for summary judgment, so Plaintiffs' citations to Rule 56 and assertions that there are "genuine issues of material fact in dispute," Int. MTD Opp. at 5-7, 10-11, are legally irrelevant.[5] Moreover, Plaintiffs' own invocation of Rule 56 does not justify the shoehorning of baseless *ad hominem* attacks on the "credibility" of Intervenors into their brief, *id.* at 11-13, and raises questions regarding whether Plaintiffs' filing was "presented for an[] improper purpose," D.C. Super. Ct. Civ. R. 11(b)(1).

Second, Plaintiffs' claim, Int. MTD Opp. at 13-14, that Intervenors lack Article III standing is wrong and irrelevant. Article III standing is an "indispensable part of the *plaintiff's* case." *D.C. Appleseed Ctr. for L. & Just., Inc. v. D.C. Dep't of Ins., Sec., & Banking*, 54 A.3d 1188, 1205 (D.C. 2012) (emphasis added). Plaintiffs make no attempt to show that District law requires Article III standing for an *intervenor-defendant*, nor could they. Indeed, Plaintiffs have already conceded that Intervenors have a sufficient interest under Rule 24(a)(2), as they filed no opposition when Intervenors moved to intervene more than two months ago. This Court then granted intervention as of right, finding that Intervenors properly "claimed an interest relating to the subject-matter of this action," which "may be impaired or impeded by the outcome of this litigation." Int. Order.

D.C. Bd. of Zoning Adjustment, 321 A.3d 673, 680 (D.C. 2024) (reserving judgment on applicability of *Loper Bright* to D.C.'s "well-established" agency deference regime).

[5] What Plaintiffs' claim are "disputed facts," (at 10-11) are instead a mix of (duplicative) legal questions, conclusory assertions, and irrelevant contentions. As Plaintiffs themselves admit, the Court should not "accept legal conclusions cast in the form of factual allegations." Int. MTD Opp. at 8 (citing *Kowal v. MCI Comm. Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)).

CONCLUSION

For the foregoing reasons, Intervenors' motion should be granted.

Dated: July 2, 2025

Respectfully submitted,

/s/ *Kevin P. Hancock*

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CERTIFICATE OF SERVICE

I certify that on July 2, 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
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