SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CHARLES E. WILSON *et al.*, *Plaintiffs*, v. MURIEL E. BOWSER *et al.*, *Defendants*.	Civil Action No. 2023-CAB-005414 Before Carl E. Ross, Associate Judge Next Event: Status Conference Scheduled for March 13, 2026 at 10:00 a.m. Oral Hearing Requested

[PROPOSED] INTERVENOR-DEFENDANTS LISA D. T. RICE AND GROW DEMOCRACY D.C.'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF POINTS OF AUTHORITIES IN SUPPORT

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INTRODUCTION

This case presents a challenge to Defendant D.C. Board of Elections' determination—after full public process and administrative review—that Initiative 83 is a lawful and proper subject of the District's initiative power. Plaintiffs ask this Court to override both the Board and the will of the District's voters, who overwhelmingly adopted Initiative 83 in November 2024. But the record shows no legal or factual basis to disturb the Board's decision. Under the controlling "substantial evidence" standard, the Board's proper-subject ruling must be upheld.

First, Plaintiffs' threshold claims under the D.C. Administrative Procedure Act ("DCAPA") fail as a matter of law. The DCAPA does not supply jurisdiction to challenge a Board initiative decision before this Court and the D.C. Court of Appeals has already confirmed that Plaintiffs may proceed only through this Court's general equity jurisdiction, not the DCAPA.

Second, the Board's proper-subject decision easily satisfies the substantial evidence standard. The Board carefully considered written submissions, public testimony, and advisory opinions from the Attorney General and Counsel to the D.C. Council. On that record, the Board concluded—correctly—that Initiative 83 falls squarely within the scope of permissible direct legislation reserved to District voters.

Because Plaintiffs cannot carry their burden under the applicable deferential review standard—and because Initiative 83 is lawful, constitutional, and rooted in the District's strong tradition of direct democracy—summary judgment should be granted in Intervenor-Defendants' favor and the Complaint dismissed with prejudice.

BACKGROUND

I. Legal Background

A. 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) (citation modified).

The D.C. Initiative Procedures Act ("IPA"), *see* D.C. Code § 1-1001.16 *et seq.*, provides for an initiative process "by which the electors of the District of Columbia may propose laws . . . and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval," *id.* § 1-1001.02(10). Defendant Board of Elections is the independent agency of the District responsible for the administration of voter registration, elections, and ballot access. *See id.* § 1-1001.01 *et seq*. The Board administers the initiative submission, approval, and election process. *See generally id.* §§ 1-1001.05, 1-1001.16.

The IPA states that the Board "shall refuse to accept" a proposed initiative "if the Board finds that it is not a proper subject of initiative" under certain specified grounds. D.C. Code § 1-1001.16(b)(1); *see also* 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 D.C. Human Rights Act of 1977. *See* 3 D.C.M.R. § 1000.5. If the Board decides that an initiative is not a proper subject, the IPA authorizes the Proposer to seek a writ of mandamus from the Superior Court compelling the Board to accept the initiative. D.C. Code § 1-1001.16(b)(3).

If the Board decides that an initiative is a proper subject, the Board must formulate and publish a short title, summary statement, and the legislative text of the measure, D.C. Code § 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 District voters casting ballots on the measure. *See id.* § 1-1001.16(r)(1).

II. Factual and Procedural Background

A. Initiative 83

Initiative 83—entitled the "Ranked Choice Voting and Open the Primary Elections to Independent Voters Act of 2024"—contains two changes to how District elections are conducted. First, Initiative 83 would 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.[1] The District currently has a closed partisan primary system in which voters

[1] *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

must register with a political party at least 21 days prior to a primary election in order to vote in that party's primary. 3 D.C.M.R. § 504.3. Initiative 83 would effectively repeal that restriction for District voters who have not registered with a party but who are willing to affiliate with one party for purposes of the primary election.

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

B. Proceedings Before the Board

After Defendant-Intervenor Lisa D. T. Rice submitted Initiative 83 to the Board on June 16, 2023, the Board 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 to the Board 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.

Votes Count D.C., https://www.makeallvotescountdc.org/let-independents-vote (last visited Oct. 20, 2025).

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. at 241-52. On July 25, the Board issued a 12-page Memorandum Opinion and Order memorializing its determination. Rec. at 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).

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 294-341; *see also 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 deadline 10 days later for any qualified District elector to challenge the Board's formulations in Superior Court, *see* D.C. Code § 1-1001.16(e)(1)(A). On August 2, 2024, the Board certified Initiative 83 for inclusion on the November 2024 ballot after concluding that Rice, as the initiative's proposer, had submitted a petition in support of the initiative containing sufficient valid signatures.[2]

On November 5, 2024, D.C. voters overwhelmingly approved Initiative 83 with 72.89 percent voting in favor. *See General Election 2024—Certified Results*, D.C. Board of Elections, https://perma.cc/T95K-E2K4 (archived Apr. 16, 2025); *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

[2] Alex Koma, *Election Reform Measure Initiative 83 Can Appear on November Ballot, Board Rules*, Washington City Paper (Aug. 2, 2024), https://washingtoncitypaper.com/article/745543/election-reform-measure-initiative-83-can-appear-on-november-ballot-board-rules/.

Congress issuing a joint resolution of disapproval and, as a result, Initiative 83 became District of Columbia Law 25-295. *See* D.C. Law 25-295, Council of the District of Columbia Notice, https://perma.cc/Z4HW-UY7L (archived Apr. 16, 2025); *see also* 72 D.C. Reg. 3106 (Mar. 21, 2025). On July 14, 2025, the D.C. Council voted to fund the ranked-choice voting aspect for implementation starting in 2026.[3]

C. Judicial Proceedings

In the midst of the Board's proceedings, 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. (Aug. 31, 2023). As the D.C. Court of Appeals has explained, the Complaint "ostensibly" challenges Initiative 83's short title, summary statement, and legislative form, but "the lion's share of [the] complaint . . . raise[s] a number of challenges to the Board's determination that Initiative 83 was not a 'proper subject' for initiative." *Wilson*, 330 A.3d at 995.

Defendants moved to dismiss on October 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, explaining 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* Order at 5-9 (Mar. 28, 2024).

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

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[3] *See DC Council Votes to Fund Ranked Choice Voting Implementation in Nation's Capital*, FairVote (July 14, 2025), https://fairvote.org/press/dc-council-votes-to-fund-ranked-choice-voting-implementation-in-nations-capital/.

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. *Id.* at 996. The Court held that "the Complaint, to the extent it brought a challenge" to the Board's formulations "under Subsection (e)(1)(A)," was timely filed "because it was filed before the end of the ten-day period." *Id.* at 1005. However, the Court also "read the lion's share of the Complaint as raising a substantive challenge, premised on several grounds, that the Initiative was not a 'proper subject' of the initiative process." *Id.* As to that challenge, the Court held 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.

After remand, this Court granted Intervenor-Defendants' motion to intervene in the case. The Board and Intervenor-Defendants both filed motions for summary disposition and/or dismissal for failure to state a claim. The Board also filed a motion to strike. On September 3, 2025, the Court granted and denied the motions in part. *See* Order (Sep. 3, 2025) ("Sep. 3 Order").

First, the Court denied the motions for summary affirmance, explaining that "a review of the agency's findings of fact and conclusions of law would be more appropriate through a Motion for Summary Judgment if the parties choose to file one," including because it would allow the parties to "fully brief the level of deference they believe should be afforded to the agency's decision, in light of the Supreme Court's decision in *Loper Bright*." *Id.* at 6-7.

Second, the Court granted the motions to dismiss in part; the Court dismissed Count IV of Plaintiffs' Complaint because "the plain language of Initiative 83 demonstrates, as a matter of law, that it does not violate the prohibition against appropriating." *Id.* at 8. As for the Complaint's remaining claims, the Court denied the motions to dismiss while acknowledging that Plaintiffs' allegations are "scarce on factual details." *Id.* at 9.

Third, the Court granted the Board's motion to strike new claims and extra-record materials that Plaintiffs attempted to introduce in response to the Board's motion to dismiss. *Id.* at 14-16. The Court explained that Plaintiffs' attempt to introduce new evidence was inappropriate because "the Superior Court must review the administrative record alone and not duplicate agency proceedings or hear additional evidence." *Id.* at 14.

On September 23, 2025, the Board filed a motion for judgment on the pleadings under D.C. Rule of Civil Procedure 12(c). Three days later, on September 26, 2025, the Court held a status conference. At that conference, counsel for Intervenor-Defendants informed the Court that they intended to move for summary judgment given the Court's September 3 Order. In response, counsel for Plaintiffs requested that the Court give Plaintiffs an opportunity to brief why they should be given the opportunity to take discovery even though this is an administrative review case. After the conference, the Court issued an order setting a deadline of October 13, 2025 for Plaintiffs to file their intended motion seeking discovery. *See* Order (Sep. 26, 2025). Plaintiffs did not file such a motion by October 13 and instead attempted to do so four days after the deadline on October 17. Intervenor-Defendants will oppose that motion on or before this Court's deadline of October 29, 2025. *See id.*

Intervenor-Defendants now move for summary judgment.

LEGAL STANDARD AND STANDARD OF REVIEW

I. Summary Judgment in a Case Challenging Agency Action

Under D.C. Superior Court Rule of Civil Procedure 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

In a case challenging agency action—like this one, *see Wilson*, 330 A.3d at 995 ("[T]he lion's share of [Plaintiffs'] complaint . . . raise[s] a number of challenges to the Board's determination that Initiative 83 was a 'proper subject' for initiative.")—"[s]ummary judgment is . . . the mechanism for deciding whether as a matter of law the agency action is supported by the administrative record and is otherwise consistent with the . . . standard of review," *Southeast Conference v. Vilsack*, 684 F. Supp. 2d 135, 142 (D.D.C. 2010); *accord Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993). In making this determination, the trial court "sits as an appellate tribunal" and the "entire case on review is a question of law, and only a question of law." *Marshall Cnty.*, 988 F.2d at 1225-26.

Since a challenge to agency action is appellate in nature, the suit, by definition, involves no disputes of material fact that could preclude summary judgment. Instead, the legality of the agency's decision is evaluated based on the Superior Court's "review [of] the administrative record alone." *Kegley v. D.C.*, 440 A.2d 1013, 1018 (D.C. 1982). As the D.C. Superior Court Agency Review Rules explain, in a case involving "Superior Court review of administrative agency orders or decisions," D.C. Sup. Ct. Agency Rev. R. 1(a)(1), the "record on review consists of" the agency's order and the agency's "findings or report," the "papers and exhibits filed with the agency" and "the transcript of any testimony before the agency," *id.* at 1(g); *cf.* U.S. District Court for the District of Columbia Local Civil Rule ("D.D.C. LCvR") 7(h) (comment) ("[I]n cases where review is based on an administrative record the Court is not called upon to determine whether there is a genuine issue of material fact, but rather to test the agency action against the administrative record."). Because review is based solely on the administrative record, the complaint, "properly read, actually presents no factual allegations, but rather only arguments about the legal conclusion[s] to be drawn about the agency action." *Marshall Cnty.*, 988 F.2d at 1226 (adding that

"there is no real distinction in this context between the question presented on a 12(b)(6) motion and a motion for summary judgment").[4]

II. Discovery Is Inappropriate in a Case Challenging Agency Action

Plaintiffs have waived their claim—made to this Court orally at the September 26, 2025 status conference—that discovery is appropriate in this case. In response to that assertion, the Court set a deadline of October 13, 2025 for Plaintiffs to file a motion supporting their purported need for discovery. *See* Sep. 26 Order at 1. But Plaintiffs did not file any such motion until four days after the deadline and without any attempt to explain their untimely filing. *See* Pl.'s Mot. for a Brief Discov. Period (Oct. 17, 2025). That motion should thus denied as untimely, *see, e.g.*, *United States v. Dahlquist*, No. CR 24-443 (BAH), 2025 WL 105676, at *1 n.2 (D.D.C. Jan. 15, 2025) (explaining that a "motion may be denied as untimely" where it was filed "without leave to file an untimely motion" and with "utter disregard for compliance with this Court's orders"), and Plaintiffs' purported need for discovery treated as waived, *see, e.g.*, *Tsai v. Maryland Aviation*, 306 F. App'x 1, 5 (4th Cir. 2008) (holding that a failure to move for a continuance to take discovery waived the claim that discovery was needed prior to summary judgment); *Access Telecom, Inc. v. MCI Telecomms. Corp.*, 197 F.3d 694, 719 (5th Cir. 1999) (same).

Even if Plaintiffs' motion were not untimely—which it is—discovery would clearly be inappropriate here given the nature of this administrative review action. Because a trial court reviewing agency action "sits as an appellate tribunal," that court is not "authorized to determine

[4] Because D.C. Superior Court Agency Review Rule 1(g) directs that the record on review here is the Board's administrative record, a statement of material facts as to which the moving party contends there is no genuine issue—which normally accompanies a summary judgment motion, *see* D.C. Sup. Ct. R. 56(b)(2)—is unnecessary here, *cf., e.g.*, D.D.C. LCvR 7(h)(2) (exempting administrative review cases from the usual requirement to file a statement of material facts requirement).

in a trial-type proceeding whether [an agency's decision] was factually flawed." *Marshall Cnty.*, 988 F.2d at 1225-26. Instead, the trial court "consult[s] the record to answer the legal question before the court—in this case whether the agency adhered to the standards of decisionmaking required by" the relevant standard of review, *id.*, which is detailed below. While challengers to agency action may argue that the agency's review of the administrative record was flawed, "[c]hallengers to agency action are not . . . ordinarily entitled to augment the agency's record with either discovery or testimony presented in the district court." *Id.*; *see, e.g.*, *Kegley*, 440 A.2d at 1019 (holding that the Superior Court "clearly erred" by "hear[ing] additional evidence in the case and . . . not confin[ing] itself to reviewing the evidence in the administrative record").

Indeed, this Court already recognized in its September 3 Order that, when reviewing a challenge to agency action, "the Superior Court must review the administrative record alone and not duplicate agency proceedings or hear additional evidence." Sep. 3 Order at 14 (citing *Kegley*, 440 A.2d at 1018 and D.C. Sup. Ct. Agency Rev. R. 1). This Court's rules for agency review cases provide that the administrative record shall serve as the record on review and do not contemplate any discovery. *See* D.C. Sup. Ct. Agency Rev. R. 1(g). Instead, those rules direct courts to set a dispositive briefing schedule immediately after the case is filed and the agency lodges the administrative record. *See id.* at 1(f)(1)-(2). The rules also direct that the parties' briefs must "include specific references to the pages of the agency record that support the averments relied upon by the parties," *id.* at 1(e), and not any additional factual material obtained in discovery.

In sum, the Court should refuse to grant discovery here, where Plaintiffs' motion is untimely and, in any event, review is limited to the administrative record before the Board.

III. "Substantial Evidence" Standard of Review

As Plaintiffs' Complaint acknowledges, "[t]he principle of deference [to administrative agencies] is well established in the D.C. Court of Appeals." Compl. ¶ 90. Indeed, that Court has instructed that the applicable standard for the Superior Court's review of an agency's decision is the DCAPA's "substantial evidence" standard, D.C. Code § 1-1510. *See Kegley*, 440 A.2d at 1018-19; *see also In re A.T.*, 10 A.3d 127, 134-35 (D.C. 2010). That standard "prohibits the substitution of [the court's] judgment for that of the agency." *Kegley*, 440 A.2d at 1018. Instead, "the agency decision is presumed to be correct and the [challenger] bears the burden of demonstrating error." *Hearns v. D.C. of Consumer & Regul. Affs.*, 704 A.2d 1181, 1182 (D.C. 1997) (citation omitted). The scope of the Superior Court's review is limited to "a review of the administrative record to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the [agency], or if the action is in some manner otherwise arbitrary, capricious or an abuse of discretion." *Kegley*, 440 A2.d at 1019; *see also In re A.T.*, 10 A.3d at 135 (same); *Barry v. Wilson*, 448 A.2d 244, 246 (D.C. 1982) (same). As this Court has recently detailed, the scope of "substantial evidence" review is quite narrow:

> [T]he Court must sustain the decision of the agency unless it is unsupported by substantial evidence in the record. *See, e.g., Wallace v. District Unemployment Compensation Bd.,* 294 A.2d 177, 178–79 (D.C. 1972). "The scope of our review is limited to whether substantial evidence supports the Department's determination . . . " *Keep v. District of Columbia Dep't of Employment Servs.,* 461 A.2d 461, 462–63 (D.C. 1983) (per curiam). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Wallace,* 294 A.2d at 179 (quoting *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126 (1938)).

Sep. 3, 2025 Order at 12.

The substantial evidence standard applies even though, as detailed below, *see infra* pp. 17-18, Plaintiffs' DCAPA claims against the Board's "proper subject" decision are improper and should be dismissed. As the D.C. Court of Appeals has explained, the DCAPA's substantial

evidence standard applies not only to DCAPA claims—which may only be heard directly by the D.C. Court of Appeals—but also to equitable actions seeking Superior Court review of an agency decision, like this case. *See Wilson*, 330 A.3d at 1005-06); *see also In re A.T.*, 10 A.3d at 134-35 (citing *Rones v. D.C. Dep't of Hous. & Cmty. Dev.*, 500 A.2d 998, 1001 n.5 (D.C. 1985)); *Kegley*, 440 A.2d at 1018 (holding that the "scope of review in the Superior Court of a decision made by [an agency] is the same as this court's scope of review of a contested case under the DCAPA").

The substantial evidence standard of review also applies here even though this action seeks review of the Board's determination that Initiative 83 was a "proper subject" of initiative under the IPA. The IPA *only* provides an initiative *proposer* with a cause of action in mandamus to challenge a Board *rejection* of an initiative on proper-subject grounds. D.C. Code § 1-1001.16(b)(3). The Court of Appeals has "read this language as giving to the Superior Court the power to conduct its own independent, de novo examination of a proposed initiative once it has acquired jurisdiction of the case." *Hessey v. Burden*, 615 A.2d 562, 568 (D.C. 1992). But this suit—asserted by an *opponent* challenging the Board's *approval* of an initiative—was not and could not have been brought under the IPA's mandamus cause-of-action language upon which the *Hessey* ruling turned. *See Wilson*, 330 A.3d at 1005. Instead, the Court of Appeals has held that this Court is authorized to hear Plaintiffs' proper-subject challenge pursuant to the Court's general equity jurisdiction, s*ee id.* at 1005-06, and for such cases, the Court of Appeals has held that the proper scope of review is identical to the DCAPA's deferential substantial evidence standard, *see In re A.T.*, 10 A.3d at 134-35; *Rones*, 500 A.2d at 1001 n.5; *Kegley*, 440 A.2d at 1018.

Plaintiffs claim in their untimely motion for discovery—without citation—that the Court of Appeals in *Wilson* "did not confine the Superior Court's review to a limited examination of the administrative record." Mot. ¶ 6. Not true. While *Wilson* held that Plaintiffs could invoke this

Court's general equity jurisdiction to challenge the Board's proper-subject decision, *Wilson* does not discuss the applicable standard of review. *See* 330 A.3d at 1005-06. Other D.C. Court of Appeals rulings, however, make clear that deferential substantial evidence review—based on an administrative record—is consistent with this Court's general equity jurisdiction. *See In re A.T.*, 10 A.3d at 134-35; *Rones*, 500 A.2d at 1001 n.5; *Kegley*, 440 A.2d at 1018.

IV. *Loper Bright* Does Not Impact the Outcome of this Case

The Court's September 3, 2025 Order asks the parties to brief the impact, if any, that the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), may have on review of the Board's proper-subject decision. Sep. 3 Order at 6-7. In *Loper Bright*, the Supreme Court overruled the *Chevron* doctrine, under which courts would afford deference to an agency's reasonable interpretation of an ambiguous "statute which it administers." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). *Loper Bright* held that "courts need not and under the [federal Administrative Procedure Act ("APA")], may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. at 413. For three independent reasons, *Loper Bright* has no impact on the outcome of this case.

First, this Court is bound to follow longstanding D.C. Court of Appeals case law establishing deference to D.C. agency decisions, *see, e.g.*, Sep. 3, 2025 Order at 12 (citing cases), absent an en banc ruling by that Court overruling those precedents, *see, e.g.*, *Client Earth v. Wash. Gas Light Company*, No. 23-cv-0826, 2025 WL 2535182, at *6 (D.C. Sep. 4, 2025) ("[T]his court has adopted the rule that no three-judge division of this court will overrule a prior decision of this court and that such result can only be accomplished by this court en banc.") (citation modified). The D.C. Court of Appeals has thus far "reserved judgment on any potential impact of *Loper Bright Enterprises v. Raimondo* on our well established deference to an agency's interpretation of a

relevant statute and regulations." *Vornado 3040 M St., LLC v. District of Columbia*, 318 A.3d 1185, 1195 n.7 (D.C. 2024) (citation modified); *Friends of the Field v. D.C. Bd. of Zoning Adjustment*, 321 A.3d 673, 680 n.2 (D.C. 2024) (same); *accord* Compl. ¶ 90 (admitting that "[t]he principle of deference is well established in the D.C. Court of Appeals"). Indeed, *Loper Bright*—which is already 16 months old—is unlikely to ever have any application in the District given that the ruling is founded on an interpretation of the *federal APA*, not the DCAPA or U.S. Constitution. *See* 603 U.S. at 393. The D.C. Court of Appeals's well established deference to D.C. agency decision-making thus remains controlling on this Court notwithstanding *Loper Bright*.

Second, even if the en banc D.C. Court of Appeals had directed Superior Courts to follow *Loper Bright*—which it has not—*Loper Bright* would still not apply to this case. *Loper Bright* overruled the doctrine that courts should defer to permissible "agency interpretations of the statutes those agencies administer." 603 U.S. at 378. *Loper Bright* thus eliminated deference only for the "pure legal question" involved in an agency's interpretation of ambiguous statutory text and not the "factbound determinations" involved when an agency applies clear statutory terms to the factual record. 603 U.S. at 389. Since *Loper Bright*, the D.C. Circuit has repeatedly confirmed that courts must still defer to agency factual determinations under the substantial evidence standard. *See, e.g.*, *Vill. of Morrisville, Vermont v. FERC*, 136 F.4th 1117, 1125 (D.C. Cir. 2025) (explaining that under *Loper Bright* "questions of law . . . are reviewed de novo" while under the "substantial evidence" standard, we "uphold the Commission's factual determinations if we find that the evidence on which the finding is based is substantial" (citation omitted)); *Healthy Gulf v. United States Dep't of the Interior*, No. 24-1024, 2025 WL 2486119, at *5 (D.C. Cir. Aug. 29, 2025) (same). Here, Plaintiffs do not challenge the Board's interpretation of any statute that it administers or indeed any statute at all. *See generally* Compl. Instead, the Complaint challenges the Board's

factbound determinations concluding, based on the administrative record before the agency, that Initiative 83 is a proper subject of initiative. *See, e.g.*, Compl. ¶ 95 (alleging, *inter alia*, that the Board's decision failed to "rel[y] on any data"; lacks "a rational connection between facts and judgment"; relied on factors in which [the Congress or the D.C. Council] has not intended for it to consider"; and offer[s] an explanation for its decision that runs counter to the evidence before the agency"). Accordingly, even if *Loper Bright* applied here—which it does not—it would leave the deference owed to the Board's "proper subject" decision undisturbed.

Third and finally, *Loper Bright* is irrelevant here for the additional reason that Plaintiffs cannot show that the Board's (clearly correct) decision that Initiative 83 is a proper subject of initiative would be reversed even under complete *de novo* review. *See infra* pp. 19-29. Even in a counterfactual world where the en banc D.C. Court of Appeals had ordered lower courts to follow *Loper Bright* and where *Loper Bright* eliminated deference even to an agency's application of law to fact (none of which is true), *Loper Bright* would still not change the outcome of this case given that the administrative record so *clearly* establishes that Initiative 83 is a proper subject of initiative. This Court therefore ultimately need not decide whether *Loper Bright* impacts the level of deference applicable to the Board's ruling. *See, e.g.*, *Friends of the Field*, 321 A.3d at 680 n.2 ("reserv[ing] judgment" on the impact of *Loper Bright* on review of D.C. agency action because "our holding concerning the zoning regulation at issue would be the same even on de novo review"); *see also Edelman v. Lynchburg College*, 535 U.S. 106, 114 (2002) (explaining that "there is no need to resolve any question of deference" where an agency regulation is "not only a reasonable one, but the position we would adopt even if there were no formal rule and we were interpreting the statute from scratch"); *Wash. Reg'l Medicorp v. Burwell*, 813 F.3d 357, 362 (D.C.

Cir. 2015) (finding no need to engage in deference analysis where agency's interpretation is both reasonable and the best interpretation of the statute).

ARGUMENT

I. The Complaint's DCAPA Claims Fail as a Matter of Law

Counts V and VI of the Complaint purport to challenge the Board's "proper subject" decision under the DCAPA. *See* Compl. ¶¶ 43-57. These claims must fail as a matter of law, however, because the DCAPA does not provide a cause of action to challenge the Board's initiative decisions.

The D.C. Court of Appeals has recognized only two methods by which an aggrieved party may challenge a Board "proper subject" decision. First, the IPA "gives only the proponent of an initiative measure the right to contest in court the Board's refusal to accept it" as a proper subject of initiative by filing a mandamus action in D.C. Superior Court. *Hessey*, 615 A.2d at 570. Second, as has occurred here, aggrieved *opponents* of an initiative may invoke the Superior Court's "general equity jurisdiction" under D.C. Code § 11-921(a) to assert "substantive challenges to the Board's 'proper subject' determination." *Wilson*, 330 A.3d at 1006 (citing *Hessey*, 615 A.2d at 570).

In contrast, the D.C. Court of Appeals has specifically held that the DCAPA does not provide a "basis for this court's jurisdiction to review challenges to initiative petitions." *Davies v. District of Columbia Bd. of Elections and Ethics*, 596 A.2d 992, 996 (D.C. 1991) ("We likewise reject [Plaintiff's] endeavor to bring this matter [challenging an initiative's signatures] before us pursuant to the Administrative Procedure Act."). Indeed, the DCAPA authorizes judicial review only for the D.C. Court of Appeals to review "contested case[s]." D.C. Code § 2-510(a). This suit is neither before the Court of Appeals nor a "contested case." *See Davies*, 596 A.2d at 996

(describing it as "doubtful" whether a Board of Elections "public hearing at which petitioner challenged the initiative met the 'contested case' requirement of our APA jurisdiction" since a "contested case" requires a "trial-type hearing").

Reinforcing that the DCAPA does not allow Plaintiffs to challenge the Board's decision in this Court, or elsewhere, is that the D.C. Court of Appeals has already held that this Court's jurisdiction is founded on its "general equity jurisdiction" under D.C. Code § 11-921(a). *Wilson*, 330 A.3d at 1006. The Court of Appeals has previously held that a party aggrieved by an initiative in a non-"contested case" may nevertheless seek redress by invoking this Court's general equity jurisdiction in cases, like here, where the IPA and APA fail to provide jurisdiction. *See In re A.T.*, 10 A.3d 127, 134-35 (D.C. 2010) (citing *Rones*, 500 A.2d at 1001 n.5); *Hessey*, 615 A.2d at 570.[5]

Count VI fails for the additional, independent reason that it alleges a "violation of rule making," but the Board made no rule. Plaintiffs' citation to the D.C. Code's definition of "rule" does not help them, as the Board's proper subject review did not consist of any "statement" "designed to implement, interpret, or prescribe law or policy." *See* Compl. ¶ 49 (citing D.C. Code § 2-502(6)(A)). Instead, the *voters* implemented a law when they approved Initiative 83; the Board did not. Accordingly, the Board's proper subject determination is not rule-making under the DCAPA, even if there *was* a cause of action under the DCAPA for Plaintiffs to challenge it.

In sum, Plaintiffs' DCAPA claims must fail.[6]

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[5] As explained above, *see* pp. 12-14, even though the basis for this Court's jurisdiction over this action is its general equity jurisdiction rather than the DCAPA, the DCAPA's deferential substantial evidence standard nevertheless provides the applicable standard of review.

[6] Even if there were a basis in the DCAPA for Plaintiffs' assertion of those claims, they would fail on the merits for the identical reasons Plaintiffs' equitable claims also fail. *See infra* Part II.

II. Plaintiffs Cannot Show that the Board's Proper-Subject Order Is Unsupported by Substantial Evidence

The Court must likewise reject Plaintiffs' challenge to the Board's determination that Initiative 83 is a proper subject for initiative. As detailed above, the applicable substantial-evidence standard "prohibits the substitution of [the court's] judgment for that of the agency." *Kegley*, 440 A.2d at 1018. Instead, "the agency decision is presumed to be correct and the [challenger] bears the burden of demonstrating error." *Hearns*, 704 A.2d at 1182. The scope of the Superior Court's review is limited to "a review of the administrative record to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the [agency], or if the action is in some manner otherwise arbitrary, capricious or an abuse of discretion." *Kegley*, 440 A.2d at 1019.

The Complaint asserts that the Board erred because Initiative 83 is allegedly not a proper subject for four independent reasons. This Court has already dismissed Plaintiffs' claim that Initiative 83 violates the prohibition on initiatives requiring the D.C. Council to appropriate funds, 3 D.C.M.R. § 1000.5(c). *See* Sept. 3 Order at 7-8. Plaintiffs also cannot carry their burden of show that the Board erred in rejecting their other three claims.

A. The Board's Decision that Initiative 83 Does Not Violate the D.C. Human Rights Act Is Supported by Substantial Evidence

First, substantial evidence supports the Board's decision that Initiative 83's ranked choice voting provision does not violate the D.C. Human Rights Act and Plaintiffs cannot show otherwise. The Board properly concluded, based on the administrative record, that Initiative 83 does not authorize discrimination in either impact or intent. *See* Rec. at 277-78 (Proper-Subject Order at 9-10).

The D.C. Human Rights Act 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 Coal. 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.*")).

Before the Board 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). The Board recognized—correctly—that those were purely "speculative concerns" that did not justify interfering with the right of initiative, "particularly given the lack of evidence of an incurable discriminatory impact and the fact that the Measure is neutral on its face." *Id.* at 277-78 (Proper-Subject Order at 9-10). Indeed, the written comments of Plaintiff Charles Wilson lay bare the purely speculative nature of any discrimination claim, as Wilson himself testified that Initiative 83's ranked choice voting provision has merely "the *potential* to authorize discrimination and create a disparate impact on voters and candidates belonging to protected classes." Rec. at 68 (emphasis added).

Moreover, while certain opponents of Initiative 83 broadly alleged that certain groups would be harmed by ranked choice voting, *see* Rec. at 69, 70, 82, 85, 91-92 (written comments of Charles Wilson, Robert King, Jeannette Mobley, Hazel Bland Thomas, and Deirdre Brown), only

two opponents making that claim cited to *any* source of data purportedly supporting their assertion, *see* Rec. at 82, 91-92 (written comments of Mobley and Brown). But even the data they cited—studies of ranked choice voting in Maine and San Francisco—suggested only that electorate populations with a higher percent of protected classes had a higher rate of spoiled ballots. *See* Rec. at 82, 91-92. And, fatally, as the Board has already made clear, "the studies mentioned by opponents below (which appear from the record to concern elections held in 2018 or before) *were not provided to the Board*." BOE Mot. to Dismiss at 25 (emphasis added). The Board likewise did not have before it: (1) any "statistics comparing the levels of spoiled ballots across populations consisting of higher levels among protected classes versus non-protected classes"; (2) any "description of the structure of the ranked choice balloting practice employed in the jurisdictions studied . . . 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"; or (3) any "court case finding that ranked choice voting was illegally discriminatory."[7] *Id.* at 25-26.

This is a far cry from the sort of "significant statistical disparity" identified in the actual jurisdiction at issue required to sustain, even on its face, a disparate impact claim. *Ricci v. DeStefano*, 557 U.S. 557, 587 (2009). The Court should thus uphold 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, *see, e.g.*, *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 241 (2005) ("[I]t is not enough to simply allege that there is a disparate impact . . . or point to a generalized policy that

[7] No commenter could provide the Board with such a court case, as none exists.

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.'") (emphasis in original) (citation omitted).

On the other side of the ledger, the Board had before it testimony regarding: (1) the benefits of ranked choice voting including for voters and candidates of color, *see* Rec. at 54, 55-56, 61-62, 66 (written comments of Lisa D. T. Rice, Proposer, Kelsye Adams, Slobodan Milic, Briana McGowan, and Kymone Freeman)[8]; (2) discussion of ways to mitigate any confusion among voters through robust public education and careful ballot design and instructions, *see* Rec. at 57-60 (written comments of Stefan P. Katz, Whitney Quesenbery, and Harsha Kodali); and (3) a general rejection of the premise that ranked choice voting is confusing for voters of color and older voters, *see* Rec. at 53-56, 60, 66 (written comments of Lisa D. T. Rice, Proposer, Kelsye Adams, Harsha Kodali, and Kymone Freeman).[9]

Given the record before it, as the Board has already correctly noted, "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"—which they did not—"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." BOE Mot. 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

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[8] *See also* Rec. at 128-29, 136-37, 139-40, 148-54, 163, 179-80 (July 21, 2023 testimony before the Board of Rev. Wendy Hamilton, David Krucoff, Barbara Zia, Victoria Pelletier, Phillip Pannell, Nolan DiFrancesco, and Brian Strege)

[9] *See also* Rec. at 148-150 (July 21, 2023 testimony before the Board of Victoria Pelletier).

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 (written comments of Lisa D. T. Rice, Proposer).

In sum, the administrative record demonstrates that the Board's decision that Initiative 83's ranked choice voting provision does not violate the D.C. Human Rights Act's prohibition on unlawful discrimination is supported by substantial evidence. Plaintiffs cannot carry their burden of proving otherwise and so the Court should grant summary judgment as to Count I.

B. The Board's Decision that Initiative 83 Does Not Violate the D.C. Home Rule Act Is Supported by Substantial Evidence

Second, the Court should grant summary judgment upholding the Board's decision that Initiative 83 does not violate the D.C. Home Rule Act, because Initiative 83 clearly "does not . . . do away with partisan primaries." Rec. at 278 (Proper-Subject Order at 10).

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).

In its proper-subject decision, the Board concluded—correctly—that Initiative 83 does not "apply to the nomination of candidates and would not alter the party-affiliation designation of candidates in the general election," and thus, "does not . . . do away with partisan primaries." Rec. at 278 (Proper-Subject Order at 10). Rather, 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, the Board observed, 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). The Board rightly concluded that this new law would do nothing to change the fact that "[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 followed the guidance of the Attorney General, *see* Rec. at 278 (Proper-Subject Order at 10), whose Advisory Opinion—contained in the administrative record—similarly explains that the Home Rule Act "does not require *closed* primaries," which would mandate that voters register with a political party to vote, Rec. at 42 (A.G. Advisory Op. at 6) (emphasis added). The Attorney General thus concluded that Initiative 83 "makes no changes to the partisan elections required by the Home Rule Act, but simply provides for the votes in these elections to be tabulated under a ranked-choice system, rather than a first-past-the-post system, and allows unaffiliated voters to choose to participate in one party's primary election." Rec. at 42 (A.G. Advisory Op. at 6). In contrast, the Board stated that the testimony offered at the July 18, 2023 hearing claiming that Initiative 83 violates the partisan election requirement offered nothing more than "some facial appeal," Rec. at 278 (Proper-Subject Order at 10), which the Board rightly rejected in light of the text of Initiative 83 and the views of the Attorney General in the administrative record.

The Court should therefore grant summary judgment on Count II of Plaintiffs' Complaint, because the Board's determination that Initiative 83 does not violate the Home Rule Act's partisan elections requirement is supported by substantial evidence and Plaintiffs cannot show otherwise.

C. The Board's Determination that Initiative 83 Does Not Violate the First Amendment is Supported by Substantial Evidence

Third and finally, the Court should grant summary judgment upholding the Board's decision—supported by substantial evidence—that Initiative 83 does not violate the First Amendment associational rights of any political parties or District voters. 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. Compl. ¶ 96 (citing *California Democratic Party v. Jones*, 530 U.S. 567, 581-82 (2000)); *see also id.* ¶¶ 75-78 (relying on *Jones*). But the administrative record lacks any evidence to support this claim, which the Board correctly rejected. *See* Rec. at 278-79 (Proper-Subject Order at 10-11).

At the July 18, 2023 hearing, Initiative 83 opponents rested their claim that the semi-closed primary provision would violate freedom of association on *California Democratic Party v. Jones*, 530 U.S. 567 (2000). Rec. at 278 (Proper-Subject Order at 10) (citing, *e.g.*, comments by D.C. Democratic State Committeewoman Renee Bowser). The Board correctly determined, however, that Initiative 83 "is unlike *Jones*," which "considered California's switch from a closed primary where only a political party's declared members could vote on its nominees, to a blanket (or 'jungle') primary, in which each voter's ballot lists every candidate regardless of party affiliation. Rec. at 278-79 (Proper-Subject Order at 10-11). As the Board recognized, while the Supreme Court found that "such a blanket party primary system interfered with political party constitutional associational interests," the Court specifically distinguished this system from a primary—like that at issue here—where "'even when it is made quite easy for a voter to change his party affiliation the day of the primary, and thus, in some sense, to crossover, and vote in another party's primary, 'at least he must formally become a member of the party; and once he does so, he is limited to voting for candidates of that party.'" Rec. at 278-79 (Proper-Subject Order at 10-11) (quoting *Jones*, 530 U.S. at 577).

The Board likewise pointed out that a Supreme Court plurality "subsequently upheld a semi-closed primary system in which '[i]n general, anyone can join a political party merely by asking for the appropriate ballot at the appropriate time or (at most) registering within a state-

defined reasonable period of time before an election." Rec. at 279 (Proper-Subject Order at 11) (quoting *Clingman v. Beaver*, 544 U.S. 581, 590 (2005)) (citation modified). The Board thus concluded—correctly—that 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); *see also* Rec. at 279 n.21 (Proper-Subject Order at 11 n.21) (citing *Democratic Party of Haw v. Nago*, 833 F.3d 1119, 1124 (9th Cir. 2016); *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022)).

The Board's ruling followed the guidance of the Attorney General, who likewise observed that Initiative 83 does not impose a severe burden on associational rights because it limits "[u]naffiliated voters . . . to voting 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—wholly unsupported by any evidence in the administrative record—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).

The reasoning of both the Board and the Attorney General is sound and supported by substantial evidence: Initiative 83 does not infringe on Plaintiffs'—or any District voters'—association rights but, instead, 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—as the Board correctly held—constitutionally distinguishable from the blanket primary system truck 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 570.[10]

Instead, Initiative 83 is—as the Board correctly determined—more akin to the primary system at issue in *Clingman*, which the Supreme Court upheld because, "[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.) (citation modified); *see also id.* at 601. 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.

[10] 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.

2016).[11] So too here, as the Board has rightly explained. Rec. at 278-79 (Proper-Subject Order at 10-11).

In short, neither the administrative record nor Plaintiffs provide any 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.

The administrative record also demonstrates that 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

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[11] 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 (citation modified).

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, as the Board already recognized, detailing the controlling precedent discussed above. *See* Rec. at 278-79 (Proper-Subject Order at 10-11). As the Board 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 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 grant summary judgment on Count IV of Plaintiffs' Complaint, because the Board's decision that Initiative 83 is constitutional and does not impinge associational rights is supported by substantial evidence.

CONCLUSION

For the foregoing reasons, the Court should grant this motion for summary judgment and dismiss Plaintiffs' Complaint with prejudice.[12]

Oral Hearing Requested

Dated: October 22, 2025

Respectfully submitted,

/s/ *Kevin P. Hancock*

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** admitted pro hac vice*

[12] The Court should also dismiss the Complaint to the extent it could be construed to assert a challenge to the Board's adoption of a summary statement, short title, and legislative form for Initiative 83 under D.C. Code § 1–1001.16(e)(1)(A). *See* Compl. pp. 1-2 & ¶¶ 59-60. As the D.C. Court of Appeals observed, Plaintiffs' complaint only "ostensibly" challenges these formulations, and instead the "lion's share" of the Complaint challenges the Board's proper subject determination. *Wilson*, 330 A.3d at 995. Indeed, the Complaint does not even attempt to explain why the summary statement, short title, and legislative form are allegedly objectionable. *See, e.g.*, Compl. ¶¶ 59-60. The claim—to the extent it can be said to even exist—should thus be dismissed not only for obviously failing to be supported by substantial evidence, but more fundamentally, for failing to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also, e.g.*, *Logan v. LaSalle Bank Nat'l 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. . . .") (citation modified).

CERTIFICATE OF SERVICE

I certify that on October 22, 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; and

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

/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.

MURIEL E. BOWSER *et al.*,

Defendants.

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

Next Event: Status Conference Scheduled for March 13, 2026 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 judgment, any opposition, any replies, and the administrative record, it is this ___ day of _____, 20__, 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

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