

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

CHARLES WILSON, et al.,

Plaintiffs,

v.

MURIEL E. BOWSER, et al.,

Defendants.

**2023-CAB-005414
Judge Carl E. Ross**

CASE CLOSED

ORDER GRANTING SUMMARY JUDGEMENT FOR DEFENDANTS

Pending before the Court are (1) Defendant District of Columbia’s Board of Elections (“DC BOE”) Motion for Judgment on the Pleadings, filed September 23, 2025, (2) Intervenor-Defendant’s Lisa T. Rice and Grow Democracy D.C.’s (“Intervenor”) Motion for Summary Judgement, filed October 22, 2025, (3) Plaintiff District of Columbia Democratic Party’s (“Plaintiffs”) Omnibus Response, filed December 19, 2025, (4) Intervenor’s Reply, filed January 16, 2026, and (5) Defendant’s Reply, filed January 16, 2026. Also pending before the Court are (1) Defendant’s Motion to Expedite, filed January 16, 2026, (2) Intervenor’s Response, filed January 21, 2026, and (3) Defendant’s Reply, filed January 27, 2026. Finally, pending before the Court are (1) Defendant’s Motion to Strike, filed January 16, 2026, (2) Plaintiff’s Opposition to Motion to Strike, filed January 30, 2026, (3) Intervenor’s Response to Plaintiff’s Opposition, filed February 4, 2026, and (4) Defendant’s Reply, filed February 6, 2026. The Court has considered the administrative record, filed November 16, 2023, the Parties’ briefings, and the entire record therein. For the reasons stated herein, Defendant’s Motion to Strike is granted, Defendant’s Motion to Expedite is denied as moot, Defendant’s Motion for Judgment on the Pleadings is granted, and Intervenor’s Motion for Summary Judgement is granted.

FACTUAL AND PROCEDURAL BACKGROUND

The District of Columbia Initiative Procedures Act (hereinafter “IPA”) 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.” D.C. Code § 1-204.101(a). Legislation can be directly proposed by D.C. voters through a proposed initiative submitted to the Board of Elections. D.C. Code § 1-204.102. The Board of Elections is an independent agency responsible for the administration of voter registration, elections, and ballot access in the District. *See* D.C. Code § 1-1001.05 After the Board receives the initiative, it must request and receive advisory opinions from the Attorney General and the General Counsel of the D.C. Council on whether the measure is a proper subject of initiative. D.C. Code § 1-1001.16(b)(1A)(A). The Board may choose to accept the measure or may refuse the measure if it deems the initiative is not a “proper subject” under the terms of Title IV of the District of Columbia Home Rule Act or under specific terms outlined in the D.C. Code. D.C. Code § 1-1001.16(b)(1); *see also* D.C. Code § 1-1001.16(b)(1)(A)-(D). If the Board accepts the measure and subject determination is made, the Board assigns a serial number to each initiative and must prepare a summary statement, short title, and proper legislative form. D.C. Code § 1-1001.16(b)(4)-(c)(4).

After preparing the initiative measure, the Board must call a meeting to adopt the summary statement, short title, and legislative form of the measure and submit its formulations to the District of Columbia Register for publication. D.C. Code § 1-1001.16(d)(1)-(2)(B)(i). Following publication in the D.C. Register, registered voters may challenge the Board’s formulations and seek review in the Superior Court of the District of Columbia. D.C. Code § 1-1001.16(e)(1)(A). If, after review, the Board’s decision is found to be proper, the measure is printed onto a petition

that is circulated amongst District of Columbia voters for ballot consideration. D.C. Code § 1-1001.16(g).

In order for the initiative measure to qualify for ballot consideration, the petition must secure the valid signatures of “registered qualified electors upon the initiative or referendum measure equal in number to 5% of the registered qualified electors in the District; provided, that the total signatures submitted include 5% of the registered qualified electors in each of 5 or more of the 8 wards.” D.C. Code § 1-1001.16(h)(i)(1). Following the petition period, the Board then determines that the number and validity of signatures on the initiative petition meets the necessary qualifications, and the Board then certifies that the initiative measure is sufficient and will appear on the ballot. D.C. Code § 1-1001.16(p)(1).

Plaintiff’s Complaint seeks this Court’s review of Proposed Initiative 83 (hereinafter “Initiative 83”), also known as the Ranked Choice Voting Initiative or the “Make All Votes Count Act of 2024.” *See generally* Compl. On August 31, 2023, eight days after BOE’s approval but one day before the approved formulations were published in the D.C. Register, Plaintiff filed a Complaint for Declaratory Judgment and Injunctive Relief. The Complaint objects to “the Summary Statement, Short Title, and Legislative Form of Proposed Initiative No. 83.” Compl. at 1. On October 23, 2023, Defendant District of Columbia filed a Motion to Dismiss on the grounds that Plaintiff’s Petition is premature because (1) the ten-day challenge period did not trigger until the BOE’s approved formulations were published in the D.C. Register, and (2) the proposed Initiative has not yet been voted into law. On March 28, 2024, this Court granted Defendant District of Columbia’s Motion to Dismiss. *See generally* Order, Mar. 28, 2024. On April 22, 2024, Plaintiffs appealed this Court’s decision to grant the Motion to Dismiss.

On February 10, 2025, the District of Columbia Court of Appeals (hereinafter “DCCA” or “D.C. Court of Appeals”) issued an Order affirming in part, vacating in part, and remanding in part. Specifically, the Court of Appeals held:

(1) Subsection (e)(1)(A) is a claim processing rule rather than a jurisdictional rule; (2) the ten-day period described in Subsection (e)(1)(A) is a deadline, rather than a time window during which any suit within its scope must be brought; (3) under its general equity jurisdiction, the Superior Court had the power to adjudicate appellant’s challenges to the Board’s ‘proper-subject’ determination; and (4) the Mayor and the District are not proper defendants. *Wilson v. Bowser*, 330 A.3d 993, 996 (D.C. 2025). The case was remanded to the Superior Court for further proceedings.

On remand, DC BOE filed a Motion to Dismiss. The Court granted in part and denied in part DC BOE’s motion, dismissing Count IV and proceeding with the remaining claims. Order, Sept. 3, 2025. In its Order, the Court emphasized that the instant issue is best resolved in a motion for summary judgement, and the parties shall brief how the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo* influences agency appeals in the District. *See id.*

Separately, Plaintiff filed a Motion for a Brief Discovery Period, seeking a 60-day discovery period. In its order denying the motion, the Court explained that discovery is improper for agency appeal cases because the Court’s role is “limited to evaluating the agency’s decision based solely on the administrative record that was before the agency at the time [the Initiative] was implemented.” Order, Nov. 17, 2025.

Ultimately, DC BOE filed a Motion for Judgement on the Pleadings, seeking to dismiss the remaining counts in Plaintiff’s Complaint. *See generally* Def.’s Mot. J. Pleadings. Intervenor filed a Motion for Summary Judgement, arguing that the Complaint should be dismissed with prejudice because substantial evidence in the record shows that Initiative 83 is “lawful,

constitutional, and rooted in the District’s strong tradition of direct democracy.” Intervenor’s Mot. Summ. J. at 1.

On December 19, 2025, Plaintiffs filed an Omnibus Opposition to Defendant’s Motion for Judgement on the Pleadings and the Motion for Summary Judgement which briefly discussed the impact of *Loper Bright* on the instant matter while also raising several arguments outside the scope of the administrative record. *See* Pls.’ Opp’n at 21. Plaintiffs argue, among other things, that the administrative record demonstrates that DC BOE approved a measure violative of the D.C. Human Rights Act, Home Rule Act, and U.S. Constitution. *Id.* at 29. Further, Plaintiffs assert that the Court previously determined the merits of the case in its September 3, 2025, Order granting in part and denying in part DC BOE’s Motion to Dismiss. Additionally, while the Court emphasized in numerous orders that the instant matter is an agency appeal, and arguments are therefore confined to the administrative record, Plaintiffs nevertheless submitted exhibits and asserted claims outside the scope of the administrative record.

In response to Plaintiffs’ Omnibus Opposition, DC BOE filed a Motion to Strike, arguing that the Court should strike the portions of the Omnibus Opposition outlining the material facts in dispute and alleging new claims beyond the scope of the Complaint. Def.’s Mot. Strike at 5. Defendant reiterates the Court’s previous holdings, explaining that the Court is confined to the administrative record and may not consider exhibits, arguments, and allegations outside the scope of the Complaint and the administrative record¹. *See generally id.*

¹ Defendant DC BOE argues that the following claims were not included in the original Complaint and should therefore be struck: (1) Measure impermissibly intrudes into areas reserved for legislative or administrative action (Pls.’ Opp’n at 14-15, 17), (2) Measure restructures the District’s electoral framework (Pls.’ Opp’n at 15), (3) The Board failed to consider operational feasibility and administrative burdens (Pls.’ Opp’n at 15), (4) ballot exhaustion and accessibility risks (Pls.’ Opp’n at 15), (5) Board’s implementation of accommodations for blind, visually impaired, and cognitively disabled (Pls.’ Opp’n at 16), (6) distribution of educational resources (Pls.’ Opp’n at 16), (7) whether the Board evaluated alternatives (Pls.’ Opp’n at 17-18), (8) Measure conflicts with elections law (Pls.’ Opp’n at 17), (9) Measure imposes an impracticable implementation timeline (Pls.’ Opp’n at 17), (10) Measure compels voters to express preferences to those they do not support (Pls.’ Opp’n at 25), (11) Measure imposes unconstitutional burdens on voter’s

LEGAL STANDARD

I. Motion to Strike

“The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” D.C. Super. Ct. Civ. R. 12(f). “The decision to grant or deny a motion to strike is vested in the trial judge’s sound discretion.” *District of Columbia v. Equity Residential Mgmt., LLC*, 2020 D.C. Super. LEXIS 11 at 3 (quoting *United States ex re. Landis v. Tailwind Sports Corp.*, 308 F.R.D. 1, 4 (D.D.C. 2015)). Courts, however, generally disfavor motions to strike. *See Franco v. Nat’l Capital Revitalization Corp.*, 930 A.2d 160, 166 (D.C. 2007). “Even when technically appropriate and well-founded, Rule 12(f) motions often are not granted in the absence of a showing of prejudice to the moving party.” *Malibu Media LLC v. Doe*, 2015 U.S. Dist. LEXIS 141503, at * 5 (D.N.J. Oct. 19, 2015) (quoting 5C C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE § 1381 (3d ed.)). “Before [a motion to strike] can be granted ‘the Court must be convinced that there are no questions of fact, that any questions of law are clear and not in dispute, and that under no set of circumstances could the defense succeed.’” *SEX v. Guld & Western Industries, Inc.*, 502 F. Supp. 343, 345 (D.D.C. 1980) (quoting *Augustus v. Board of Public Instruction*, 306 F.2d 862, 868 (5th Cir. 1962)).

II. Summary Judgement for Administrative Agency Decisions

Established D.C. Court of Appeals’ precedent effectively limits this Court’s review of agency decisions. When reviewing a decision from an administrative agency, there is a “presumption of correctness of the agency’s decision” and the burden is placed on the petitioner to demonstrate that there was an error on the part of the agency. *See Cooper v. District of Columbia*

right of expression (Pls.’ Opp’n at 18), and (12) Measure interferes with Council’s power of the purse (Pls.’ Opp’n at 17).

Department of Employment Services, 588 A.2d 1172, 1174 (D.C. 1991); *see also* D.C. Code § 2-510(a)(3)(A), (E) (limiting judicial review to whether the agency decision was (A) “[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;” or (E) “[u]nsupported by substantial evidence in the record of the proceedings before the Court.”). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Smallwood v. D.C. Metro. Police Dep’t*, 956 A.2d 705, 707 (D.C. 2008) (quoting *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 759 (D.C. 2008) (internal citation and quotation marks omitted)). If substantial evidence supports the agency’s findings, the Court must affirm the agency’s decision, even though contrary evidence also exists in the record. *See Ferreira v. District of Columbia Department of Employment Services*, 667 A.2d 310, 312 (D.C. 1995) (citations omitted).

The Court, therefore, must defer to the agency’s factual findings when there is substantial evidence to support them and must affirm the agency’s conclusions when they rationally stem from those findings. *See Washington Hospital Center v. District of Columbia Department of Employment Services*, 859 A.2d 1058, 1061 (D.C. 2004) (citations omitted) (“In reviewing an administrative decision, we defer to factual findings of the agency as long as there is substantial evidence to support them.”); *see also Giles v. District of Columbia Department of Employment Services*, 758 A.2d 522, 524 (D.C. 2000) (citations omitted) (“This court must affirm the agency’s decision when...conclusions flow rationally from its findings of fact.”). Courts will “defer to [the] agency’s informed interpretation of the statute it administers as long as that interpretation is reasonable and not plainly wrong or inconsistent with the statute’s legislative purpose.” *Adgeron v. Police & Firefighters’ Ret. & Relief Bd.*, 73 A.3d 985, 990 (D.C. 2013); *see also R.O. v. Department of Youth Rehab. Services*, 199 A.3d 1160, 1164 (D.C. 2019). However, the Court “may reverse an agency decision if it is grounded on a mistaken legal premise or manifests an

abuse of discretion.” *Franchak v. District of Columbia Metropolitan Police Department*, 932 A.2d 1086, 1091 (D.C. 2007) (internal citations and quotations omitted).

III. *Skidmore* Deference

While the Court disagrees with Plaintiff that the level of deference owed to a D.C. agency action has changed, for the sake of argument, if Plaintiff is correct, the Court, at minimum, owes the agency *Skidmore* deference. In *Loper Bright Enter. v. Raimondo*, the United States Supreme Court held that the longstanding deference afforded to agency decisions under the federal Administrative Procedure Act (“APA”) articulated in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984), should no longer be exercised and that courts must exercise “their independent judgement in deciding whether an agency has acted within its statutory authority, as the APA requires.” *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412 (2024). The Supreme Court explained that “[c]areful attention to the judgement of the Executive Branch may help inform [the Court’s] inquiry” but “courts need not defer to agency interpretation of the law simply because a statute is ambiguous.” *Id.* at 413. Assuming that the Supreme Court’s decision in *Loper Bright* did change the amount of deference this Court should afford D.C. agency decisions under D.C. law, at a minimum those decisions would be entitled to the level of deference articulated by the U.S. Supreme Court in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944) (often referred to as ‘*Skidmore*’ deference).

In *Skidmore*, the Supreme Court explained that the role of the administrator is based on more “specialized experience and broader investigations and information than is likely to come to a judge in a particular case.” *Skidmore*, 323 U.S. at 140. As such, the weight of the agency judgement depends on “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to

persuade, if lacking power to control.” *Id.* Likewise, the D.C. Court of Appeals has referred to *Skidmore* deference as a “lesser degree of deference” which essentially depends on an agency’s “power to persuade” the court. *Mallof v. D.C. Bd. Elec. & Ethics*, 1 A.3d 282, 393 (D.C. 2010).

DISCUSSION

I. Defendant’s Motion to Strike is Granted Because the Court is Confined to the Administrative Record and Plaintiffs Plead Allegations Outside the Scope of the Complaint

a. Plaintiffs’ Statement of Genuine Issues of Disputed Material Facts are Struck from the Record Because the Court Confines its Analysis to the Administrative Record

The Court strikes Plaintiffs’ Exhibits and portions of the omnibus response because they are outside the scope of the administrative record. In reviewing the Board’s decision to implement Initiative 83, the Court looks only to the administrative record. Plaintiffs concede that the Court must carefully review the *entire* administrative record and may not confine its review to the Complaint or the DC BOE’s final order. Pls.’ Opp’n at 25. Any extraneous information presented through exhibits or the pleadings may not be considered because the Court may only review the administrative record to ensure that Defendant’s decision was supported by substantial evidence in the record. As such, Plaintiffs’ statement of material facts, enumerated in their Omnibus Opposition and Exhibits accompanying their Opposition, are, accordingly, struck from the record.

b. Plaintiffs’ Statements of Genuine Issues of Disputed Material Facts are Struck from the Record Because the Statements Represent Questions of Law

Plaintiffs’ statements of genuine issues of disputed material facts are struck because they represent questions of law, which are to be determined by the Court. Whether Defendant complied with the IPA in enacting Initiative 83 is a question of law, rather than fact, for the Court to determine. For instance, Plaintiffs’ alleged fact number six (6) states that material facts exist as to whether the Board considered disparate impacts on protected classes. Pls.’ Opp’n at 15. Such

statements are not material facts because they require the Court to evaluate the administrative record. Similarly, alleged fact numbers ten (10), eleven (11), twelve (12), and thirteen (13) are also struck because they question the impact of the Defendant's decision on protected groups, which is a question of law requiring an analysis of the administrative record. Further, statement nineteen (19) alleges "Genuine Issues of Material Fact Regarding Whether Initiative I-83 Violates the DC Home Rule Act." *Id.* at 17. This is a conclusory statement regarding a question of law, as Plaintiffs' Count II against Defendant rests wholly on the question of whether the initiative violates the Home Rule Act. There are no questions of fact in dispute to be resolved. Whether the initiative violates the DC Home Rule Act requires the Court to understand the Defendant's processes in implementing the Initiative, and whether the administrative record supports Defendant's decision. Therefore, while presented as factual issues, the statements on the list are questions of law and are struck from the record.

c. Plaintiffs' Remaining Allegations in the Opposition are Struck Because the Claims Were Not Pled in the Complaint

In a motion for summary judgement, the Court looks at the claims pled by Plaintiffs in the Complaint. Any extraneous allegations against Defendant that were not originally pled in the Complaint are struck. For instance, allegations nineteen (19) and twenty (20) allege that the Initiative intrudes on legislative or administrative action, or reallocates authority vested in executive agencies contrary to the Home Rule Act. Pls.' Opp'n at 16–17. Further, alleged fact number four (4) alleges that a genuine dispute of material fact exists as to whether "[Initiative 83] fundamentally restructures the district's framework – including ballot design, vote tabulation, voter education, and party primary administration – in a manner exceeding permissible initiative authority." Pls.' Opp'n at 15. Plaintiffs failed to make such allegations in the Complaint, and they are, therefore, struck from the record. *See generally* Compl.

Accordingly, the Court strikes the following alleged material facts because Plaintiffs failed to include such allegations in the Complaint: operational feasibility and administrative burdens (No. 5), ballot exhaustion (Nos. 7, 27-28), sufficient accommodations for blind, visually impaired, cognitively disabled, and mobility impaired voters (No. 14), equitable distributions of educational resources (Nos. 15-16), conflicts with election law (No. 22), implementation of a legally or practicably impossible timeline (No. 23), compels voters to express preferences for candidates (No. 25), and burdens the voter's right of expression (No. 26, 29). Finally, the Court strikes material fact twenty-one (21), because the Court previously dismissed Count IV of Plaintiff's Complaint on the merits (Prohibition Against Appropriating) in its September 3, 2025, Order, and the Court is unwilling to adjudicate the matter again at this stage.

II. The Court Treats Defendant DC BOE's Motion for Judgment on the Pleadings as a Motion for Summary Judgement

Pursuant to Superior Court Rules of Civil Procedure 12(d), "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Super. Ct. R. Civ. Pro. 12(d). For an agency review action, the Court must evaluate the administrative record alone. The administrative record, which is a matter outside the pleading, is presented to the Court. As such, the Court, in its discretion, will treat Defendant's Motion for Judgement on the Pleadings as a Motion for Summary Judgement.

III. Plaintiffs' *Res Judicata* Argument Fails as a Matter of Law

The doctrine of *res judicata* does not govern this matter. Plaintiffs argue that the Court's September 3, 2025, Order, granting in part and denying in part Defendant's Motion to Dismiss, determined the merits of Plaintiffs' claims, and therefore the doctrine of *stare decisis* bars

Defendant and Intervenor from relitigating the issues. Pls.’ Opp’n at 22. Plaintiffs’ argument fails as a matter of law because the Court has yet to determine the merits of the Complaint.

“Under the doctrine of claim preclusion (*res judicata*), a valid final judgment on the merits absolutely bars the same parties from relitigating the same claim in a subsequent proceeding.” *Parker v. Martin*, 905 A.2d 756, 762 (D.C. 2006). In determining the applicability of claim preclusion, the Court must consider: (1) whether the claim was adjudicated finally in the first action, (2) whether the present claim is the same as the claim which was raised or which might have been raised in the prior proceeding, and (3) whether the party against whom the plea is asserted was a party or in privity with a party in the prior case. *Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999). Applied here, only Count IV of Plaintiffs’ Complaint was adjudicated on the merits through dismissal, but Plaintiffs’ remaining claims were not adjudicated on the merits in the previous order. 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,” and the Court held that Plaintiffs’ remaining claims were plausible on their face, but did not make any determination as to whether Defendant DC BOE violated the DCAPA, DCHRA, Home Rule Act, or the U.S. Constitution. *See* Order, Sept. 3, 2025. In fact, the Court requested that the Parties move for summary judgement. Consequently, Plaintiffs’ assertion that the instant litigation is already resolved in their favor fails as a matter of law.

IV. The Court Grants Summary Judgement in Favor of DC BOE with Respect to Count VI (Plaintiffs’ DCAPA Rulemaking Claims)

Plaintiffs’ Count VI, which raises claims under the District of Columbia Administrative Procedure Act (DCAPA) D.C. Code §§ 1–1501 *et seq.*, with respect to rule making fails as a matter of law. Defendants are entitled to summary judgment with respect to Count VI because Initiative 83 is not a “rule” as defined by the DCAPA. Under D.C. Code § 2-505(a),

The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The notice shall also contain a citation to the legal authority under which the rule is being proposed. The publication or service required by this subsection of any notice shall be made not less than 30 days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.

Plaintiffs assert that Defendant DC BOE failed to comply with the DCAPA when it accepted Initiative 83. Compl. ¶ 56. However, initiatives are governed by the D.C. Initiative Procedures Act (“IPA”), rather than the DCAPA.

Under the IPA, “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.” D.C. Code § 1-204.101(a). After the Board receives the initiative, it must request and receive advisory opinions from the Attorney General and the General Counsel of the D.C. Council on whether the measure is a proper subject of Initiative. D.C. Code § 1-1001.16(b)(1A)(A). The Board may choose to accept the measure or may refuse the measure if it deems the initiative is not a “proper subject.” D.C. Code § 1-1001.16(b)(1). If the Board accepts the measure and subject determination is made, the Board assigns a serial number to each initiative and must prepare a summary statement, short title, and proper legislative form. D.C. Code § 1-1001.16(b)(4)-(c)(4). Then, the Board must call a meeting to adopt the summary statement, short title, and legislative form of the measure and submit it to the District of Columbia Register for publication. D.C. Code § 1-1001.16(d)(1)-(2)(B)(i). Following publication in the D.C. Register, registered voters may challenge the Board’s formulations and seek review in the Superior Court

of the District of Columbia. D.C. Code § 1-1001.16(e)(1)(A). Therefore, DC BOE's power to accept Initiative 83 is codified in the IPA, not the DCAPA.

Plaintiffs cite to no authority to support their proposition that Initiatives that comply with the IPA must simultaneously comply with the DCAPA's rulemaking statutes. Indeed, the D.C. Court of Appeals has generally 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), but has also held that the "Superior Court [has] general equity jurisdiction to hear appellant's substantive challenges to the Board's 'proper subject' determination." *Wilson v. Bowser*, 330 A.3d 993, 1006 (2025). The Superior Court may do so by evaluating whether an agency's decision is supported by substantial evidence. *See Kegley v. District of Columbia*, 440 A.2d 1013, 1018–19 (D.C. 1982) (establishing that under the DCAPA, an agency's decisions must be affirmed if it is supported by substantial evidence in the record, and the Superior Court must apply that same standard in reviewing an agency's decision); *see also Hessey*, 615 A.2d at 568 ("D.C. Code § 1-1320(b)(3) empowers the Superior Court, after the Board has rejected a proposed initiative measure, to decide whether that measure is a 'proper subject of initiative...'").

The Court has not been presented with any authority establishing that DC BOE must comply with the DCAPA's rulemaking statute when an Initiative is procedurally ratified through the IPA, and the Court declines to impose such a requirement. In the instant case, the DC BOE complied with the IPA's statutory requirements when it received an advisory opinion from the Attorney General, held a public notice and comment period, determined that the Initiative was a "proper subject," adopted the summary statement, short title, and legislative form, and formally published the measure in the DC Register. R. at 37–51, 269–80, 342–65. As such, to the extent

that Plaintiffs allege procedural deficiencies, the Court finds that Defendant complied with the IPA in enacting Initiative 83, and Plaintiffs' claim that Defendant violated DCAPA's rulemaking statute fails as matter of law.

V. Summary Judgement is Granted in Favor of Defendants Because DC BOE's Finding that the Initiative is a Proper Subject, Does Not Violate the DC Human Rights Act, Home Rule Act, or U.S. Constitution and is Supported by Substantial Evidence

As outlined above, pursuant to the DCAPA, the Court must sustain the decision of the agency if it is supported by substantial evidence in the record. In order to pass muster under the DCAPA, (1) the agency's decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must flow rationally from the findings. *The Washington Times v. D.C. Dep't of Emp. Servs.*, 724 A.2d 1212, 1216 (D.C. 1999). The applicable standard "prohibits the substitution of [the Court's] judgement for that of the agency" and "the trial court's function is to determine 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*, 440 A.2d at 1018. In the instant case, DC BOE's decision that the Initiative is a proper subject and did not violate the D.C. Human Rights Act, the Home Rule Act, or the United States Constitution is supported by substantial evidence. Therefore, Defendants are entitled to summary judgment.

a. Defendant's Determination that the Initiative Does Not Violate the D.C. Human Rights Act is Supported by Substantial Evidence

To succeed on a claim of discrimination under the District of Columbia Human Rights Act ("DCHRA"), Plaintiffs must establish that they were discriminated against because of their membership in a protected class. *McFarland v. George Washington University*, 935 A.2d 337, 346–47, 352 (D.C. 2007). 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). Specifically, a claim for disparate impact requires a “demonstration of causation through ‘statistical evidence of a kind and degree sufficient to show that the practice in question ...caused’ individuals to suffer the offending adverse impact ‘because of membership in a protected group.’” *McCaskill*, 36 F.Supp.3d at 157 (quoting *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994 (1988)). The DCHRA “effects clause” states “[a]ny practice which has the effect or consequence of violating any of the provisions of this chapter shall be deemed to be an unlawful discriminatory practice.” D.C. Code § 2-1402.68. Under this clause, “despite the absence of any intention to discriminate, practices are unlawful if they bear disproportionately on a protected class and are not independently justified for some nondiscriminatory reason.” *McCaskill*, 36 F.Supp.3d at 157 (citing *Gay Rts. Coal. of Geo. Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 29 (D.C. 1987)).

Plaintiffs allege that “Defendants’ 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” and Defendants “intentionally, knowingly, and willfully ignored the fact that there are reasonable and available alternatives to allowing 80,000 currently independent voters to effectively invade the three standing political parties in Washington, D.C.” Compl. ¶¶ 10, 18. The Board’s finding that the Initiative does not violate the DCHRA is supported by substantial evidence in the record.

In its decision to implement Initiative 83, DC BOE considered the opinions of numerous stakeholders regarding any alleged disparate impact the Initiative may have at the “Proper Subject Matter Hearing” held on July 18, 2023. R. at 52. The DC BOE considered Plaintiffs allegation that “Ranked Choice Voting has the potential to authorize discrimination and create a disparate

impact on voters and candidates belonging to protected classes...and any voting system that introduces disparities or disadvantages certain groups should be critically evaluated.” R. at 68. DC BOE considered Plaintiffs’ allegation that voters in predominately Black wards report confusion about selecting more than one candidate and Ranked Choice Voting therefore “introduce[s] an additional layer of confusion to the electorate.” R. at 69. DC BOE considered a study submitted by Ms. Jeannette Mobley alleging that the Initiative may result in an increased likelihood of ballot exhaustion among elderly and non-college-educated voters. R. at 82–83. DC BOE also considered comments such as the one expressed by Intervenor that “[f]rom a voter’s perspective, ranked choice voting is easily explained and executed. As adults, we rank our choices regularly. The criticism that ranked choices voting is too complicated for Black voters and Seniors – I am both – is insulting and archaic.” R. at 53-54. Finally, the DC BOE considered an Advisory Opinion Authored by the D.C. Attorney General which stated that the “proper subject” provision “does not draw any distinctions on the basis of any protected characteristic, either by its express terms or in effect, and it therefore does not authorize discrimination prohibited by the Human Rights Act.” R. at 39.

After considering various opinions, Defendant DC BOE determined the following in its Memorandum Opinion and Order,

Certain commenters argued that persons with disabilities and the elderly would be disproportionately confused by ranked choice voting to the point of causing a discriminatory impact that would violate the D.C. Human Rights Act. However, we cannot interfere with the right of initiative based on such speculative concerns, particularly given the lack of evidence of an incurable discriminatory impact and the fact that the Measure is neutral on its face. This issue goes to the wisdom of adopting ranked choice voting, which is for the voters to decide, rather than its constitutionality.

R. at 277-78.

Based on the administrative record, DC BOE concluded that those opposed to Initiative 83 only raised “speculative concerns” and that those concerns lacked corroborating evidence. R. at 277–78. The Initiative is “neutral on its face” and Plaintiffs failed to present evidence supporting its contention that the measure is discriminatory either in intent or impact. *See McCaskill*, 36 F.Supp.3d at 157 (holding that disparate impact claims require a “demonstration of causation through ‘statistical evidence of a kind and degree sufficient to show that the practice in question ...caused’ individuals to suffer the offending adverse impact ‘because of membership in a protected group’”). Plaintiffs failed to identify sufficient evidence to demonstrate how the Initiative will impact a protected group. *See Ricci v. DeStefano*, 557 U.S. 557, 587 (explaining that to establish a “prima facie case of disparate-impact” there must be a “a threshold showing of a significant statistical disparity”) (citing *Connecticut v. Teal*, 457 U.S. 440, 446 (1982)). As such, DC BOE’s decision that the Initiative does not violate the DCHRA is supported by substantial evidence in the administrative record.

b. DC BOE’s Determination that the Initiative Does Not Violate the Home Rule Act is Supported by Substantial Evidence

Likewise, DC BOE’s finding that Initiative 83 was a proper subject that complies with the DC Home Rule Act is supported by substantial evidence in the administrative record. 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). If implemented, D.C. Code §1-1001.09(g)(2) reads, “[a] duly registered voter who is not registered as affiliated with any political party shall be permitted to vote in a primary election held by a single political party of that voter’s choice.”

At DC BOE’s board meeting, held on July 8, 2023, proponents explained that a partisan primary means that each party nominates members of its party, and with ranked choice voting, only registered party members or those affiliated with the party may participate in the primary. R. at 123. Further, the Attorney General’s report explicitly stated that the Initiative would not violate the Home Rule Act because it still requires elections on a partisan basis. R. at 42. Namely, the Home Rule Act does not require or prefer “first past the post” method over ranked choice voting. R. at 42. The Attorney General further elaborated that the Initiative does not change the current partisan election system but simply tabulates votes under a different system – one that still permits partisan elections. R. at 42. Indeed, DC BOE stated in its Memorandum that Initiative 83 merely allows independent voters to affiliate with parties by participating in a party primary rather than affiliating twenty-one days prior to the election. R. at 278. DC BOE maintains that the election will allow only one nominee per political party, ensuring that the election is held in a “partisan” nature. R. at 278.

DC BOE’s finding that Initiative 83 does not violate the Home Rule Act is supported by substantial evidence in the record. The evidence in the record makes it clear that the Initiative does not eliminate partisan elections in a manner that violates the Home Rule Act. Indeed, DC BOE considered opponents’ arguments regarding non-affiliated voters and closed primaries. DC BOE expressly found that, while the Initiative systematically alters the current electoral system, it nevertheless permits partisan elections to ensue pursuant to the Home Rule Act. Accordingly, DC BOE’s decision to affirm Initiative 83 as consistent with the Home Rule Act is supported by substantial evidence.

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

Finally, DC BOE's decision that the Initiative does not violate the First Amendment is supported by substantial evidence. "[T]he [Supreme] Court has recognized that the First Amendment protects the freedom to join together in furtherance of common political beliefs, which necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only. That is to say, a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (internal citations and quotations omitted).

As it relates to elections, the states possess "broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008); U.S. CONST. Art. I, § 4, cl. 1. That power, however, is not absolute and is subject to the limitations codified in specific provision of the Constitution. *Wash. State Grange*, 552 U.S. at 451. As the Supreme Court held, "[e]lection regulations that impose a severe burden on associational rights are subject to strict scrutiny, and we uphold them only if they are 'narrowly tailored to serve a compelling state interest.'" *Id.*

Plaintiffs allege that Initiative 83 is substantially similar to California Election Code § 2001, which permitted "blanket" primary elections in violation of a voter's right to associate under the First Amendment. *Jones*, 530 U.S. at 567; *see also* Compl. ¶ 34. Specifically, Plaintiffs allege that the Initiative allows a voter to rank up to five candidates, and the voter may not give one candidate the same ranking, rank a candidate more than once, or skip a ranking. Pls.' Opp'n at 31.

Accordingly, the Initiative compels political expression beyond a voter's intent in violation of the First Amendment. *Id.* at 32.

DC BOE relies, in part, on the D.C. Attorney General advisory opinion which notes that courts in other jurisdictions, namely the Ninth Circuit and District Courts in Maine, upheld ranked-choice voting against constitutional challenges. R. at 42. Courts have rejected the idea that multiple rounds of tabulation result in disparate opportunities to vote, discards votes, or otherwise dilute votes contrary to Constitutional rights. *Id.* Indeed, the state's ability to legislate election laws created only limited burdens on a voter's constitutional right to associate. *Id.*

The opinion further distinguished Initiative 83 from the California law in *Jones*. California's law allowed voters to vote for a candidate from a ballot which listed every candidate, regardless of party affiliation. *Id.* The Supreme Court noted the difference between a blanket primary and a semi-closed primary, holding that semi-closed primaries require a voter to first become a member of the party, thereby limiting the voter's choice to a candidate of that party. *Jones*, 530 U.S. at 567. Accordingly, Initiative 83 differs from a blanket primary because District law prohibits voters from changing their party affiliation twenty-one days prior to elections. DC BOE ultimately found that the risk of "party raiding" is diminished. R. at 43.

During the comment period, Plaintiff Wilson testified that Initiative 83 would conflict with the U.S. Constitution, namely, the Equal Protection Clause. Plaintiffs did not raise the issue of First Amendment associational rights at the time that Defendant heard from the public. R. at 67-69. Therefore, the Board did not have sufficient evidence to investigate the claim that the Initiative violates the First Amendment. DC BOE nevertheless addressed associational rights in its Memorandum, finding 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." R. at 279. This Court may reverse an agency's decision if it is grounded on a mistaken legal premise or manifests an abuse of discretion. *Franchak*, 932 A.2d at 1091. Neither Plaintiffs' arguments nor the administrative record sufficiently demonstrates that DC BOE failed to consider the Initiative's implications on First Amendment rights. Therefore, DC BOE's finding that the Initiative does not violate a voter's First Amendment right is supported by substantial evidence.

VI. Defendants are Entitled to Summary Judgment Even if the Court Affords the Agency Decision *Skidmore* deference.

Defendants are entitled to summary judgment even if the agency decision is entitled to less deference. Plaintiffs argue that the decision in *Loper Bright* does not automatically void binding DCCA precedent. Pls.' Opp'n at 21. First, the Court disagrees that the Supreme Court's decision in *Loper Bright* changes the level of deference to be afforded to DC BOE's decision in this case and agrees that the Court remains bound by established D.C. Court of Appeals precedent. The decision in *Loper Bright* addresses the level of deference to be afforded to agency interpretations of ambiguous statutory provisions under the federal APA but does not address the level of deference to be afforded to decisions under District of Columbia law, namely the DCAPA and the IPA. In contrast, the D.C. Court of Appeals has established longstanding precedent regarding the deference to be afforded to D.C. agency decisions under D.C. law, and the D.C. Court of Appeals has not overturned its binding case law on the subject. Accordingly, this Court's inquiry begins and ends with an analysis of whether DC BOE's decision was supported by substantial evidence, and for the aforementioned reasons, the Court finds that it was.

However, even if the Supreme Court's decision in *Loper Bright* altered the level of deference to be afforded DC BOE's decision in the instant case, DC BOE's decision, at a

minimum, must be afforded *Skidmore* deference. Under *Skidmore*, the Court shall give weight to an agency’s decision, after careful consideration of “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *See Skidmore*, 323 U.S. at 140. For the reasons stated below, even under *Skidmore* deference, Defendants are entitled to summary judgment.

As previously noted, the IPA allows D.C. voters to propose laws and have those laws presented directly to qualified D.C. voters for approval or disapproval. *See* D.C. Code § 1-204.101. The IPA sets forth procedural requirements that must be met before an Initiative may be presented to the voting public and effectively limits the DC BOE’s ability to block an Initiative from being presented to the voting public. *See generally id*; D.C. Code § 1-1001.16 *et seq*; *Hessey*, 584 A.2d at 3 (explaining that “only those limitations expressed in the law or clear[ly] and compelling[ly] implied” may be imposed on the power of direct legislation by the electorate).

Among DC BOE’s requirements is a determination that the initiative is a “proper subject” under the terms of Title IV of the District of Columbia Home Rule Act or under specific terms outlined in the D.C. Code. D.C. Code § 1-1001.16(b)(1); *see also* D.C. Code § 1-1001.16(b)(1)(A)-(D). As noted in the D.C. Attorney General’s Advisory Opinion “[a] measure is not a proper subject for initiative if it is not in the proper form, or if it would Appropriate funds; Violate or seek to amend the Home Rule Act; Violate the U.S. Constitution; Authorize or have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977; or Negate or limit an act of the Council enacted pursuant to section 446 of the Home Rule Act.” R. at 38. Even viewing DC BOE’s decision as simply persuasive authority, the Court finds that Initiative in question was a “proper subject” under applicable law.

First, the D.C. Court of Appeals has held that the Initiative in question does not appropriate funds. *Wilson v. Bowser*, 330 A.3d 993, 997 (D.C. 2025) (“[B]y its terms, Initiative 83 will not be implemented unless and until the Council appropriates funds for its implementation.”). Second, Initiative 83 does not violate the Home Rule Act. The Home Rule Act requires the Mayor, members of the Council, and Attorney General to be elected on a partisan basis and requires two at-large members be elected in each election cycle, but limits a political party to not more than one nominee for at-large member in one election cycle. D.C. Official Code § 1-204.01(b); D.C. Code § 1-204.21(b); D.C. Code § 1-204.35(a). As previously stated, Initiative 83 limits primary voting participation to one political party and for the reasons previously articulated does not violate or amend the Home Rule Act.

Likewise, Initiative 83 does not violate the First Amendment or due process rights and continues to permit the freedom of association with a particular political party. The DC BOE correctly noted that a plurality of the United States Supreme Court “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.’” R. at 279 (Proper-Subject Order at 11) (quoting *Clingman v. Beaver*, 544 U.S. 581, 590 (2005)). As explained by DC BOE, “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.” R. at 279.

Finally, DC BOE was not provided with sufficient evidence to find that Initiative 83 authorized discrimination. As noted, the measure is neutral on its face, and the argument that African Americans, persons with disabilities and the elderly would be disproportionately confused

by ranked choice voting to the point of causing a discriminatory impact that would violate the D.C. Human Rights Act is speculative at best. *See* R. at 277.

Ultimately, the Initiative met “all technical filing requirements: it was submitted in the proper form, and its Proposer timely filed the supporting verified statement of contributions” and the DC BOE followed the applicable procedural requirements. R. at 279–80. For the aforementioned reasons, Defendants are entitled to summary judgment even if the Court affords DC BOE’s decision *Skidmore* deference and the Court, accordingly, enters judgment in favor of Defendants.

ACCORDINGLY, it is by the Court, this 2nd day of June 2026, hereby
ORDERED that Defendant’s Motion to Strike is **GRANTED**; and it further
ORDERED that Defendant’s Motion to Expedite is **DENIED as moot**; and it is further
ORDERED that Defendant’s Motion for Judgement on the Pleadings is **GRANTED**; and
it is further

ORDERED that Intervenor-Defendant’s Motion for Summary Judgement is **GRANTED**;
and it is further

ORDERED that this case is **CLOSED** and all future hearings are **VACATED**.

**THIS IS A FINAL ORDER UNDER SUPERIOR COURT RULES OF CIVIL
PROCEDURE 58.**

SO ORDERED.


Judge Carl E. Ross

Copies to all Parties.