

## **Draft: ANC3C Resolution in Opposition to the Initiative Amendment Act of 2023**

**WHEREAS**, The voters of the District of Columbia enjoy the right of initiative, *i.e.*, the ability to “propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval,” as guaranteed in the Home Rule Act of 1973, as amended;<sup>1</sup>

**WHEREAS**, The right of initiative in the United States is an important legacy of the Progressive Era, when reformers established the initiative process and used it to implement landmark democratic policies, such as primary elections, direct election of United States senators, home rule for municipalities, permanent voter registration, fair apportionment, labor rights and protections, women’s suffrage, elimination of poll taxes, and environmental protection, *inter alia*;<sup>2</sup>

**WHEREAS**, The right of initiative has served since that time as “a safeguard against the concentration of political power in the hands of a few” and “a means of putting new ideas on the political agenda”;<sup>3</sup>

**WHEREAS**, The right of initiative is not enjoyed by citizens in all jurisdictions in the United States, with roughly one-half of states offering their voters no ability to participate in direct democracy through the mechanisms of initiative or referendum;

**WHEREAS**, The right of initiative, in many jurisdictions where it does exist, has been under sustained attack by officials and vested interests, as “part of a larger antidemocracy blueprint” to “suppress the will of voters and undermine democratic processes,” including but not limited to efforts to impose additional requirements for ballot qualification, to raise the approval percentage for adoption, to require passage in multiple successive elections, to levy filing fees, to limit initiatives to a single subject, to empower state officials to unilaterally block initiatives from appearing on the ballot, and to restrict judicial interpretation of laws passed by initiative;<sup>4</sup>

**WHEREAS**, On September 18, 2023, Councilmembers Phil Mendelson and Anita Bonds introduced in the Council of the District of Columbia a bill entitled “Initiative Amendment Act of 2023” (B25-0475), hereinafter “the proposed Act”;

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<sup>1</sup> D.C. Code § 1–204.101(a).

<sup>2</sup> David D. Schmidt, *Citizen Lawmakers: The Ballot Initiative Revolution* (Philadelphia: Temple University Press, 1989), 15–20.

<sup>3</sup> Schmidt, 25–26.

<sup>4</sup> Sara Carter, Alice Clapman, and Alexi Comella, “Politicians Take Aim at Ballot Initiatives,” Brennan Center for Justice, January 16, 2024, <https://www.brennancenter.org/our-work/research-reports/politicians-take-aim-ballot-initiatives>.

**WHEREAS**, The proposed Act seeks to restrict the right of initiative by codifying an interpretation of the Home Rule Act’s exclusion of “laws appropriating funds” that would disallow all “proposals that would have a fiscal cost” of any sort;<sup>5</sup>

**WHEREAS**, Nearly any new law can be construed to entail a fiscal cost in the course of its implementation, such as the expenditures for outreach and education that typically accompany a change in public policy;

**WHEREAS**, The District of Columbia Court of Appeals has interpreted the “laws appropriating funds” exception on multiple occasions, finding that “[a]ll that the ‘laws appropriating funds’ exception actually means, in the concrete, is that the people may not seek, through the initiative, to propose and pass an actual budget request act ... as the Council’s deliberations on the Charter Amendments make clear”;<sup>6</sup>

**WHEREAS**, The District of Columbia Court of Appeals has further found that the “legislative history of the exception ... shows that the Council did not exclude a matter from the initiative right because of its prospective fiscal impact,” and that “to construe the exception in [such a] manner ... would be to effectively write the initiative process out of existence”;<sup>7</sup>

**WHEREAS**, The proposed Act, by so construing the exception, would in fact “effectively write the initiative process out of existence”.

**THEREFORE BE IT RESOLVED**, That Advisory Neighborhood Commission 3C opposes the proposed Initiative Amendment Act of 2023 (B25-0475) and urges the Council of the District of Columbia to do the same.

**BE IT FURTHER RESOLVED**, That Advisory Neighborhood Commission 3C calls upon the Council of the District of Columbia to protect and defend the right of initiative as a fundamental democratic right of the people of the District of Columbia to participate in the making of laws to which they are bound.

**BE IT FURTHER RESOLVED**, ANC 3C authorizes the Chair and the Commissioners for 3C02 and 3C05 to represent the Commission on this matter.

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<sup>5</sup> Phil Mendelson, “Statement of Introduction,” September 18, 2023, <https://lims.dccouncil.gov/downloads/LIMS/53793/Introduction/B25-0475-Introduction.pdf?Id=174940>.

<sup>6</sup> *Convention Center Referendum Committee v. District of Columbia Board of Elections & Ethics*, 441 A.2d 926 (D.C. 1981).

<sup>7</sup> *District of Columbia Board of Elections & Ethics v. District of Columbia*, 520 A.2d 674, 676 (D.C. 1986). See also *District of Columbia Board of Elections & Ethics v. District of Columbia*, 866 A.2d 795 (D.C. 2005), where the Court held that “[i]nitiatives can ... ‘propose authorizing legislation that the Council could enact,’ raise revenues without directing their allocation, or ‘contain a ‘non-binding policy statement’ that revenues should be allocated for specified purposes,” citing *Hessey v. District of Columbia Board of Elections & Ethics*, 601 A.2d 19 (D.C. 1991) (en banc).