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No. 24-CV-397

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

CHARLES E. WILSON,
APPELLANT,

V.

MURIEL E. BOWSER, *et al*.,
APPELLEES.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES MURIEL E. BOWSER AND THE DISTRICT OF COLUMBIA

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INTRODUCTION

In the District of Columbia, the Board of Elections is an independent agency that implements and enforces the D.C. Election Code, D.C. Code § 1-1001.01 *et seq*., including the reticulated framework by which voters place proposed laws—or "initiatives"—on the ballot. That framework requires that the Board take certain actions at certain times, and it provides for judicial review of the Board's actions in certain ways at certain times. Here, after the Board took several actions to advance Initiative Measure No. 83—the "Ranked Choice Voting and Open the Primary Elections to Independent Voters Act of 2024"—appellant Charles E. Wilson (as well as the D.C. Democratic Party and a former Independent candidate for the D.C. Council, Keith Silver) brought suit alleging that the Board had wrongly determined that the measure was a "proper subject of initiative." The Superior Court dismissed the suit as untimely filed.

As brought against Mayor Muriel E. Bowser in her official capacity and the District of Columbia, however, Wilson's suit fails for an independently sufficient reason. Even assuming that the Board's determination has inflicted some injury in fact on Wilson, his suit fails to allege any way in which that injury is traceable to or redressable by *the Mayor or the District*. Simply put, Wilson has not demonstrated his standing as to either defendant. The Court thus can—and should—affirm the Superior Court's judgment as to the Mayor and the District.

STATEMENT OF THE ISSUE

Whether the judgment of the Superior Court should be affirmed as to the Mayor and the District because the source of Wilson's alleged injury—the Board's determination that Initiative Measure No. 83 is a proper subject of initiative—is not traceable to or redressable by these defendants.

STATEMENT OF THE CASE

Wilson and others filed this suit against the Board, the District of Columbia, and Mayor Bowser on August 31, 2023. Supplemental Appendix ("SA") 369-403.[1] On March 28, 2024, the Superior Court (C. Ross, J.) dismissed it for "fail[ing] to meet the requisite filing requirements specifically prescribed under [the] D.C. Code." SA 493; *see* SA 486-94. Wilson and only Wilson filed a timely notice of appeal. SA 496-97.

STATEMENT OF FACTS

1. The Board Of Elections And The Initiative Process.

The District of Columbia Board of Elections is an "independent agency" that, "[i]n the performance of its duties, . . . shall not be subject to the direction of any non-judicial officer of the District." D.C. Code § 1-1001.06(a) (codifying language that dates to Pub. L. No. 84-376, § 6(a), 69 Stat. 699, 700 (1955)); *see Jackson v.*

[1] Wilson filed an appendix with this Court that was incomplete and unpaginated. Citations to "SA" are to the supplemental appendix filed by the Board on July 19, 2024.

D.C. Bd. of Elections & Ethics, 999 A.2d 89, 114-15 (D.C. 2010) (en banc) (describing the Board's independence).[2] Those duties include implementing and enforcing the D.C. Election Code, D.C. Code § 1-1001.01 *et seq*., by, among other things, "register[ing] qualified voters," "inform[ing] . . . [voters] about elections and voting," "[p]rovid[ing] for [the] recording and counting votes by means of ballots or machines or both," and "[c]onducting elections." *Id*. § 1-1001.05(a)(2), (a)(3), (a)(4), (a)(12).

As particularly relevant here, the Board is "the gatekeeper for the initiative process" by which District voters place proposed laws directly onto the ballot for other voters' approval. *Marijuana Pol'y Project v. United States*, 304 F.3d 82, 84 (D.C. Cir. 2002); *see* D.C. Code § 1-1001.02(10) (defining "initiative"); *id.* § 1-1001.16 (setting out initiative procedures). To start, on receipt of a proposed measure, "the Board shall refuse to accept [it]" if it is "not a proper subject of initiative." *Id*. § 1-1001.16(b)(1). A measure is not a "proper subject" if it "appropriat[es] funds," *id*. § 1-1001.02(10), conflicts with the powers granted to the D.C. Council in the Home Rule Act, *id*. § 1-204.01 *et seq*., authorizes discrimination prohibited by the D.C. Human Rights Act ("DCHRA"), *id*. § 2-1401.01 *et seq*., or

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[2] Throughout these proceedings, Wilson has referred to the Board as the D.C. Board of Elections, DCBOE, and BOE. Those terms thus appear interchangeably throughout this brief.

violates the U.S. Constitution. *See id*. § 1-1001.16(b)(1); 3 DCMR § 1000.5. If the Board refuses the measure, "the person or persons submitting [it]" may "within 10 days" challenge that refusal in the Superior Court through "a writ in the nature of mandamus to compel the Board to accept [it]." D.C. Code § 1-1001.16(b)(3).

Next, "[w]ithin 20 calendar days" of the Board's acceptance, "the Board shall" place the measure "in the proper legislative form" and prepare a short title and a "true and impartial" summary statement that "shall not intentionally create prejudice for or against [it]." *Id*. § 1-1001.16(c). "[W]ithin 10 calendar days from the date the Board publishes [those formulations] in the [D.C.] Register," any voter (not just the person or persons who submitted it) may in the Superior Court "object[] to the summary statement, short title, or legislative form of the initiative measure formulated by the Board . . . and request[] appropriate changes." *Id*. § 1-1001.16(e)(1)(A) ("The Superior Court . . . shall expedite [its] consideration of this matter."). "Should no [judicial] review . . . be sought as provided [for] in paragraph (1)," the Board "shall . . . accept[]" the proposed summary statement, short title, and legislative form. *Id*. § 1-1001.16(e)(2).

After that, "the Board shall certify" the formulations and "prepare and provide to the proposer . . . an original petition form" for the purpose of gathering the requisite number of signatures from District voters. *Id*. § 1-1001.16(f) to (g), (i). The measure's supporters then have 180 days to circulate the petition, collect

signatures, and submit the signed petition to the Board for further review. *Id.* § 1-1001.16(h) to (j). "[T]he Board shall refuse to accept the petition" if it does not meet certain procedural requirements or "on its face clearly bears an insufficient number of signatures." *Id.* § 1-1001.16(k). However, if the Board refuses the petition, the "person or persons submitting [it]" may again "within 10 days" attempt to "compel the Board to accept [it]" through "a writ in the nature of mandamus" in the Superior Court. *Id.* § 1-1001.16(*l*).

Finally, "within 30 calendar days" of accepting the signed petition, "the Board shall certify" whether there are enough valid signatures such that "[t]he Board shall conduct an election on [the] initiative measure at the next primary, general, or city-wide special election held at least 90 days after [certification]." *Id.* § 1-1001.16(o) to (p). During an initial 10 days of this 30-day period, any voter may challenge before the Board the validity of the signatures collected, after which he may petition this Court for further review. *Id.* § 1-1001.16(o).

All that done—and even if "ratified by a majority" of voters—the measure still "shall not take effect until the end of the 30-day congressional review period . . . and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving [of it]." *Id.* § 1-1001.16(r)(1).

2. The Board Determines That The "Make All Votes Count Act Of 2024" Is A Proper Subject Of Initiative And Finalizes Its Legislative Form As Initiative Measure No. 83.

In June 2023, the Board received a proposed ballot measure entitled the "Make All Votes Count Act of 2024." SA 1-12 (Proposal). The measure's summary statement explained that the measure sought to "implement ranked-choice voting" and to "permit voters not registered with a political party to choose to participate in" one party's primary election for all offices other than party offices. SA 2; *see* SA 2-6 (proposing to amend D.C. Code §§ 1-1001.02, 1-1001.05, 1-1001.09, and to add D.C. Code § 1-1001.08a). The measure also provided that none of these changes would be implemented unless the D.C. Council made the necessary appropriations. *See* SA 6 (conditioning the measure's "appl[ication]" to "the date of inclusion of its fiscal effect in an approved budget and financial plan"). In other words, "voters might choose to pass the [m]easure, but the Council then might choose not to fund [it]." SA 271.

At a meeting on July 21, 2023, the Board unanimously determined that the "Make All Votes Count Act of 2024" was "a proper subject of initiative," D.C. Code § 1-1001.16(b)(1). *See* SA 241-61 (Transcript). In a written decision issued several days later, SA 269-80 (7/25/23 Opinion and Order), the Board explained that the proposed measure satisfied the "technical filing requirements" and that "neither the ranked choice voting nor the semi-closed primary aspects of the [m]easure

present[ed] a proper subject matter concern." SA 279-80. Specifically, the measure did not "appropriate funds" because it "provide[d] on its face that it will not be implemented unless and until . . . the Council . . . approve[s] a budget that covers [its] costs." SA 274-75. "[T]he ranked choice voting aspect of the [m]easure" was also proper because the claim that elderly or disabled voters would be "disproportionately confused" by ranking candidates "to the point of causing a discriminatory impact" under the DCHRA was "speculative." SA 277. And the measure's "semi-closed primary provision" would not interfere with the Home Rule Act's requirement that certain offices be "'elected on a partisan basis'" because the measure simply "allow[ed] independent voters to affiliate with a party through the act of participating in a party primary election, rather than requiring voters to make that affiliation twenty-one days prior to that election." SA 278. Finally, and for similar reasons, the Board determined that allowing previously unaffiliated voters "to vote on the ballot for one party's primary" did not violate the "constitutional right to freedom of association." SA 278-79 (citing *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), and *Clingman v. Beaver*, 544 U.S. 581 (2005)).

Having found the measure substantively appropriate, the Board accepted it as "Initiative Measure No. 83," placed it in proper legislative form, and prepared an impartial summary statement and short title. *See* D.C. Code § 1-1001.16(b)(4) to (c)(3). Following a public meeting on August 23, 2023, where the Board adopted

these formulations as amended, the Board caused Initiative Measure No. 83 (and a statement of its expected fiscal impact) to be published in the D.C. Register on September 1, 2023. D.C. Code § 1-1001.16(d)(2); *see* SA 356-64 (Legal Publication).

3. Wilson And Others Bring Suit In The Superior Court.

The day before publication in the D.C. Register, on August 31, 2023, Wilson ("a resident of and a voter in the District of Columbia, who serves as Chair of the D.C. Democratic Party"), the D.C. Democratic Party, and Keith Silver ("a former Independent Candidate for the D.C. Council . . . [in] 2020"), brought suit in the Superior Court. SA 369-70; *see* SA 369-403 (Complaint). As statutory authorization for the action, the complaint quoted D.C. Code § 1-1001.16(e)(1)(A), which allows any voter to "request[] appropriate changes" to the Board's summary statement, short title, or legislative form by "seek[ing] review in the Superior Court . . . within 10 calendar days from the date the Board publishes [those formulations] in the [D.C.] Register." SA 370; *see* SA 382 (Compl. ¶ 59: "This is an objection to the Summary Statement, Short Title and Legislative Form of proposed Initiative No. 83, undertaken pursuant to . . . Subsection (e)(1)(A).").

Nothing in the complaint, however, challenged or requested changes to the Board's wording of the summary statement or the short title or the measure's legislative form. Rather, the gravamen of the complaint was that, contrary to the

Board's earlier substantive determination, Initiative Measure No. 83 was not a "proper subject" under D.C. Code § 1-1001.16(b):

> No Initiative should be accepted and approved by DCBOE if 1) it appropriates funds, 2) it violates or seeks to amend the D.C. Home Rule Act . . . , 3) it violates the United States Constitution, 4) it authorizes discrimination prohibited by the D.C. Human Rights Act, [or] 5) it vitiates and negates an Act of the D.C. Council, D.C. Code §§ 1-204.101(a) and 1-1001.16(b)(1). For the reasons that follow, this initiative violates all of those legal limitations and more.

SA 383 (Compl. ¶ 61) (footnote omitted). Each count of the complaint then alleged (1) that the Board should not have approved the proposed measure as a "proper subject" for initiative because it appropriated funds (Count IV), violated the Home Rule Act (Count II), the DCHRA (Count I), and the U.S. Constitution (Count III), or (2) that the Board's approval violated the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Code § 2-501 *et seq*. (Counts V and VI). SA 372-80 (Compl. ¶¶ 1-57); *see* Br. 47-48 ("[The] Complaint outlined each of the Board's violation[s] of the express substantive prohibitions . . . that would have required it to not accept the proposed measure."), 52 ("Plaintiffs' filing . . . challenged the Board's decision to accept Initiative 83 . . . as a proper subject for an initiative measure." (footnote omitted)).

Consistent with this focus, the complaint's particular allegations identified only actions taken by the Board under the D.C. Election Code, D.C. Code § 1-1001.16, to "accept" or "approve" Initiative Measure No. 83. *See, e.g.*, SA 381

("[T]he D.C. Board of Elections is not authorized to approve this Initiative"); SA 387 (Compl. ¶ 72: "[T]he D.C. Board of Elections may not 'accept' and approve an Initiative that [appropriates funds]."); SA 390-91 (Compl. ¶ 81: "BOE's decision . . . indirectly permitted the advance of a process that could ultimately suppress the voice and influence of voters of color for decades to come."); SA 394-99 (Compl. ¶¶ 89-98: discussing agency action and criticizing the Board's proper-subject determination). Despite naming the Mayor and the District of Columbia as defendants—and sometimes using the label "defendants" to describe actions taken solely by the Board, *see, e.g.*, SA 380 (Compl. ¶¶ 52, 56)—none of the allegations challenged actions taken by the Mayor or the District, or explained how either had decided anything in the initiative process or had any authority to do so.

4. The Superior Court Dismisses The Complaint As Untimely.

Defendants promptly filed a limited motion to dismiss, arguing that plaintiffs had filed their complaint outside the 10-day period prescribed by Subsection 1-1001.16(e)(1)(A), and that any challenge to the constitutionality or legality of a measure that "has not yet been voted into law" was "premature." SA 488; *see* SA 413-26 (10/23/23 Defs.' Mot. to Dismiss). In opposition, plaintiffs insisted that they *had* timely filed under Subsection 1-1001.16(e)(1)(A), and that the case was "ripe" because the measure had been accepted by the Board, and officials expected the measure to have a fiscal impact if it were implemented. *See* SA 432-55

(11/3/23 Pls.' Opp'n at 1-2, 4-6, 11-14, 21 (citing SA 362-64 (Fiscal Impact Statement))).

Addressing only plaintiffs' failure to satisfy the "filing requirements specifically prescribed" by Subsection 1-1001.16(e)(1)(A), the Superior Court dismissed the complaint. SA 493; *see* SA 486-94. That provision, the Court concluded, "plainly reads" that those who "wish[] to challenge the Board's decision to adopt a short title, summary statement, and legislative form 'may seek review in the Superior Court . . . within 10 calendar days from the date the Board publishes [them] in the [D.C.] Register.'" SA 491 (quoting D.C. Code § 1-1001.16(e)(1)(A)) (emphasis omitted). Finding that this language "contemplates . . . challenge[s] . . . [to] the Board's decision *only after*" that publication, the Court concluded that an action "rais[ing] a challenge to the Board's decision *prior to* [D.C. Register] publication . . . offends traditional notions of statutory interpretation and exceeds the bounds of the Court's jurisdiction." SA 491-92 (second emphasis added).

The Superior Court accordingly rejected plaintiffs' argument that the complaint was timely under Subsection 1-1001.16(e)(1)(A) because it was filed within 10 days of "publication *on the Board's website*." SA 492 (emphasis added). The court also rejected as "without merit" plaintiffs' argument that, although their complaint was "filed" on August 31, it was timely because it was not "docketed"

until September 1. SA 493; *see Quinn, Racusin & Gazzola Chartered v. Pavich L. Grp., P.C.*, 309 A.3d 587, 593 (D.C. 2024) (explaining that "electronic filing is complete on transmission" and quoting D.C. Super. Ct. Civ. R. 5(d)(5)(A)). Because the suit was filed outside the statutorily prescribed time period, the court dismissed the complaint. SA 493.

Only Wilson appealed from the dismissal. SA 496.

STANDARD OF REVIEW

This Court reviews de novo the Superior Court's order granting a motion to dismiss and may affirm the order on bases other than those on which the Superior Court relied. *Randolph v. ING Life Ins. & Annuity Co*., 973 A.2d 702, 705 (D.C. 2009) ("[I]f there is an alternative basis that dictates the same result, a correct judgment must be affirmed on appeal."). Because a "defect of standing is a defect in subject matter jurisdiction," *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015) (cleaned up), a defendant may raise it "at any time" and "even where no party addresses it, [the Court has] an obligation to consider [it] sua sponte," *Quinn*, 309 A.3d at 591-92.

SUMMARY OF ARGUMENT

Standing to sue is an absolute prerequisite to bringing a lawsuit, and its absence is a complete bar to maintaining one. To establish standing, Wilson must establish not only that he has suffered an injury in fact, but also that there is a

traceable connection between his injury *and each defendant* that a court could redress. Wilson has failed to make this showing. Even assuming that Wilson was sufficiently injured by the Board's proper-subject determination, no allegations support that this injury is traceable to, or redressable by relief running against, the Mayor or the District. Those defendants neither direct the Board's actions nor enforce or administer the D.C. Election Code. No more is needed to affirm the dismissal of Wilson's complaint as to the Mayor and the District.

ARGUMENT

I. Wilson Failed To Establish His Standing To Sue The Mayor And The District.

"The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is *attributable to the defendant* and capable of redress by the court." *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206-07 (D.C. 2002) (second emphasis added); *see Allen v. Wright*, 468 U.S. 737, 751 (1984) (same). These elements are "an indispensable part of the plaintiff's case" and "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Fraternal Ord. of Police Metro. Police Dep't Lab. Comm. v. District of Columbia*, 290 A.3d 29, 37 (D.C. 2023) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). Accepting as true all the material allegations in Wilson's complaint and construing them in his favor, *see Grayson v. AT&T Corp.*,

15 A.3d 219, 232 (D.C. 2011) (en banc), Wilson has failed to make this showing as to the Mayor and the District.

A. Nothing indicates that Wilson's alleged injury is traceable to the Mayor or the District.

The source of Wilson's alleged injury is that the Board "accepted and approved" Initiative Measure No. 83 despite its lack of a proper subject. SA 383 (Compl. ¶ 61); *see* Br. 51 ("The Protest Action filed against this Initiative makes the argument, for several reasons at law, that the D.C. Board of Elections is not authorized to approve this Initiative."). Specifically, he alleges that the Board erred because the initiative appropriates funds (Count IV), violates the Home Rule Act (Count II), the DCHRA (Count I), and the U.S. Constitution (Count III), and that the Board's determination otherwise violates the DCAPA (Counts V and VI). SA 382-83 (Compl. ¶¶ 60-61); *see* D.C. Code § 1-1001.16(b)(1) ("[T]he Board shall refuse to accept the [proposed] measure if the Board finds that it is not a proper subject of initiative."); 3 DCMR § 1000.5 (similar). Even assuming for sake of argument that Wilson has adequately alleged that the Board's decision inflicted an injury that is "concrete and particularized and actual or imminent, not conjectural or hypothetical," *Grayson*, 15 A.3d at 246 (cleaned up), Wilson alleges nothing that explains how *the Mayor or the District* caused this injury. That is fatal.

To demonstrate standing, the plaintiff must trace his injury to "the defendant's . . . [allegedly] unlawful conduct." *Grayson*, 15 A.3d at 235 (quoting

Wright, 468 U.S. at 751) (emphasis added). In other words, he must demonstrate his "standing . . . separately as to each defendant," *Disability Rts. S.C. v. McMaster*, 24 F.4th 893, 900 (4th Cir. 2022), which requires "a showing that each defendant caused his injury," *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017) (citing *Lujan*, 504 U.S. at 560-61). *See Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) ("[S]tanding is not dispensed in gross.").

Wilson fails to do this. He accurately alleges that the Board is "the Administrative Agency responsible for District of Columbia elections." SA 371. But he fails to allege how the Mayor or the District took any of the challenged actions or did (or could do) anything to enforce or administer the D.C. Election Code, including with respect to the initiative process. *See California v. Texas*, 593 U.S. 659, 669-70 (2021) (finding no standing against a government official that does not "act to enforce" the statute alleged to cause harm); *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) (citing the "long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute"). For good reason.

By statute, "the Board *shall not* be subject to the direction of any nonjudicial officer of the District"—including the Mayor. D.C. Code § 1-1001.06(a) (emphasis added). The Mayor thus cannot control the Board's determination as to whether something is a proper subject of initiative—nor direct the conduct of any election in

the District of Columbia more generally. Nor can the District writ large. *See, e.g.*, *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788 (D.C. 2005) (suit by District challenging Board's approval of initiative). It is therefore unsurprising that Wilson has not alleged *any* "causal relation" between the Board's "independent" acceptance and approval of Initiative Measure No. 83 and the Mayor or the District. *Fraternal Ord. of Police*, 290 A.3d at 38 (quoting *California*, 593 U.S. at 675). Standing as to the Mayor and the District is thus "precluded." *Id.*

Indeed, even if Wilson now strained to characterize Counts I through IV as bringing a stand-alone, pre-election, pre-enactment challenge to the new election procedures that Initiative Measure No. 83 would create *if* approved by voters, accepted by Congress, and funded by the Council, Wilson has still failed to establish traceability as to the Mayor or the District.[3] That is because, once again, only *the*

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[3] Any such suit would also be unripe, including as brought against the Board. *See Loc. 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 896 (D.C. 2010) ("[R]ipeness concerns . . . still apply in cases where . . . the plaintiff seeks declaratory relief" and those concerns may be "raise[d] . . . *sua sponte* even though neither party has discussed [them] in its briefs"). Indeed, despite otherwise relying on *Hessey v. Burden*, 615 A.2d 562 (D.C. 1992), Wilson ignores that case's holding that "pre-election review" of the "constitutionality *or* legality of an initiative" is "reserved for the truly extreme case" such as where "[a]n initiative propos[es] to establish an official religion." *Hessey*, 615 A.2d at 574 (emphasis added). Nor do any of Wilson's arguments on the merits come close to satisfying this high bar. *See Comm. for Voluntary Prayer v. Wimberly*, 704 A.2d 1199, 1202 (D.C. 1997) (finding that the Superior Court did not abuse its discretion when it identified as an "extreme" case an initiative that "clearly conflict[ed] with decisions of the Supreme Court").

Board (not the Mayor or the District) would be taking actions to implement ranked-choice voting or to ensure that unaffiliated voters receive a ballot to participate in a partisan primary election. *See, e.g.*, SA 358 ("The Board shall . . . [a]rrange the ballot for the presidential preference primary so as to enable each voter to indicate the voter's rankings."); SA 360 ("The Board shall permit a voter not registered with a political party to vote by mail-in ballot in a primary election if such voter has requested such a ballot"); *see generally* SA 357-60 (proposing to amend D.C. Code §§ 1-1001.02, 1-1001.05, 1-1001.09, and to add D.C. Code § 1-1001.08a). And dispositive here, Wilson does not allege anything otherwise. To the contrary, Wilson's only arguably relevant allegation is that implementing Initiative Measure No. 83 would impose "significant financial obligation[s]" on "*DCBOE*." SA 378 (Compl. ¶¶ 39, 41) (emphasis added); *accord* SA 362-64 (Fiscal Impact Statement) (finding that "to implement the proposed initiative . . . by the June 2026 primary election . . . *[t]he Board of Elections*" will require approximately "$1.5 million over the four-year financial plan period" (emphasis added)). But "[w]hen a defendant has no role in enforcing the law at issue"—as the Mayor and the District have no role here—"it follows that the plaintiff's injury allegedly caused by that law is not traceable to the defendant" and the action against that defendant fails. *McMaster*, 24 F.4th at 902.

B. Nothing indicates that Wilson's alleged injury is redressable by relief that runs against the Mayor or the District.

"[S]tanding to sue each defendant also requires a showing that . . . an order of the court against each defendant could redress the injury." *Calzone*, 866 F.3d at 869 (citing *Lujan*, 504 U.S. at 560-61). Just as Wilson's injury—if any—cannot be traced to the Mayor or the District, neither can relief that runs against the Mayor or the District redress it.

To repeat, neither the Mayor nor the District enforces or has any alleged or apparent authority over the initiative process. Wilson would thus receive no relief if an order "[d]eclaring the decision . . . to 'accept' and 'approve' the subject Initiative as wrongful, unlawful and null and void," SA 401, were directed against the Mayor or the District, who, as Wilson elsewhere acknowledges, did not make the "decision" at issue. *See, e.g.*, SA 383, 387, 391 (Compl. ¶¶ 61 ("DCBOE"), 72 ("D.C. Board of Elections"), 81 ("BOE")). Equally useless to Wilson would be an order entered against the Mayor or the District declaring that actions *they did not take* were "substantively" or "procedurally unlawful." SA 401. Nor would any order to "permanently block the implementation of the subject Initiative," SA 401, have any purchase *except* if it were directed at the Board, which is charged not only with the initiative process but also with the administration of the District's elections more broadly. *See supra* pp. 2-3. Whatever favorable redress for Wilson's alleged injury the Board might be able to provide, none can come from the Mayor or the District.

CONCLUSION

The judgment of the Superior Court dismissing the complaint as to the Mayor and the District should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 22, 2024, this brief was served through this Court's electronic filing system to:

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