

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

+ + + + +

FRIDAY

DECEMBER 14, 2018

+ + + + +

The District of Columbia Board of Elections convened a Regular Board Meeting in Suite 750, 1015 Half Street, S.E., Washington, D.C., 20003, pursuant to notice at 1:30 p.m., Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

MICHAEL BENNETT, Chair
MICHAEL D. GILL, Member
DIONNA M. LEWIS, Member

BOARD OF ELECTIONS STAFF PRESENT:

ALICE P. MILLER, Executive Director
KENNETH J. MCGHIE, ESQ., General Counsel
CECILY COLLIER-MONTGOMERY, Director,
Office of Campaign Finance
WILLIAM SANFORD, ESQ., General Counsel,
Office of Campaign Finance
RUDOLPH MCGANN, ESQ., Staff Attorney

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P-R-O-C-E-E-D-I-N-G-S

1:52 p.m.

CHAIR BENNETT: Let me start off with introducing the folks that are here. To my far left, Ms. Alice Miller, executive director of the Board of Elections. To her right and my left is Ms. Dionna Lewis, Board member, Michael Bennett, Chair.

To my right is Mr. Ken McGhie, general counsel, Board of Elections. His right is Board Member Michael Gill, and Cecily Montgomery, to his right, is the director of the Office of Campaign Finance.

ADOPTION OF MINUTES

CHAIR BENNETT: First thing on the agenda is adoption of the minutes from the November 15th meeting. Can I get a motion from one of the Board members?

PARTICIPANT: So moved.

MEMBER GILL: Second.

CHAIR BENNETT: It's been properly moved and seconded. All in favor?

1 (Chorus of aye.)

2 CHAIR BENNETT: Unanimous. Those
3 minutes are accepted from the last meeting.

4 BOARD MATTERS

5 CHAIR BENNETT: Any matters from the
6 Board? Mr. Gill?

7 MEMBER GILL: No.

8 CHAIR BENNETT: Ms. Lewis?

9 MEMBER LEWIS: No.

10 CHAIR BENNETT: None from me, other
11 than the fact that we got through our third
12 election for 2018, the first being in June, the
13 primary second being November -- the general.
14 Thank you, Ms. Royal. Then the third being the
15 election of the Ward 4 Board of Education member.
16 I think the winner was Mr. O'Leary. There was a
17 question by many in terms of why we didn't have
18 that particular election happen in November with
19 the main election.

20 The reason is that there were some
21 timing requirements for gathering petitions and
22 those kind of things that didn't allow it by --

1 our following the law didn't allow it to be at
2 the November election. We had to have a special
3 election which, unfortunately, cost the city a
4 fair amount of money, but we had to have a
5 special election in December to be compliant with
6 the law. No other Board matters.

7 Office of Campaign Finance, Ms.
8 Montgomery.

9 MS. COLLIER-MONTGOMERY: Good
10 afternoon.

11 CHAIR BENNETT: Let me stop for a
12 second. Did we have anybody call in? Normally,
13 Mr. Sindram calls in.

14 PARTICIPANT: I did inform him you had
15 a meeting today, but he was not answering.

16 CHAIR BENNETT: Okay, great, thank
17 you. Ms. Montgomery.

18 MS. COLLIER-MONTGOMERY: Yes, good
19 afternoon. The first thing I would like to
20 report --

21 CHAIR BENNETT: Oh, I'm sorry. I
22 missed the adoption of the agenda for today.

1 ADOPTION OF AGENDA

2 CHAIR BENNETT: Can I have a motion
3 for the adoption of today's agenda?

4 MEMBER LEWIS: So moved.

5 MEMBER GILL: Second.

6 CHAIR BENNETT: It's been properly
7 moved and seconded. All in favor?

8 (Chorus of aye.)

9 CHAIR BENNETT: Unanimous, so the
10 agenda has been adopted for today. Thanks, Ken.
11 Ms. Montgomery -- I'm sorry. Go ahead.

12 CAMPAIGN FINANCE REPORT

13 MS. COLLIER-MONTGOMERY: Good
14 afternoon. The first thing I would like to
15 report is that the Office of Campaign Finance has
16 been reorganized, consistent with the enactment
17 of D.C. Law 22-94, the Fair Elections Amendment
18 Act of 2018. As you know, the law became
19 effective on May 5, 2018, and the provisions of
20 the law became applicable on November 7, 2018.

21 The Office of Campaign Finance has
22 been reorganized to establish a Fair Elections

1 Program Division. That division will be
2 responsible for the administration of the Fair
3 Elections Act Program. The division will be
4 managed by a fair elections program manager.

5 As you may know, the Council, in the
6 budget for the Office of Campaign Finance for
7 fiscal year '19, also included three audit
8 positions for the division, as well as an
9 information technology specialist. The Fair
10 Elections Program will be responsible for
11 providing for the public financing to candidate
12 who are deemed eligible to participate in the
13 program. Under the public financing --

14 CHAIR BENNETT: Ms. Montgomery, can
15 you turn your mic on? I don't think you're --

16 MS. COLLIER-MONTGOMERY: Okay. Under
17 the Public Financing Program, the Act will
18 provide for the provision of base amounts, as
19 well as for matching fund payments. During the
20 month of November, there was one filing date.
21 That date was the 8th day pre-special election
22 report of receipts and expenditures for

1 candidates who participated in the Ward 4 State
2 Board of Education election.

3 The report was due on November 26,
4 2018. There were six required filers. All of
5 the participating committees timely filed their
6 reports, as well as electronically filed their
7 reports.

8 I have an addendum to the referrals
9 which were made to the Office of the General
10 Counsel for the Office of Campaign Finance with
11 respect to the October 10th Report of Receipts
12 and Expenditures. These are failures to file.
13 The first is with a political action committee
14 Foodservice PAC. Sam LeBlanc is the treasurer.
15 Also, I have the listing of the failures to file
16 the 8 Day Pre-General Election Report of Receipts
17 and Expenditures.

18 Those committees which were referred
19 to the Office of the General Counsel are as
20 follows: Melik for At-Large, Melik Ahmir Abdul,
21 treasurer; Friends of Traci Hughes, Traci Hughes,
22 treasurer; Rosenberg for Ward 6, Clayton

1 Rosenberg, treasurer; Dibinga for D.C., Omekongo
2 Dibinga, treasurer; Committee to Elect James
3 Butler for Mayor 2018, Terrence Jordan,
4 treasurer; George Jackson for D.C. Mayor, George
5 Jackson, treasurer; The Committee to Elect
6 Professor Alpha Bah, Esq., MBA, Alpha Bah,
7 treasurer; Dustin DC Canter for Mayor, Tabitha
8 Zimmerman, treasurer; Nate Brown Mr. Ward 6,
9 Christina Brown, treasurer; Wreh for Council,
10 Chayanne Tweh, treasurer; Friends to Elect Calvin
11 H. Gurley, Calvin Gurley, treasurer; Ameer
12 Flippin, Ameer Flippin, treasurer; Citizens to
13 Elect Bill Lewis, Charlotte Lewis, treasurer.

14 The political action committees which
15 were referred for the failure to timely file the
16 8th day pre-general report were DC Choice, David
17 Pope, treasurer; DC Democratic State Committee,
18 John Hugh Allen, treasurer; Foodservice PAC, Sam
19 LeBlanc, treasurer; Metro DC Democratic
20 Socialists of America, Solidarity DC PAC, Gabriel
21 Rodriguez, treasurer; Ward One Democrats, Daniel
22 Orlaskey, treasurer; DC for Democracy PAC,

1 Vasudevan Abhiraman; Economic and Protection
2 Party, Margaret Smith, treasurer; Holland &
3 Knight DC PAC, Dennis Horn, treasurer; Ward 5
4 Democrats, William Lewis, treasurer.

5 We also, during the month of November,
6 had new candidates and committees who registered
7 with the Agency. The first was Save our Votes,
8 no D.C. Council repeal of Initiative 77
9 referendum, registered on November 1, 2018; D.C.
10 Proud 2019 Inaugural Committee, registered on
11 November 14, 2018.

12 In the audit branch of the Agency,
13 during the month of December, the audit branch
14 conducted 133 desk reviews. Those were desk
15 reviews of political action committees, our
16 constituent service funds, as well as our
17 principal campaign committees. Also, during the
18 month of November, we have ongoing audits. The
19 ongoing audits, first, would be a full field
20 audit of Sheika Reed for Ward 1, which was
21 initiated on August 29, 2018.

22 The periodic random audits in the

1 office, which are ongoing, are of candidates in
2 the 2018 election, the January 31, 2018 filing:
3 Kenyon McDuffie, 2018, which was initiated March
4 22, 2018, a periodic random audit of a continuing
5 committee in the 2018 election; the June 10, 2018
6 filing, Anita Bonds, 2018, which was initiated
7 September 11, 2018; a periodic random audit of a
8 constituent service program for the October 1,
9 2018 filing, Mayor Bowser's Constituent Service
10 Fund.

11 We also issued two audit reports, our
12 Ward 5, which was issued on December 5, 2018, and
13 the Citizens Outreach Fund, which was issued on
14 November 7, 2018. The final audit reports are
15 available at our website for review by members of
16 the public. At this time, I would ask William
17 Sanford, of General Counsel, to give the report
18 from the Office of the General Counsel.

19 MR. SANFORD: Good afternoon. I'll
20 just try to project. Good afternoon. My name is
21 William Sanford, general counsel for the Office
22 of Campaign Finance. Good afternoon, Mr.

1 Chairman and distinguished Board members. During
2 the month of November 2018, the Office of the
3 General Counsel received a total of 29 referrals.

4 They include the following: 22
5 referrals were transmitted from the Public
6 Information and Records Management Division, and
7 seven referrals were transmitted from the Reports
8 Analysis and Audit Division. During the month of
9 November 2018, the Office of the General Counsel
10 conducted ten informal hearings, issued six
11 orders, which included the following.

12 Two orders were issued for failure to
13 timely file reports of receipts and expenditures,
14 in which fines totaling \$2,350 were imposed, and
15 four orders were issued for failure to timely
16 file reports of receipts and expenditures, in
17 which no fines were imposed.

18 During the month of November 2018, the
19 Office of the General Counsel imposed fines
20 against the following respondents. A fine of
21 \$1,650 was imposed against Justin Green, a
22 candidate for the at-large council position. A

1 fine of \$700 was imposed against Dustin DC Canter
2 for Mayor, who ran for mayor in 2018 election
3 cycle. During the month of November 2018, the
4 Office of the General Counsel received payments
5 of \$3,000 towards fines. Those payments were
6 made by Jeffrey Thompson, in accordance with a
7 settlement agreement that was reached between the
8 Office of Campaign Finance and Mr. Thompson in
9 December of 2017.

10 During the month of November 2018, the
11 office carried no open investigations, no
12 requests for interpretive opinions were filed,
13 and no show cause proceedings were conducted.
14 That should conclude my report.

15 CHAIR BENNETT: Thank you. Next on
16 the agenda is executive director's report, Ms.
17 Miller.

18 EXECUTIVE DIRECTOR'S REPORT

19 MS. MILLER: Thank you, Mr. Chairman.
20 As you mentioned previously, the Board conducted
21 the December 4th special election for the Ward 4
22 State Board of Education member. Prior to that

1 election, we did mail postcards to every Ward 4
2 household, alerting them of the election date,
3 time, and contest. Also, during the November 6th
4 general election, we posted poster boards on each
5 of the precincts in Ward 4, handed out flyers to
6 the voters reminding them to basically come back
7 to their precinct on December 4 to vote in this
8 special election. Of course, information was
9 available on our website. At this time, I would
10 request that the Board certify the winner of that
11 election, who is Frazier O'Leary who won that
12 election, so we need a motion to certify Frazier
13 O'Leary as the winner of the Ward 4 State Board
14 of Education.

15 CHAIR BENNETT: Can I get a motion
16 from a Board member?

17 MEMBER LEWIS: So moved.

18 MEMBER GILL: Second.

19 CHAIR BENNETT: It has been properly
20 moved and seconded to certify Mr. Frazier O'Leary
21 as the winner of the Ward 4 School Board seat.
22 Can I get a vote? Those in favor?

1 (Chorus of aye.)

2 CHAIR BENNETT: I, as well, so it's
3 unanimous. Thank you.

4 MS. MILLER: Thank you. Also,
5 subsequent to the November 6th general election,
6 we had several requests for recounts that were
7 filed. As a result of those recounts, which we
8 conducted, we have a new certification for 4C08,
9 Leah Anderson, 8E01, Oye Owolewa, and that's it.
10 So we just need the Board to have a motion to do
11 a new certification for those two seats, 4C08 and
12 8E01.

13 CHAIR BENNETT: Can I get a motion?

14 MEMBER LEWIS: So moved.

15 MEMBER GILL: Second.

16 CHAIR BENNETT: It's been properly
17 moved and seconded to certify the election of --
18 can you give me the names, again, Ms. --

19 MS. MILLER: It's 4C08 and 8E01, Leah
20 Anderson and Oye Owolewa.

21 CHAIR BENNETT: Properly moved and
22 seconded accordingly. All in favor?

1 (Chorus of aye.)

2 CHAIR BENNETT: Ayes have it. It's
3 unanimous. Thank you, Ms. Miller.

4 MS. MILLER: You have, also, in your
5 packets, the calendar for the upcoming year,
6 which basically, as usual, goes to the first
7 Wednesday of the month, with the exception of the
8 July Board meeting, which will be after July 4th,
9 and also the January meeting, which is January
10 3rd. We can make the adjustments later, as time
11 goes on, but at least for January, if you want to
12 have it on the 3rd or the 9th, we can put that on
13 the website, whatever you decide today.

14 CHAIR BENNETT: We'll adjust to the
15 9th.

16 MS. MILLER: All right, thank you.
17 That's it. I just want to say one other thing.
18 On Thursday, December 20, the office will close
19 at 1:00, so that the staff can head on holiday.

20 CHAIR BENNETT: Anything else, Ms.
21 Miller?

22 MS. MILLER: No.

1 CHAIR BENNETT: Questions from the
2 Board? Ms. Lewis, any questions?

3 MEMBER LEWIS: No questions.

4 CHAIR BENNETT: Any questions, Mr.
5 Gill?

6 MEMBER GILL: No questions.

7 CHAIR BENNETT: All right. Next up is
8 the general counsel, Mr. McGhie.

9 GENERAL COUNSEL'S REPORT

10 MR. MCGHIE: Okay, the first item I
11 have on my agenda is Office of Campaign Finance
12 petitions for enforcement. There are 15
13 petitions for enforcement that we would like to
14 have the Board address, so that we can have
15 orders, in order to file them in D.C. Superior
16 Court for enforcement. Rudy McGann, of my
17 office, is going to make the presentation on
18 those petitions for enforcement.

19 CHAIR BENNETT: Great. Mr. McGann.

20 MR. MCGANN: Okay, good afternoon.
21 The matters for petitions enforcement begin as
22 follows. Docket No. 15C-067, respondent's name

1 is Patterson for Ward 8. The amount of the fine
2 is \$1,650, and the missing filing is the August
3 17th filing from 2015.

4 The next matter is 16C-003, again
5 Patterson for Ward 8. The amount of the fine is
6 \$1,600, and the missing filing is the February
7 17, 2016 filing. The third matter, 16C-040,
8 again Patterson for Ward 8. The fine amount is
9 \$1,500, and the missing filing is the March 30th
10 filing.

11 The next matter is 17C-001, Toliver
12 for Ward 4. The fine amount is \$1,750, and the
13 missing filing is reports of receipts and
14 expenditures from February 17th of last year.

15 The next matter is, again, Patterson for Ward 8,
16 17C-003 -- I apologize. That's the new one. The
17 amount of the fine is \$850, and the missing
18 filing is the reports of receipts and
19 expenditures from February 17, 2017. The next
20 matter is 17C-006, Holmes for Ward 8. The fine
21 amount is \$1,450, and the missing filing is a
22 report of receipts and expenditures from February

1 17, 2017.

2 The next matter is 17C-011, Toliver
3 for Ward 4. The amount of the fine is \$2,650,
4 and the missing report is the report of receipts
5 and expenditures from August 16, 2017. The next
6 matter is 17C-014, again, Patterson for Ward 8.

7 The fine amount is \$1,700, and the
8 missing report is the August 16, 2017 report of
9 receipts and expenditures. The next matter is
10 17C-017, Committee to Elect Natalie Williams.
11 The amount of the fine is \$2,650, and the missing
12 report is the report of receipts and expenditures
13 from August 16, 2017.

14 The next matter is Justin Green at
15 large, 17C-019. The fine amount is \$2,650, and
16 the missing report is, again, the August 16, 2017
17 report of receipts and expenditures. Next matter
18 is 17C-020, Sheila Bunn for Ward 8. Fine amount
19 is \$1,700. Missing report is the August 16, 2017
20 report of receipts and expenditures. The next
21 matter is 17C-021, Carter at large, 2014. The
22 fine amount is \$1,700, and it's the August 16,

1 2017 report of receipts and expenditures. The
2 next matter is 17C-023, Lannette Woodruff for
3 School Board. The fine amount is \$200.

4 It's a report of receipts and
5 expenditures from August 16, 2017. The next
6 matter is 17C-024, Committee to elect Jacque
7 Patterson, 2016. The amount of the fine is \$200.
8 It's a report of receipts and expenditures from
9 August 16, 2017.

10 The next matter -- excuse me, the
11 final matter is 17P-008, D.C. Recovery Act for
12 Living Descendants. The fine amount is \$1,800,
13 and the missing report is the report of receipts
14 and expenditures from August 16, 2017. Those are
15 all the matters that the General Counsel's Office
16 is seeking the Board to file with the Superior
17 Court for enforcement.

18 MR. MCGHIE: At this point, I'd ask
19 the Board to consider entertaining a motion to
20 accept Mr. McGann's report and to issue orders on
21 each one of the petitions for enforcement, so
22 that we can present that to the D.C. Superior

1 Court for an order of enforcement.

2 CHAIR BENNETT: Okay, do you have any
3 questions, Ms. Lewis?

4 MEMBER LEWIS: No questions.

5 CHAIR BENNETT: Mr. Gill?

6 MEMBER GILL: No questions.

7 CHAIR BENNETT: Can I get a motion?

8 MEMBER GILL: Motion to accept Mr.

9 McGann's report.

10 MEMBER LEWIS: Second.

11 CHAIR BENNETT: All in favor?

12 (Chorus of aye.)

13 CHAIR BENNETT: It's unanimous. Thank
14 you, Mr. McGann.

15 MR. MCGANN: Thank you very much.

16 CHAIR BENNETT: Okay, next item.

17 MR. MCGHIE: Next, I have emergency
18 and proposed rulemaking to amend Title 3, DCMR,
19 Chapter 5, Voter Registration. The purpose of
20 the amendment is to provide means for voters who
21 are victims of covered offenses or covered
22 employees, as defined in the Address

1 Confidentiality Act of 2018, to make their voter
2 records confidential. In essence, this is a way
3 for individuals that may have some type of
4 protective order that was issued, or some type of
5 domestic problem, to come here and have their
6 voter records held confidential.

7 CHAIR BENNETT: Okay. Ms. Miller, you
8 have any issues on that matter?

9 MS. MILLER: No.

10 CHAIR BENNETT: Is the registrar here?

11 PARTICIPANT: She was.

12 PARTICIPANT: She's in the back.

13 CHAIR BENNETT: I just want to make
14 sure you don't have any issues with regard to the
15 -- Mr. McGhie, would you repeat?

16 MR. MCGHIE: Yes, the Voter
17 Confidentiality Act allowing individuals that may
18 have a protective order to be confidential.

19 CHAIR BENNETT: That's not going to
20 cause you any administrative challenges or
21 problems? You're good with that?

22 MS. MILLER: I will add that we have

1 not really looked at them, so we will follow what
2 the regulations say, but if there's a problem
3 we'll come back and make adjustments. Right now,
4 it's fine.

5 CHAIR BENNETT: All right. Can I get
6 a motion?

7 MEMBER LEWIS: So moved.

8 MEMBER GILL: Second.

9 CHAIR BENNETT: Properly moved and
10 seconded. Vote is --

11 (Chorus of aye.)

12 CHAIR BENNETT: It's unanimous. Thank
13 you, Mr. McGhie.

14 MR. MCGHIE: Next, I have a proposed
15 rulemaking to amend Title 3, DCMR, Municipal
16 Regulations, Chapter 42. I don't think we're
17 moving on 43 right now. Those are Office of
18 Campaign Finance regulations. I will defer to
19 Ms. Montgomery to explain the nature of that
20 proposed rulemaking.

21 CHAIR BENNETT: Okay, Ms. Montgomery.

22 MS. COLLIER-MONTGOMERY: Yes. I would

1 ask Mr. Sanford to come forward to give a
2 presentation on those regulations.

3 MR. SANFORD: Good afternoon, again,
4 William Sanford for the Office of Campaign
5 Finance.

6 PARTICIPANT: You may need to speak up
7 a little, Mr. Sanford.

8 MR. SANFORD: Sure. As Mr. McGhie
9 indicated, the amendment would amend Title 3 of
10 District of Columbia Municipal Regulations to
11 include two new chapters. Those chapters are
12 designed for the implementation of the Fair
13 Elections Program.

14 Chapter 42 includes the general
15 provisions of the program, including
16 registration, mandatory filing, contribution
17 limits, etc., which will be available in the D.C.
18 Register when these regs are published. Chapter
19 43, we can proceed it only covers disclosure
20 information and, also, the disposal of surplus
21 property.

22 Both chapters are designed for the

1 implementation of the new Fair Elections Program.
2 I just wanted to add that these regulations will
3 undergo further revisions in the future for this
4 particular program.

5 That will include revising Chapter --
6 or amending Chapter 99 definitions section to
7 include some of the language that is being used
8 in the Fair Elections Program, and also making a
9 revision to Chapter 37, which is the fine
10 schedule, after we devise a schedule for fines
11 under the Fair Elections Program. We'd like to
12 ask the Board to carefully consider accepting
13 these amendments to our regulations.

14 CHAIR BENNETT: I would like to
15 entertain a motion to accept that as proposed
16 rulemakings. The rulemakings will be published
17 in the D.C. Register for a 30-day comment period.
18 At the conclusion of that 30-day comment period,
19 we will come back to the Board for a final
20 rulemaking.

21 Any questions, Ms. Lewis?

22 MEMBER LEWIS: No questions.

1 CHAIR BENNETT: Mr. Gill?

2 MEMBER GILL: No questions.

3 CHAIR BENNETT: Can I get a motion?

4 MEMBER GILL: So moved.

5 MEMBER LEWIS: Second.

6 CHAIR BENNETT: All in favor?

7 (Chorus of aye.)

8 CHAIR BENNETT: It's unanimous. Thank
9 you, Mr. McGhie, Ms. Montgomery, and Mr. Sanford.

10 MR. MCGHIE: The final matter I have
11 is a litigation status update. The Board is in
12 court on Graham v. D.C. Board of Elections. That
13 was a case dealing with the referendum measure.
14 Proponents of the referendum filed a referendum
15 on October 31st to suspend an act of the Council.
16 It was the Council act that was repealing
17 Initiative 77. Initiative 77, which passed,
18 would have phased out a two-tier minimum wage
19 system, common in most states, that allows
20 employers to count gratuities when paying tip
21 workers.

22 It would have gradually raised the

1 current hourly tip wage from \$3.89 to \$15.00 by
2 2025. Employers would have had to make up the
3 difference if tips did not add up to the standard
4 minimum wage.

5 Again, this was a referendum to
6 suspend the Council's repeal of Initiative 77.
7 The Board formulated that initiative and
8 published it in the Washington Post and the D.C.
9 Register, and it was challenged in court.
10 Basically, the challenge in court was for three
11 reasons.

12 The plaintiffs alleged that there was
13 not proper notice by the Board in its initial
14 meeting, when it decided on the proper subject
15 and when it made the formulation of the language.
16 They also alleged that the formulation of the
17 Board's language was improper or was misleading.
18 Finally, they challenged the Board's
19 determination that it was a proper subject for a
20 referendum. It went to Superior Court Judge Neal
21 Kravitz. Judge Kravitz ruled in favor of the
22 plaintiffs on the notice issue.

1 He formulated the language for the
2 initiative himself, and he held off on making a
3 determination on the proper subject matter.
4 That's scheduled for a status hearing on December
5 21st, just on the issue of proper subject matter.

6 Judge Kravitz also, in granting the
7 plaintiff's motion on the proper notice, stayed
8 the Board from -- allowed the Board to receive
9 the petition sheets from the proposers on the
10 12th of December, but directed that the Board
11 could take no further action on processing the
12 referendum. At this point, the intervenors have
13 filed a notice of appeal. The Board has yet to
14 make a determination on whether we'll appeal the
15 matter, as well.

16 CHAIR BENNETT: Anything else? Any
17 questions, Mr. Gill?

18 MEMBER GILL: No.

19 CHAIR BENNETT: Ms. Lewis?

20 MEMBER LEWIS: No.

21 CHAIR BENNETT: None from me.

22 Anything else, Mr. McGhie?

1 MR. MCGHIE: That would conclude my
2 report.

3 CHAIR BENNETT: Okay, great, thanks.
4 Any questions on this report, in general, Mr.
5 Gill?

6 MEMBER GILL: No.

7 CHAIR BENNETT: Ms. Lewis?

8 MEMBER LEWIS: No.

9 PUBLIC AFFAIRS

10 CHAIR BENNETT: Next would be public
11 matters. Any matters from the public? Ms.
12 Brizill. Unfortunately, I think that neither one
13 of those mics work, so if you could project, that
14 would be great. There's only one mic there now,
15 anyway.

16 MS. BRIZILL: Good afternoon. My name
17 is Dorothy Brizill. I'm the executive director
18 of DCWatch, a good government organization in the
19 District of Columbia. I have a couple of issues
20 or questions I'd like to raise with the Board,
21 and I'd like a response back, if possible. First
22 and foremost, on Mr. McGhie's last item regarding

1 the litigation that was filed in Graham v. The
2 Board of Elections concerning Referendum 008, I
3 would like a better sense of where the Board is
4 on its belief regarding the requirement of
5 notice.

6 As you heard from Mr. McGhie, Judge
7 Kravitz essentially ruled against the Board,
8 denied the referendum, because he felt that the
9 issue of public notice regarding the November 9th
10 Board of Elections meeting was not met. I must
11 admit that I did read all the filings in the
12 case.

13 What troubled me is Paragraph 9 of the
14 Board of Elections' Motion to Dismiss, where it
15 states -- your attorney has written prior to the
16 discussion of the subject matter at your November
17 9th Board of Elections public hearing, the Board
18 addressed the procedural issue of whether the
19 hearing was properly noticed.

20 The Office of the General Counsel
21 advised the Board that the District referendum
22 laws did not contain a specific notice

1 requirement for the subject matter of formulation
2 hearing, and that any requirement for public
3 notice of a hearing under the District's
4 Administrative Procedures Act or Open Meeting
5 Clause was accomplished by the publication of
6 notice on the Board's website one week prior to
7 the hearing. Further, the Office of General
8 Counsel of the Board of Elections informed the
9 Board that notice letters had been delivered to
10 various public officials and interested parties,
11 and that notice of the hearing had been submitted
12 to the D.C. Register.

13 I will end there. That is a verbatim
14 reading of what the Board's attorney filed in the
15 matter. As you know, the public notice of a
16 hearing scheduled by the Board of Elections did
17 not appear in the D.C. Register until November
18 9th, the very day of the public hearing.

19 I would like some clarification, given
20 this language in a filing by your attorney in the
21 Superior Court, of what you believe the
22 requirement is regarding public notice is, both

1 with regards to subject matter, whether or not an
2 initiative or referendum or issue is proper
3 subject, as well as allowing for citizens and the
4 general public to comment.

5 CHAIR BENNETT: Ms. Brizill, first of
6 all, thank you. Thank you for your question.
7 That is the very question that we're in the
8 process of doing some analysis ourselves. We've
9 been talking about that prior to this meeting,
10 and we'll be meeting on that again afterwards.
11 Right now, what I can refer you to is simply what
12 you read and what you already have. After we
13 finish our analysis and make some assessments,
14 Mr. McGhie indicated earlier that we were
15 considering appealing.

16 Once we do that, and once we make some
17 assessment and determine how we want to move
18 forward, we'd be happy to share our rationale
19 with you. Right now, anything I give you is
20 simply stream of consciousness and part of our
21 thought process.

22 MS. BRIZILL: Mr. Bennett, what you've

1 just told me in response to my inquiry raises the
2 second part of my concern, which is you have
3 indicated that you and the Board are going to
4 have a discussion after this public meeting about
5 this very issue. Why can't you have a discussion
6 in front of the public, especially since it
7 concerns an issue of adequate public notice?

8 CHAIR BENNETT: With regard to a legal
9 matter -- and there are issues around
10 attorney-client privilege, those kind of things
11 -- these will be discussions that fall into that
12 category.

13 MS. BRIZILL: I did not ask you the
14 question of whether or not this Board intends to
15 appeal the decision. I asked you the question of
16 how does this Board view and interpret what is in
17 the Code and in the regulations requiring public
18 notice.

19 CHAIR BENNETT: Ms. Brizill, the
20 answer to that question is exactly what you just
21 simply read. That is a part of our filings.
22 Obviously, the judge did not agree with us.

1 MS. BRIZILL: So you believe -- this
2 Board believes that publication in the D.C.
3 Register on the day of a public hearing is
4 adequate notice to the public?

5 CHAIR BENNETT: Ms. Brizill, you're
6 asking me to take a position on the matter that
7 is a part of litigation, and I am not going to do
8 that with you right now because I don't have a
9 position on that at this point.

10 MS. BRIZILL: I'm just asking are you
11 standing by what your attorney wrote?

12 CHAIR BENNETT: I've given you an
13 answer. That's the answer that I'm going to
14 stick with, Ms. Brizill. Do you have any other
15 questions, ma'am?

16 MS. BRIZILL: Yes, I do.

17 CHAIR BENNETT: Okay, please, go
18 ahead.

19 MS. BRIZILL: In your filings in the
20 court, you make a big issue of indicating that
21 the notice and the language of the referendum was
22 published on your website.

1 CHAIR BENNETT: That's correct.

2 MS. BRIZILL: I am here to tell you it
3 was not.

4 CHAIR BENNETT: Okay.

5 MS. BRIZILL: It was not, and I have
6 email exchanges with your public information
7 officer because it was not there. There was a
8 banner headline saying it was supposed to be
9 there, but the language, itself, was not there.

10 It wasn't until November 27th that I
11 got a response back from her, in which she
12 provided me the language. It is a big fat
13 error/lie to tell the court that it was on your
14 website when it, in fact, wasn't. I don't know.
15 I indicated -- I'd be glad to provide a copy of
16 my email. I used multiple computers to try to
17 bring it up. Finally, I wrote to your public
18 information officer. She indicated there was a
19 problem or an error. I also spoke to your
20 attorney, Renee Christiansen. She had to
21 intervene and provide me with it.

22 The final thing I would ask about was

1 -- an issue I'm going to raise, and I've already
2 raised it, but I'll raise it with the Board of
3 Ethics and Government Accountability, is the
4 extent to which you're using closed-door
5 meetings. I don't expect an answer to that.

6 Finally, I would like to ask about
7 this matter that came up today about this Voter
8 Confidentiality Act. What is its implications
9 for those who are trying to verify whether or not
10 someone is a registered voter? Are those records
11 going to be redacted, so that we won't be able to
12 find out, or how is it going to work?

13 CHAIR BENNETT: Ms. Montgomery or Mr.
14 Sanford, would you like to -- I'm sorry; Mr.
15 McGhie, you want to respond to that?

16 MR. MCGHIE: Yes. They're going to be
17 treated like any other confidential voter. We
18 have Supreme Court individuals that have
19 confidential voters. We have judges that are
20 confidential voters. I believe that it's just
21 that no individual that's looking at the voter
22 roll will be able to look at what their actual

1 address is.

2 MS. BRIZILL: Is the issue the
3 address, and not the fact that they're a voter?

4 MR. MCGHIE: It's the address.

5 MS. BRIZILL: So if I came to the
6 Board of Elections with a list of names and I
7 said I want to know whether or not these are
8 registered voters; I don't need to know whether
9 or not they're registered at this address; you
10 would be able to tell me?

11 MR. MCGHIE: You should be able to
12 look up and say that this person -- their name
13 should still be on the list, but their address
14 will not be on the list.

15 MS. BRIZILL: Will someone on the
16 staff here be able to tell me if they're a
17 registered voter at the particular address that
18 they might have signed on the petition?

19 MR. MCGHIE: Yes.

20 MS. BRIZILL: Thank you.

21 CHAIR BENNETT: Thank you. Any other
22 public matters for the Board? Yes, sir.

1 MR. SIMON: Chairman Bennett, members
2 of the Board, my name is Gottlieb Simon. I'm
3 executive director of the Office of Advisory
4 Neighborhood Commissions. I don't seem to be in
5 strong voice today. Can you hear me all right?

6 CHAIR BENNETT: Yes.

7 MR. SIMON: All right. I want to
8 share with you a continuing saga of sorts. 1992,
9 Peter Espenschied ran for re-election as an ANC
10 commissioner. He got only about 40 percent of
11 the vote. Lois Noroozi got the rest of the vote,
12 almost 60 percent.

13 However, there was a small problem.
14 She didn't realize she had to live in the
15 single-member district in which she was elected
16 at the time that she was elected. Before the
17 results were certified, she sent a letter to the
18 Board saying oops, my bad.

19 I have to withdraw. At which point,
20 the question was who is going to become the
21 commissioner? The Board, at that time, decided
22 that it made sense to go to the runner up, so

1 they appointed the runner up as the winner of the
2 election. Some people were not satisfied with
3 this outcome, so the matter went before the Court
4 of Appeals. The Court of Appeals decided that
5 the Board had made an error and that the plain
6 language of the ANC statute was that the winner
7 -- let me put it this way, that the candidate who
8 got the most votes was the winner.

9 The Board had reasonably thought the
10 winner should be the most qualified or the only
11 qualified candidate, not somebody who was
12 unqualified. The court said no, that's not
13 right. You have to give it to whoever got the
14 most votes. That was 25 years ago.

15 Over the most recent decade, we have
16 had that issue come up more than once. In fact,
17 almost every election since -- to me, it might be
18 19, but actually since 2008, a person who has
19 withdrawn gets more votes than somebody else.
20 They call up to find out who is the winner, and
21 they may be told that the runner up is the
22 winner.

1 This is, of course, not consistent
2 with the court opinion 25 years ago called Bates
3 v. Board of Education. Subsequently, in each one
4 of these situations, the Board has recognized
5 that the wrong information went out and,
6 subsequently, determined that there was no winner
7 for those cases. I would like to suggest that we
8 do something so that the confusion, and sometimes
9 the embarrassment for all parties involved, could
10 be mitigated. I would suggest that we perhaps
11 put something into the regulations that would
12 make this clear.

13 The plain language of the Act says the
14 person who gets the most votes is the winner,
15 whether they're qualified or not. That's a
16 problem. Perhaps we could deal with some of that
17 problem by having the Board insert a new
18 definition.

19 My first reaction was to say why don't
20 we call that the faux winner, or what about the
21 unqualified winner, or what about the incompetent
22 winner or the pretender to the seat winner. But

1 maybe the simplest and best definition might be
2 -- and you may have much better ones than I can
3 offer you right now.

4 Why don't we just define something
5 called the pro forma winner and say that in the
6 event that there is a pro forma winner, the Board
7 will automatically declare there's no vacancy --
8 I mean that there is a vacancy. That way, when
9 people call up, the confusion about how do you
10 describe someone who got the most votes and is
11 the winner, but isn't going to be seated, we need
12 some term. There is no term for that at the
13 moment. So a staff worker might very well
14 respond to a telephonic inquiry and say you got
15 the most votes, you're the winner, but that
16 person may, in fact, not be allowed to take the
17 seat, so that's confusing.

18 We had two cases this past election
19 where a person withdrew belatedly. Their names
20 were on the ballot, so they got the most votes,
21 but they no longer could take the seat. Perhaps
22 there was a lack of awareness of the decision

1 that I referred to before, Bates, which allowed
2 the information to get out that the first runner
3 up had won, and that turned out not to be the
4 case.

5 So a suggestion that we need to do
6 something so that when people look at the
7 regulations -- and I tried to find a clear
8 statement in the regulations that would tell
9 somebody that just because you're the runner up,
10 you don't get to be the person who takes the
11 seat. You can see there's some confusion, that
12 it would be helpful to have a clean statement, so
13 that everybody can know what the outcome is going
14 to be, without detailed and difficult research to
15 figure this out.

16 CHAIR BENNETT: Ms. Miller, do you
17 have a comment on that? That's an interesting
18 point, Mr. McGhie, but let me --

19 MS. MILLER: Obviously, Mr. Simon is
20 referring to something needing to be addressed in
21 the regulations. That case that he's referring
22 to, the Bates case, actually I'm trying to

1 remember it a bit. The way it came out was that
2 the loser never wins.

3 In other words, if there's someone who
4 receives more votes, then the next highest vote
5 getter -- and that person withdraws, we cannot
6 then certify the next highest vote getter as the
7 winner. There's some adjustment tweak in the
8 regulations that need to be made, in order to
9 qualify what he's saying and to put the proper
10 terminology beside that next highest vote getter
11 when someone withdraws. I believe that's what
12 you're saying.

13 MR. SIMON: Yes. I'm saying we need
14 to have some hook, so that people can see this
15 and identify it before it becomes a problem.

16 MEMBER GILL: I'm sorry; I got
17 confused -- so the decision, the court decision
18 was you can't just go to the runner up. I think
19 that makes a ton of sense because it may be 60
20 percent of the voters who just voted against that
21 person, so that's not right, either.

22 But your point being that we need

1 something in the regulations that allows for us
2 to describe the unqualified winner. I guess what
3 happens then, before -- we don't seat people who
4 are unqualified, but then there's confusing
5 thinking the runner up -- so we just need to
6 immediately say, as soon as we find out they're
7 unqualified, it's a vacancy. That's nowhere in
8 our regs, is that the issue?

9 MR. SIMON: It's not explicitly. If
10 you look up qualified/unqualified, you won't find
11 it this way. We did manage to clean up an issue
12 with regard to races that were only made up of
13 write-ins because in that case, it used to say
14 the write-in who's qualified or something of that
15 -- that was taken out. When we have a name on
16 the ballot and that person has withdrawn, we
17 don't -- at least I can't find any place in the
18 regulations that make it clear. It's not that
19 it's legally unclear, but it's --

20 (Simultaneous speaking.)

21 MEMBER GILL: -- imminently logical
22 thing to do.

1 MS. MILLER: Right, exactly.

2 MR. SIMON: I just wanted to give you
3 a place mark for this issue because it happened
4 this time. It happened the previous election.
5 It happened the previous election. We should be
6 able to get this cleaned up.

7 MS. MILLER: Actually, those
8 vacancies, once they're certified, we don't
9 conduct those elections anyway. The ANC does
10 that.

11 MR. SIMON: Yes, but I'm talking about
12 in a general election.

13 MS. MILLER: Right. I'm just saying,
14 just so that you know, it's not an election we
15 would have to conduct --

16 (Simultaneous speaking.)

17 MR. SIMON: The Board needs to
18 establish that there's a vacancy.

19 MS. MILLER: Right.

20 CHAIR BENNETT: Explain to me, though,
21 after -- thanks, by the way, for bringing that to
22 our attention. After there is a person who is

1 unqualified that receives the most votes, that
2 person can't be seated. Obviously, because the
3 second-highest vote getter is not the winner,
4 they can't be seated either.

5 MR. SIMON: That is correct.

6 CHAIR BENNETT: Just from a procedural
7 prospective, or for my understanding, does the
8 ANC have the authority to, at some point, have
9 another election and seat someone in that seat
10 that is now vacant?

11 MR. SIMON: Yes. Once the Board
12 declares a vacancy --

13 (Simultaneous speaking.)

14 CHAIR BENNETT: The seat vacant,
15 right.

16 MR. SIMON: -- there is a procedure
17 for an advisory neighborhood commission to
18 conduct a vacancy filling procedure. But you
19 handle the general election process.

20 CHAIR BENNETT: So what you're asking
21 us to do is to clarify the regs to make it clear
22 that there is a vacancy that has occurred in

1 those cases where the winner cannot be seated.

2 MR. SIMON: That's right.

3 CHAIR BENNETT: Okay, got it. That's
4 certainly fair. Is that something --

5 PARTICIPANT: Yes, we can do that.

6 CHAIR BENNETT: Could you submit -- I
7 would really appreciate your submitting something
8 in writing to us that made it real clear, so we
9 don't end up missing the point.

10 PARTICIPANT: Exactly.

11 CHAIR BENNETT: All right, perfect.
12 Thank you so much for your time, and thanks for
13 the point. Any other public matters before the
14 Board? Okay, great. Thanks, this meeting is
15 adjourned.

16 (Whereupon, the above-entitled matter
17 went off the record at 2:44 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Board Meeting

Before: DCBOE

Date: 12-14-18

Place: Washington, DC

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Court Reporter

NEAL R. GROSS

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