

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ELECTIONS

+ + + + +

REGULAR BOARD MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 5, 2018

+ + + + +

The District of Columbia Board of Elections convened a Regular Board Meeting in 1015 Half Street, SE, Washington, D.C., 20003, pursuant to notice at 10:30 a.m., Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

- MICHAEL BENNETT, Chair
- KENNETH J. MCGHIE, Member
- DIONNA MARIA LEWIS, Member
- MICHAEL D. GILL, Member

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BOARD OF ELECTIONS STAFF PRESENT:

ALICE P. MILLER, Executive Director
KENNETH MCGHIE, General Counsel
SYLVIA GOLDSBERRY-ADAMS, Operations Manager
KAREN F. BROOKS, Registrar of Voters
LINDA JOHNSON, Assistant to the Executive
Director

ALSO PRESENT:

CECILY COLLIER-MONTGOMERY, Director,
Office of Campaign Finance

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

2 11:07 a.m.

3 MR. BENNET: Good morning. Let me
4 bring the meeting to order. This is our
5 September monthly meeting, of which we will go
6 through our normal order of business, and also
7 conduct hearings on three petition challenges.
8 My apologies for being late.

9 This is a pretty heavy agenda that we
10 have today, and we had to take a little extra
11 time prior to the start of the meeting to make
12 sure we were fully briefed, and that would allow
13 us to be most efficient today. So thank you. It
14 wasn't because I had to show somebody around the
15 building.

16 Let me start off by, we're on the
17 record now? Okay, great, are you able to hear
18 okay? Okay, let me start off by introducing the
19 folks that are here.

20 To my far right is Ms. Cecily
21 Montgomery, Director of the Office of Campaign

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1 Finance. To her left and my right is Mr. Ken
2 McGhie, General Counsel, Board of Elections. To
3 my far left, Ms. Alice Miller, Executive Director
4 of the Board of Elections. To my left, Ms.
5 Dionna Lewis, Board member.

6 On the phone from across the pond 12
7 hours ahead of us is Board member Michael Gill.
8 We have regulations that allow him to participate
9 by voice. So Michael is here, and just by voice,
10 Michael Gill, Board member. So I will be taking
11 motions and seconds from Mr. Gill in the process
12 that we go through today.

13 I'll open up with the adoption of the
14 agenda. Can I get a motion to adopt the agenda?

15 MS. LEWIS: So moved.

16 MR. BENNET: Mr. Gill?

17 MR. GILL: Second.

18 MR. BENNET: All right. So the
19 motion is, the agenda is properly moved and
20 seconded. It's a unanimous vote. I vote to
21 approve the agenda as well. Adoption of the

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1 minutes from the last meeting. Ms. Lewis?

2 MS. LEWIS: So moved.

3 MR. BENNET: Mr. Gill?

4 MR. GILL: Second, second.

5 MR. BENNET: Properly moved and

6 seconded. I also approve the minutes from last

7 meeting. Unanimous vote.

8 Board matters. Ms. Lewis?

9 MS. LEWIS: None for me, thank you.

10 MR. BENNET: Mr. Gill?

11 MR. GILL: None for me.

12 MR. BENNET: Okay, and no Board

13 matters for me. So we'll start off with the

14 Executive Director's report.

15 Ms. Miller?

16 MS. MILLER: Thank you, Mr. Bennet.

17 Good morning. We are in full preparation for the

18 upcoming general election. Just basically as it

19 relates to the nominating petition process for

20 direct access for the ballot. The deadline for

21 filing on any of these issues was August 8. The

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1 challenge period began on August 11 and ended on
2 the 20th.

3 There were a total of 46 challenges
4 across the board to nominating petitions that
5 were filed. Thirty-nine of those challenges have
6 been resolved, either by the candidate or
7 challenger withdrawal, or through the
8 administrative orders that have been issued.

9 There are a few that are pending
10 withdrawal, and a couple that are still scheduled
11 to go before the Board. All challenges that are
12 pending must be resolved no later than September
13 10. The lottery for the November election ballot
14 is set for Friday, that's next Friday, September
15 14. It will begin at ten o'clock. I think it's
16 going to be right here in the Board room.

17 Poll worker training for early voting
18 for poll workers began on August 27 and will
19 continue through September 15. Poll worker
20 training for election day voters will begin on
21 September 17 and continue through the month of

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1 October. Our ballot format for the November
2 election has been developed and the staff is now
3 working to begin prepping the machines for logic
4 and accuracy testing.

5 That process takes approximately two
6 weeks, leading up to L&A, which will begin on
7 September 17. And that then will be ready for
8 the public testing so the public can come in and
9 test and watch the public logic and accuracy
10 process.

11 We also have going on our overlap of
12 the special election for the Board for State
13 Board of Education. The candidate pickup for
14 that contest, which is scheduled for December 4,
15 was August 15. The challenge period will begin
16 this Saturday, which is September 8, and it will
17 end ten days later.

18 Thus far, ten candidates have picked
19 up for that Ward 4 State Member of the State Board
20 of Education contest. And just other thing I
21 want to mention, and that is we will have National

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1 Voter Registration Day, which we do every year,
2 it's an annual event. And it's scheduled for
3 September 25.

4 We've been given access to the
5 national stadium for this event. It's a game
6 day, so we hope to generate a lot of new
7 registrants, as well as being able to have voters
8 update their current voter registration during
9 this time as well. So that's it for me.

10 MR. BENNET: Okay, great. Any
11 questions from Ms. Lewis?

12 MS. LEWIS: No, thank you.

13 MR. BENNET: Mr. Gill, any questions?

14 MR. GILL: No questions.

15 MR. BENNET: Okay, great, thanks.
16 None for me.

17 Next on the agenda is Office of
18 Campaign Finance, Ms. Montgomery.

19 MS. COLLIER-MONTGOMERY: Yes, good
20 morning. The first thing I would like to report
21 is that there was one report date during the month

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1 of August, and that was for the August 10 report
2 of receipts and expenditures for active principal
3 campaign committees, as well as political action
4 committees, independent expenditure committees,
5 and initiative committees.

6 I also have, will include in my report
7 the statistics for the July 31 report date, which
8 were not available at the last Board meeting.
9 First, with respect to the July 31 report of
10 receipts and expenditures, which was due from
11 principal campaign committees as well as
12 political action committees, there were 46
13 required filers.

14 Thirty-four of the filers timely
15 filed, there was one extension requested and
16 granted. There were 12 failures to file, and
17 with respect to those failures to file, those
18 candidates and committees have been referred to
19 the Office of the General Counsel for the
20 initiation of the enforcement process. The names
21 of the committees who failed to file will be

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1 published at our website.

2 With respect to the August 10 report
3 of receipts and expenditures, there were 122
4 required filers. One hundred and four of the
5 filers timely filed. There were four late
6 filers. There were also four extensions
7 requested and granted.

8 There were 14 failures to file, and
9 with those failures to file as well as the late
10 the filers, 18 in total were referred to the
11 Office of the General Counsel for the initiation
12 of the enforcement process. And again, the names
13 of all of the referrals will be published at our
14 website.

15 During the month of August, we also
16 had new candidates and committees who registered.
17 There were seven. William Hunt for Mayor
18 registered on August 6, 2018. Frank Sewell for
19 Mayor registered on August 7, 2018. Ralph
20 Chittums, Committee to Elect Ralph J. Chittums
21 Council At-Large registered on August 8.

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1 Rhonda Henderson, Rhonda Henderson
2 for State Board of Education, Ward 4, registered
3 on August 9. Elani Lawrence, Elani for State
4 Board, Ward 4, registered on August 20, 2018.
5 Ryan Terranium, Ryan for Ward 4, State Board of
6 Education, August 21, 2018. Frank Savarash,
7 Frank for DC State Board of Education, Ward 4,
8 August 27, 2018.

9 We also conducted entrance
10 conferences during the month of August for the
11 new candidates and committees who registered with
12 us. On August 2, an entrance conference was
13 held. There were 14 participants: David Lynn
14 Green; Treasurer Don Korea -- Dora Korea for
15 State Board of Education; Dora Korea, Candidate,
16 Dora Korea for State Board of Education.

17 Rory Murray, Treasurer, Credit Union
18 PAC of DC; Johnny Walker, Treasurer, Cali for
19 State Board of Education; Cali Causlek,
20 Candidate, Cali for State Board of Education;
21 Earl Folkes, Treasurer of Gertrude Stein

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1 Democratic Club PAC; Teresa Cusack, Treasurer,
2 Ward 4, Democrat's PAC; Quincy Carter, Candidate,
3 Mayor; Eleanor Orry, Candidate, Echo4Senate.

4 James Williams, JW Adams, Candidate
5 for Mayor; Ramsey Davis, Candidate, Mayor;
6 Catherine Henderson, Candidate, Catherine
7 Henderson for DC Council; Clayton Rosenberg,
8 Candidate Rosenberg for Ward 6. William Bill
9 Lewis, Candidate, Citizens to Elect Bill Lewis;
10 Karen Perry, Treasurer of Green for Ward 1;
11 Anthony Green, Candidate, Green for Ward 1.

12 We held an entrance conference also on
13 August 16. There was six participants. The
14 participants were Aminter Davies, Treasurer, DC
15 Latino PAC; Gabriel E. Rodriguez-Eng, Treasurer,
16 Metro DC Democratic Socialists of America
17 Solidarity DC PAC; Kishan Putta, Candidate, Dump
18 Trump, Democrats for Action; Renee L. Bowser,
19 Candidate, Dump Trump, Democrats for Action.

20 Gordon Aneglou Fletcher, Candidate,
21 Dump Trump, Democrats for Action; and Walter

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1 Springman, Candidate At-Large Committee,
2 Democratic State Committee.

3 With our Reports, Analysis, and Audit
4 Division during the month of August, the Audit
5 Division conducted 93 desk reviews of the
6 political action committees and filed with the
7 Agency, as well as the principal campaign
8 committees. We have several ongoing audits.

9 We have a full field audit of the
10 Sheika Reid 4 Ward 1, which was initiated on
11 August 29, 2018. We have periodic random audits
12 of the candidates in the 2018 election of their
13 January 31, 2018 filing. Re-elect Muriel Bowser
14 our Mayor, which was initiated on March 5, 2018.
15 Kenyon McDuffy, 2018, which was initiated on
16 March 22, 2018.

17 The periodic random audits of our
18 continuing committees for the 2018 election with
19 respect to the June 10, 2018 filing, Anita Bonds,
20 2018, Elissa 2018. We also initiated periodic
21 random audits of our political action committees

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1 with respect to their July 31, 2018 filing.

2 The DC Political Action Committee,
3 which was initiated on August 27. The
4 Professional Insurance Agents, which was
5 initiated on August 29. Lawyers for Better
6 Government Fund DC, which was initiated on August
7 29. And BB&T District of Columbia PAC. The
8 records from that particular PAC are due on
9 August 29, 2018.

10 We issued one audit during the month
11 of January, and that was of the Evans Constituent
12 Service Fund. The audit was issued on August 8,
13 2018, and the audit is available at our website
14 for review by members of the public.

15 I would ask the General Counsel,
16 William Sanford, to present the report of the
17 General Counsel.

18 MR. SANFORD: Good morning, Mr.
19 Chairman and distinguished Board members. My
20 name is William Sanford, General Counsel for the
21 Office of Campaign Finance.

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1 During the month of August, the Office
2 of the General Counsel received a total of 37
3 referrals, which included 35 referrals from the
4 Public Information and Records Management
5 Division, and two referrals from the Reports,
6 Analysis, and Audit Division.

7 The Office of the General Counsel
8 complete five informal hearings and issued two
9 orders which did not impose fines. During the
10 month of August 2018, the Office of the General
11 Counsel collected one \$500 fine from Jacques
12 Patterson in payment of, in accordance with an
13 installment payment plan that had been agreed
14 upon between Mr. Patterson and the Office of
15 General Counsel.

16 During the month of August 2018, there
17 were no open investigations pending before the
18 Office of the General Counsel. And during the
19 month of August 2018, the Office of the General
20 Counsel received one request for an intent to
21 opinion. That request was received, was

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1 submitted by John Zottoli, it was received on the
2 14th of August 2018.

3 The issue was restrictions on
4 Independent Expenditures Committee, and the
5 opinion was issued on 27 August, 2018. And that
6 opinion is available at the Office of the
7 Campaign Finance website at www.ocf.dc.gov.

8 And during the month of August 2018,
9 there were no show-cause proceedings conducted by
10 the Office of General Counsel. And that should
11 conclude my report.

12 MR. BENNET: Ms. Montgomery.

13 MS. COLLIER-MONTGOMERY: That
14 concludes the report of the Office of Campaign
15 Finance.

16 MR. BENNET: Great, any questions,
17 Ms. Lewis?

18 MS. LEWIS: No, thank you.

19 MR. BENNET: Mr. Gill, any questions
20 for Office of Campaign Finance?

21 MR. GILL: No questions. Nice job,

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1 though.

2 MR. BENNET: Great, thank you. That
3 concludes the Office of Campaign Finance.
4 Thanks, Ms. Montgomery. The other was, we want
5 to go back, we forgot. We have to approve some
6 precinct changes. So we need to go back to Ms.
7 Miller. We'll open your report back up again.

8 MS. MILLER: Yes, Mr. Butu is hiding
9 back there. We're all just sitting right out
10 front, which is how I overlooked him. But he has
11 that nice, bright yellow shirt on. He's in the
12 back hiding, so I'll ask him to come forward as
13 he's doing. We have about seven precincts that
14 the Board took proposed action on at the last
15 meeting.

16 MR. BENNET: Right.

17 MS. MILLER: They were published in
18 the Register, and information was sent to the
19 appropriate individuals, ANCs, Council members of
20 the affected areas. I will ask if you received
21 any response?

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1 MR. BUTU: No, ma'am.

2 MS. MILLER: And so those precincts
3 are Precinct 8, 14, 33, 86, 93, 105, and 116.

4 MR. BUTU: Yes.

5 MS. MILLER: Proposed relocation.
6 And now I will turn it over to you.

7 MR. BUTU: Okay, my name is Arlen
8 Butu.

9 MR. BENNET: Can you bring your mic
10 down so you won't move your arm. It's not on?

11 MR. BUTU: Okay.

12 MR. BENNET: Yeah, you're on.

13 MR. BUTU: My name is Arlen Butu, the
14 Facilities Manager for the DC Board of Election.
15 The first precinct relocation that was reported
16 last year was Precinct 8. We have a movement
17 from Palisades Neighborhood Library to the
18 Palisades Recreation Center, located at 5200
19 Sherier Place, NW. We'll be using the gymnasium.

20 The next precinct is Precinct 14 --

21 MR. BENNET: Excuse me. That one's

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1 actually --

2 MR. BUTU: Back.

3 MR. BENNET: Back to the gymnasium.

4 MR. BUTU: Back to the recreation
5 center, yes.

6 MR. BENNET: Yeah, okay, okay. Just
7 want to make that clear for the record.

8 MR. BUTU: Okay, the next precinct,
9 Precinct 14, we are moving from the Whittemore
10 House back to the MAA Carriage House and Meeting
11 Space, located at 1781 Church St., NW. We'll be
12 using the meeting room.

13 The next precinct is Precinct 33.
14 We'll be moving from St. Paul's Lutheran Church
15 back to Murch Elementary School, located at 4810
16 36th St., NW. We'll be using the cafeteria at
17 that location.

18 The next precinct is Precinct 86.
19 We'll be moving from Eliot-Hine Middle School to
20 Mount Moriah Baptist Church, located at 1636 East
21 Capitol Street, NE. We'll be using the

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1 multipurpose room there.

2 The next location is Precinct 93,
3 Houston Elementary School. We'll be relocating
4 to Deanwood Recreation Center, 1350 49th St., NE.
5 We'll be using the gymnasium there.

6 The next precinct is Precinct 105.
7 We'll be moving from CW Harris Elementary School
8 to Benton Park Recreation Center, located at 5100
9 7 Avenue, SE. We'll be using the multipurpose
10 room there.

11 And the last relocation is Precinct
12 116. We'll be moving from THEARC East across the
13 parking lot to THEARC West, located at 1801
14 Mississippi Ave., SE, and we'll be using the
15 black box theater.

16 I now ask that all our precincts that
17 were put on the record that need to be approved
18 for final relocation. After relocation is
19 approved today, I will notify all the affected
20 bodies once again, as well as make all the changes
21 on our website as well.

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1 MR. BENNET: Just for the record, just
2 to be clear, though, all those precincts that
3 we're moving back to or to, they passed the ADA
4 inspections and are compliant with ADA
5 requirements?

6 MR. BUTU: Yes, they were inspected,
7 and some of them does not meet 100% ADA. But
8 there are slight modifications, like a slope may
9 be off on the ramp or the railings may not have
10 the extended hand rails.

11 And I want to put on the record that
12 one of the sites is a brand new site. So it's a
13 brand new site and it's still Mr. Moffwith
14 (phonetic) addressing the ADA, being fully
15 compliant with the ADA rules and regulations.

16 MR. BENNET: Okay, but Ms. Jenkins is
17 monitoring that and making sure that we're able
18 to accommodate people without exception.

19 MR. BUTU: Yes, sir.

20 MR. BENNET: Okay. And I won't ask
21 Ms. Jenkins to put that on the record. But at

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1 any rate, so you're comfortable --

2 MR. BUTU: That's correct.

3 MR. BENNET: That we're in good shape.

4 MR. BUTU: Yes.

5 MR. BENNET: Can I get a motion to
6 approve the relocations either to or back to the
7 precincts that, the locations that Mr. Butu
8 noted?

9 MS. LEWIS: Motion, I move to approve
10 the stated precincts, 8, 14, 33, 86, 93, 105, and
11 116 either back or towards their new or prior
12 location.

13 MR. BENNET: Okay, can I get a second,
14 Mr. Gill?

15 MR. GILL: Second.

16 MR. BENNET: All righty. So it's
17 been properly moved and seconded. And I vote
18 yes, so it's unanimous. All righty, thank you,
19 Mr. Butu.

20 MS. MILLER: Just before you move on,
21 Mr. Bennet, I just want to indicate that we had

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1 discussed earlier about also trying to double the
2 early voting sites to two per ward for early
3 voting. We are up to doing that for seven of the
4 -- six of the eight wards. And we will 14 early
5 voting sites.

6 We have two wards that we're still
7 trying to identify, in addition to the location,
8 and that's Ward 1 and Ward 2. But as of now, we
9 will have 14 early voting sites beginning in
10 November.

11 MR. BENNET: Okay, great. Anything
12 else, Ms. Miller?

13 MS. MILLER: That is really it.

14 MR. BENNET: Okay, that's okay.
15 Let's switch the agenda around a little bit. And
16 because we do have so many things, and I want to
17 make sure we have adequate time for the hearings.

18 I'll ask Mr. McGhie to report on his,
19 well, we'll address the proposed rulemaking, and
20 then we'll go to the litigation status. And then
21 we're going to take public matters, and the we'll

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1 get to the nominating petition challenges. Okay?

2 And so we're going to limit the
3 comments with regard to public matters to five
4 minutes at a max, so we can kind of get through
5 the other agenda, unless there's something
6 completely urgent, of which we'll come back to
7 later.

8 So, without further ado, so to speak,
9 Mr. McGhie, can you start your General Counsel
10 report.

11 MR. MCGHIE: Okay, the first matter I
12 have on my agenda is emergency and proposed
13 rulemaking to amend Chapters 30, campaign finance
14 operation, Section 3014, constituent services
15 program. As indicated, this is an Office of
16 Campaign Finance proposed regulation, so I will
17 defer to the Director of Campaign Finance to
18 explain the purpose of that regulation.

19 MR. BENNET: Okay, can you give a
20 quick summary, Ms. Montgomery.

21 MS. COLLIER-MONTGOMERY: Yes, good

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1 morning again. The purpose of the rule is to
2 increase the amount of expenditures that can be
3 made from constituent service programs which are
4 established by the mayor, and also by members of
5 the Council from 40,000 in any one calendar year
6 to 60,000.

7 That proposed amendment to our
8 regulations is consistent with recent amendments
9 to the Campaign Finance Act.

10 MR. BENNET: Okay. Let me just, and
11 I'm going to repeat what Ms. Montgomery said,
12 we're, these, this regulation modification is
13 really to make sure that our regulations are
14 consistent with what the law already, or the
15 Council, has already passed with regard to the
16 law.

17 MS. COLLIER-MONTGOMERY: That's
18 correct.

19 MR. BENNET: Okay. All right,
20 anything else, Ms. Montgomery, with regard to
21 that that you'd like to make a?

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1 MS. COLLIER-MONTGOMERY: No, that's
2 it.

3 MR. BENNET: Okay. Mr. McGhie?

4 MR. MCGHIE: No, just request that the
5 Board entertain a motion at this time to adopt
6 this as emergency proposed rulemaking. Once
7 that's adopted, it will be published in the DC
8 Register for comment.

9 MR. BENNET: Okay, great. Can I get
10 a motion to approve the emergency regulation?

11 MS. LEWIS: So moved.

12 MR. BENNET: Mr. Gill, can I get a
13 second?

14 MR. GILL: Second.

15 MR. BENNET: All righty, so it's been
16 properly moved and seconded. And I vote yes, so
17 it's unanimous. All right.

18 MR. MCGHIE: Okay, the next thing on
19 my agenda is a litigation status update. All of
20 these matters are enforcement measures by the
21 Board to collect a fine that was imposed by the

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1 Office of Campaign Finance for various amounts,
2 ranging from \$500 to maybe \$2000.

3 First one is the Board versus Gaston
4 2014, the Board versus Carter At-Large, the Board
5 versus Bruce Majors, the Board versus Naisha
6 Harley, the Board versus Christie Love-Davis, the
7 Board versus Walter Garcia, the Board versus
8 Flanders Sharpe, the Board versus Melton Bell,
9 and the Board versus Robert Whittaker.

10 The Board versus Bruce Majors, the
11 Board versus Christian Carter, and the last one
12 is the Board versus Joe Davis.

13 The Board filed motions for
14 enforcement, petitions for enforcement, in the
15 Superior Court last month. It's now scheduled
16 to go before the court on September 14, and at
17 that time, we hope to get a judgement on all these
18 matters.

19 MR. BENNET: Great, so they'll all be
20 handled as --

21 (Simultaneous speaking.)

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1 MR. BENNET: Great, all right, so
2 we'll have outcomes at the October meeting.

3 MR. MCGHIE: Yes.

4 MR. BENNET: All right, anything
5 else, Mr. McGhie, you wanted to, your report?

6 MR. MCGHIE: No.

7 MR. BENNET: Okay, we're going to, as
8 I said before, shift the agenda around a little
9 bit. And so now we're going to take any public
10 matters. I'm going to ask that we limit the
11 amount of time. I'll try and make sure we give
12 you enough time, but I want to try and move to
13 the challenges as expeditiously as possible.

14 So are there any Board matters before
15 the Board? Or matters, I'm sorry, public matters
16 before the Board? Great, hearing none, we will
17 move now to the nominating petition challenges.

18 MR. SINDRUM: Hello, Mr. Chair, can
19 you hear me?

20 MR. BENNET: Yes, I can now, Mr.
21 Sindrum.

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1 MR. SINDRUM: Okay, I moved. There
2 is a question I have for you. At the outset of
3 the session today --

4 MR. BENNET: Mr. Sindrum, I'm sorry.
5 Just for the record, sir, could you identify
6 yourself?

7 MR. SINDRUM: Oh, absolutely.
8 Michael Sindrum, disabled veteran. Served our
9 country more than most, appearing via phone.

10 At the induction of the meeting, it
11 was indicated challenges. Challenges to what,
12 for what?

13 MR. BENNET: Oh, challenges to ballot
14 access for the November election, for the
15 November, yeah, balloting.

16 MR. SINDRUM: And is that what the
17 subsequent hearing is going to be about shortly?

18 MR. BENNET: Oh, I'm sorry, and
19 nominating petitions. It's, say again, sir.

20 MR. SINDRUM: The challenges, is that
21 to a specific candidate?

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1 MR. BENNET: Yes.

2 MR. SINDRUM: And who is that
3 candidate?

4 MR. BENNET: We will actually go
5 through the list. There are multiple candidates,
6 Mr. Sindrum. So we'll actually go through the
7 list prior to starting the challenges.

8 MR. SINDRUM: I see. And it was
9 indicated that the format for the upcoming
10 election is set, the candidate naming and
11 sequence and so on. Tracey Ewes appears on that
12 format?

13 MR. BENNET: I'll let Ms. Miller
14 answer that. Go ahead.

15 MR. SINDRUM: Thank you.

16 MS. MILLER: Ms. Ewes did not file
17 nominating petitions.

18 MR. SINDRUM: Meaning she's not on the
19 ballot?

20 MS. MILLER: That's correct.

21 MR. SINDRUM: Okay. Thank you, Mr.

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1 Chair.

2 MR. BENNET: All right, thank you.
3 Any other public matters before the Board? Okay,
4 we will officially end our monthly meeting and go
5 to the challenges.

6 Mr. McGhie.

7 MR. MCGHIE: Okay, this is a
8 nominating petition challenge. The first matter
9 is the challenger Chris Hershey versus Candidate
10 Veda Rasheed, Candidate for ANC 7E-01. Can I ask
11 Mr. Hershey and Ms. Rasheed to take a seat at the
12 front, as well as the Registrar of Voters and Ms.
13 Joiner from my office.

14 Okay, beginning with the challenger,
15 could you state your full name and address for
16 the record.

17 MR. HERSHEY: Dr. Christopher
18 Hershey.

19 MR. MCGHIE: Address.

20 MR. HERSHEY: 4515 Alabama Ave., SE,
21 Washington, DC 20019.

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1 MR. MCGHIE: Okay, and Ms. Rasheed.

2 MS. RASHEED: Veda Rasheed, 703
3 Chapman St., SE.

4 MR. MCGHIE: Okay, so procedurally,
5 what will happen is that -- well, first I should
6 say that all of these challenges were brought
7 under the DC Code, which allows for any
8 registered qualifier elected to challenge another
9 in a petition of an individual after it's been
10 posted for ten days.

11 The Board has 20 days to resolve those
12 challenges. And the last day to resolved these
13 challenges was on Monday, September 10.

14 The format for today's hearing will be
15 first that the challenger, because they have the
16 burden of proof, will be getting three minutes to
17 present their case. And there will be a timer
18 in the back that will indicate how much time you
19 have left.

20 After that, the candidate will be
21 given three minutes to respond, and then each

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1 party will be given one minute for closing
2 argument. Before we begin the presentation by
3 the parties, the Registrar of Voters will give
4 her preliminary determination on the validity of
5 the challenge. Does anybody have any questions?

6 MR. HERSHEY: A member of our campaign
7 staff is here to make a statement on behalf of
8 the campaign. We filed the appropriate
9 paperwork, and I'd like to introduce him now,
10 before the time limit starts.

11 MR. MCGHIE: Sure.

12 PARTICIPANT: Can you actually pass
13 out what you just showed?

14 MR. HERSHEY: Absolutely. On behalf
15 of the campaign, I'd like to introduce to you Mr.
16 Calvin Dark. He is sitting in the front row
17 here, and I'll be happy to make room for him.

18 MR. BENNET: You're more than welcome
19 to pull up a chair if you decide to.

20 MR. MCGHIE: So Mr. Dark is going to
21 represent you?

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1 MR. HERSHEY: Yes, sir.

2 MR. MCGHIE: All right. Mr. Dark,
3 could you please state your full name and address
4 for the record.

5 MR. DARK: Calvin Dark, 1423 F St.,
6 NW, Washington, DC.

7 MR. MCGHIE: Okay. Do you have any
8 questions about the format?

9 MR. DARK: No.

10 MR. MCGHIE: So okay, let's hear the
11 preliminary report from the Registrar of Voters.

12 MS. SMITH: Good morning. On August
13 6, 2019, Veda Rasheed submitted a nominating
14 petition to appear on the ballot as a candidate
15 for the November 6, 2018 general election contest
16 for the, contest of ANC SMD 7E-01.

17 The petition was posted for public
18 inspection for ten days, as required by law and
19 challenged on August 20, 2018 by Christopher
20 Hershey, a registered voter in the District of
21 Columbia.

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1 The preliminary review of the petition
2 challenge indicates that Ms. Rasheed submitted a
3 total of 34 signatures. The minimum requirement
4 for this office is 25 signatures of District
5 voters who are duly registered, and then the same
6 SMD as the candidate.

7 Challenger Christopher Hershey filed
8 a challenge, or challenges, to a total of 25
9 signatures, enumerated by line and page number on
10 individual challenge sheets filed for each
11 petition page. Petition signatures were
12 challenged pursuant to Title 3 DCMR 1607.1 of the
13 Board's regulations.

14 The review of the challenge indicates
15 that a total of five out of the 25 challenges are
16 valid. This leaves the candidate's nominating
17 petition with 29 signatures, four signatures over
18 the number of required, required for ballot
19 access. Thank you.

20 MR. MCGHIE: Do you have copies of
21 your report that you can give to the Board?

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1 MS. SMITH: Yes.

2 MR. MCGHIE: Okay. You can also give
3 us copies of the next matter as well?

4 MS. SMITH: Sure.

5 MR. BENNET: Hold on one second, --
6 once we get those we'll B-

7 MR. MCGHIE: In short, the Registrar
8 of Voters has indicated that based on the
9 preliminary report, the candidate is four
10 signatures over the required amount. So, Mr.
11 Dark.

12 MR. DARK: Okay.

13 MR. MCGHIE: You have three minutes
14 starting now.

15 MR. DARK: Perfect. Good morning,
16 everybody.

17 MR. BENNET: Good morning.

18 MR. DARK: What we'd like to say is
19 Ms. Rasheed should be denied ballot access
20 because for the following reasons. The
21 circulator of petition was not the candidate, the

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1 candidate was not present for circulation of at
2 least one full sheet of an opposition petition
3 she submitted, and yet the candidate signed a
4 petition affirming under penalty of law that she
5 personally circulated the petition, and that she
6 personally witnessed the signing of each
7 signature on the petition, and that she
8 personally inquired from each signer whether the
9 signer was eligible to sign the petition.

10 Now, these challenges are clear
11 misrepresentations of her admissions on the
12 affidavit she signed supported by the sampling of
13 signatures and their defects that we've
14 identified, that Mr., that Dr. Hershey the burden
15 of proof.

16 Ms. Rasheed should be denied ballot
17 access because as we all know, the DC Board of
18 Elections bends over backwards to explain and
19 clarify the ANC petition campaign and election
20 process and provides numerous opportunities for
21 candidates and petitioners to correct omissions

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1 and mistakes. There is no excuse for Ms.
2 Rasheed's misrepresentations on the affidavit.

3 Now, whether she didn't pay attention
4 to the rules, didn't seek clarification, or
5 didn't clarify her representations to the Board,
6 or she doesn't care doesn't really change what's
7 facts. The ANC petition process has been
8 established and clearly explained so that there's
9 absolute transparency and equal access for
10 everyone, for Dr. Hershey and Ms. Rasheed, so
11 that we can all put trust in the process.

12 So this doesn't leave room for the
13 misrepresentations and omissions, which cast
14 doubt on her, the supposed signatures, and all
15 the other assertions that were sworn true and
16 accurate when they were not.

17 MR. McGHIE: Okay, Ms. Rasheed, would
18 you like to respond?

19 MR. BENNET: I have a question,
20 though. So how do you know that Ms. Rasheed
21 didn't do the collection of the signatures

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1 herself? Do you have some evidence of that, or
2 did she say she didn't, or?

3 MR. DARK: We have, and I think this
4 is in the record, affidavit of two or three, three
5 of the signers, who submitted affidavit that Ms.
6 Rasheed wasn't the person circulating. And
7 that's included in the record I think you just
8 received.

9 MR. BENNET: Okay, great, thank you.
10 Do you have any questions, Ms. Lewis?

11 MS. LEWIS: Maybe.

12 MR. BENNET: Ms. Lewis will probably
13 have some questions.

14 MR. MCGHIE: Can you point to those
15 affidavits and just state what the affidavits
16 briefly state?

17 MR. DARK: Do you want the names of
18 the three?

19 MR. MCGHIE: Yeah, the names of the
20 three and what they're affirming.

21 MR. BENNET: Were they included in the

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1 document we just got?

2 MR. DARK: One of the affidavits we
3 have is, I'm not sure what page it is on your
4 documents, but from Kenneth Ellerby of 4527
5 Alabama Ave., SE.

6 MR. BENNET: That's numbered,
7 signature on line number three.

8 MR. DARK: Yeah.

9 MR. BENNET: Okay, all right, got it.

10 MR. DARK: Then we have a petition
11 from William Ellerby of 4527 Alabama Ave., SE.
12 And then the third is the petitioner, Dr.
13 Hershey, who submitted affidavit as well.

14 MR. MCGHIE: Okay, and these
15 affidavits are -- oh. Can you just summarize
16 what the affidavits are saying?

17 MR. DARK: Yes. They focus on the
18 fact that the person that circulated the petition
19 and made the representations was not the
20 candidate. And that the candidate was not
21 present at the time that the forms were signed.

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1 MR. MCGHIE: All right, now, you're
2 going to have to explain this a little more for
3 me. They're saying that the person who
4 circulated the petition is not the person who
5 signed the petition.

6 MR. DARK: Who signed the affidavit.

7 MR. MCGHIE: Who signed the
8 affidavit.

9 MR. DARK: Correct.

10 MR. MCGHIE: Is that because it was a
11 woman that approached him or was it a male that
12 approached him? It was, why are they saying
13 that?

14 MR. DARK: Well, because they've
15 identified the person who circulated the
16 petition, which they put in affidavit, Sharon
17 Shankland Brown. And so they know who, they know
18 it wasn't the candidate, and they've signed
19 affidavits who it was.

20 MR. MCGHIE: Okay, so they're saying
21 that Sharon is the one that approached them to

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1 get the signature, but Christopher Hershey is the
2 one that signed. Is that right?

3 MR. DARK: No, that Sharon was not --
4 that the candidate signed it. They circulated
5 the petition on the affidavit, when the affidavit
6 from one of the signers, for example, Kenneth
7 Ellerby, said that Sharon Shankland Brown was the
8 person who circulated the petition that he
9 signed.

10 MR. MCGHIE: Okay, all right.

11 MS. LEWIS: I'm sorry, I just have a
12 question. I don't know if I understand, maybe
13 it's a question for the Registrar. We have in
14 our packet petitions of Christopher Hershey. Is
15 there a reason why his petitions are in this
16 packet?

17 So we have one for Ms. Rasheed, and we
18 have one for Mr. Hershey. So --

19 PARTICIPANT: That is part of his
20 evidence. He included in his packet, that's why
21 I said the only got his challenge it being B- he

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1 included --

2 PARTICIPANT: He included his own --

3 PARTICIPANT: Challenge, a copy of
4 his petition and a copy of Ms. Rasheed's
5 petition.

6 MS. LEWIS: Okay, can someone address
7 the relevance of this being included?

8 DR. HERSHEY: So ma'am, if I may, when
9 the circulator of petition approached me to sign
10 --

11 MS. LEWIS: I'm sorry, sir, would you
12 mind speaking into the mic? We have a court
13 reporter here.

14 MR. HERSHEY: So on the day mentioned
15 in the affidavits, when the circulator of the
16 petition approached me, I signed her petition.
17 And the circulator at the time signed my
18 petition. And the circulator at the time was
19 Sharon, and that is what you have in your packet,
20 which is evidence of Sharon's signature at the
21 same time I signed the other person's signature

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1 showing that.

2 If that person, that circulator, would
3 have been Veda Rasheed, then I would have her
4 signature. But I don't.

5 MS. LEWIS: I see, thank you for that
6 clarification.

7 MR. HERSHEY: Yes, ma'am, thank you.

8 MR. MCGHIE: Okay, Ms. Rasheed, you
9 have your three minutes start now.

10 MS. RASHEED: So I would --

11 MR. BENNET: If you'd like to have
12 someone join you at the podium, that's perfectly
13 fine. If not, that's cool. Whatever works for
14 you is okay with us.

15 MS. RASHEED: I would, because from
16 my understanding, the issue is the, he's
17 challenging the signature that were raised in
18 petition number three?

19 MR. MCGHIE: He's challenging the
20 provision of the law that says you have to
21 personally witness the signatures.

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1 MS. RASHEED: But he's saying for
2 those three signatures?

3 MR. MCGHIE: You saying?

4 MS. RASHEED: Because from my
5 understanding, this hearing is only addressing an
6 issue that were raised in challenge, no issues
7 outside of that. Isn't that correct?

8 MR. MCGHIE: Yes.

9 MS. RASHEED: If that is the correct
10 understanding of that, then I would just
11 voluntarily withdraw those three signatures.

12 MS. LEWIS: I have just a point of
13 maybe information. It may be a question, I'm not
14 sure what's about to come out. But so I think
15 the issue that I'm at least hearing is that you
16 all are saying there are two issues here. One
17 is that there's a challenge to three signatures,
18 and I guess the authenticity of those.

19 And then you're saying separately and
20 apart, there's also a challenge you all are
21 raising as an issue that all the signatures

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1 should be invalidated because Ms. Rasheed was not
2 the one who circulated that. Is that my
3 understand --

4 MR. DARK: Actually, it's, the second
5 point is the primary, that the, as we said here,
6 the wasn't circulated by the candidate, candidate
7 didn't verify that the petitioner was a valid
8 signer, and that she personally witnessed it.

9 The three signatures were the sampling
10 that we took to, along with the affidavits, to
11 show that the process wasn't followed, and that
12 the affidavit was incorrect.

13 MR. HERSHEY: And just to piggyback
14 on what Mr. Dark said, Ms. Lewis, you are correct
15 that that is the way the BOE staff wanted us to
16 submit it is, was not as two separate but as
17 combined. So the way it was scanned through was
18 one of one, one of two, and then two of two.

19 So it was to address the first issue,
20 which is the signatures, and then the second
21 issue, which is as you understand it, the

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1 petition circulation.

2 MR. DARK: Because I'd just like to
3 also note too, in the affidavits included in your
4 packet, the affidavits speak to the process of
5 what was represented, not the defects of the
6 signature themselves.

7 MS. LEWIS: So I guess I have a
8 follow-up then, and I'm not sure who can answer
9 this. What was raised during the challenge
10 period as an issue? And what was discussed at
11 the pretrial conference, prehearing conference?

12 MS. JOINER: Amanda Joiner, Office of
13 the General Counsel. I can answer that point of
14 clarification. The original challenge as we
15 understood it was for 25 signatures. And as the
16 Registrar mentioned, they reviewed that and they
17 found five valid challenges.

18 The challenger also, in that initial
19 filing, challenged the petition circulator's
20 affidavit. So the original issues were presented
21 in the initial filing. The prehearing conference

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1 we discussed the challenged signatures
2 individually, which as the Registrar mentioned,
3 said that five were valid challenges, and that
4 left the candidate with 29 signatures.

5 In the prehearing conference we also
6 issued or discussed the affidavit issue that was
7 raised by the challenger.

8 MR. BENNET: But what you affidavit
9 does, your affidavit, those three affidavits are
10 focused on the fact that on those three
11 signatures, Ms. Rasheed was not the circulator,
12 right. But you don't, but is there any other
13 evidence that you have that she was not the
14 circulator of the other signatures?

15 MR. DARK: No, we pointed out the
16 three signatures and got the three affidavits as
17 a sampling of (Simultaneous speaking.) So to
18 answer your question, no, we didn't go through
19 all the signatures to see that.

20 MR. BENNET: So in essence you'd be
21 asking us to take the sampling and say, well,

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1 maybe she didn't get, maybe her affidavit is not
2 valid with regard to the other signatures.

3 MR. DARK: Right, it puts into
4 question, yeah.

5 DR. HERSHEY: Puts into question that
6 the affidavit wasn't entirely true, that it was
7 in part true. And that it was a
8 misrepresentation, an omission of the truth,
9 because she had certainly time to correct.

10 And the Board also allows many
11 different mechanisms and many different forms to
12 correct those things, and also to allow for a
13 petition that's in part filed for those things to
14 be witnessed by Mark -- by another person. So
15 the Board makes very clear and provides many
16 opportunities to do things correctly.

17 MR. DARK: And with the submission of
18 the affidavits, I also just want to point out,
19 we're not saying that's an exhaustive list of the
20 signatures that aren't valid. We're saying that
21 because it was brought to Petitioner's attention

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1 that the process wasn't followed, these were the
2 three that we readily identified. We can't say
3 that that's the limit of the omissions of
4 representation.

5 PARTICIPANT: Ms. Rasheed.

6 MS. RASHEED: Yes. And just so the
7 record is clear, the affidavit that was signed by
8 Mr. Ellerby is not notarized. Mr. Ellerby is
9 also 83 years old. I asked, was going to ask him
10 to come to this hearing today so he could be
11 called today. But at the end of the day, it was
12 communicated that he was not aware of what it was
13 that he was signing.

14 That second one that they're saying
15 the affidavit is not signed by the Police Chief,
16 it's just a statement taken from Kenneth Ellerby.
17 And I just wanted to bring that to the Board's
18 attention. And neither Kenneth Ellerby nor Mr.
19 William Ellerby are present here to be cross-
20 examined whether they knew what it was they were
21 signing.

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1 We don't know whether or not Mr.
2 Kenneth Ellerby even knows his statement was
3 submitted on the record or if he had. Mr.
4 William Ellerby is 83 years old.

5 This affidavit that had been presented
6 to the Board, we don't know whether or not he
7 knew what it was that he signing. I was present
8 at Mr. Ellerby's home. At the predetermination
9 hearing, I did have other individuals that signed
10 this petition that were present there, but they
11 were not able to go into the predetermination
12 conference.

13 But since it's limited to these three
14 signatures that were previously challenged,
15 that's why I, even though this statement isn't
16 signed and Mr. Ellerby didn't know what he was
17 signing, I just, for the efficiency of this
18 proceeding, I just agreed to withdraw those.
19 Because all it is I'm trying to do is just serve
20 my community.

21 MR. DARK: Just a point of

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1 clarification. If Mr. Ellerby is 83 and can't
2 be trusted, then why would it make sense for him
3 to be here to be cross-examined?

4 MS. RASHEED: I never said that he
5 could not be trusted, I said that he did not know
6 what it was that was presented to him. It's no
7 witness that signed this notarized statement, I
8 did not say that he could not be trusted and he
9 was an incompetent individual.

10 DR. HERSHEY: And for the record,
11 Kenneth Ellerby is not the Police Chief, he is a
12 retired DC Fire Chief. And he certainly is of
13 capable mind and body to sign said affidavit. I
14 just.

15 MR. BENNET: Do you have any
16 additional questions?

17 MS. LEWIS: Maybe, let me think.

18 MR. BENNET: Okay, with regard to the
19 preliminary conference or the conference that you
20 had, I guess where were you with regard to some
21 of the other signatures? Was there, did you see

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1 anything or discuss anything around the validity
2 of the other signatures or?

3 MS. JOINER: No, Mr. Chairman, we
4 didn't discuss the other signatures in this frame
5 of reference, we only discussed the Registrar's
6 report as to the other challenges.

7 MR. BENNET: Okay. Mr. Gill, do you
8 have any questions on this matter?

9 MR. GILL: No, I'm good, thanks.

10 MR. BENNET: Okay. Keep drinking
11 coffee, Mike. I don't have anything. Ms. Lewis,
12 you have some more?

13 MS. LEWIS: Ms. Rasheed, could you
14 address the accusation that you were not present
15 for the circulation of the petition?

16 MS. RASHEED: As far as?

17 MS. LEWIS: What they're saying. Can
18 you just speak to that?

19 MS. RASHEED: I was present for his -
20 -.

21 MS. LEWIS: So they're saying that you

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1 were not present, you were not the circulator of
2 the petitions.

3 MS. RASHEED: I was present on the
4 street.

5 MS. LEWIS: Okay.

6 MS. RASHEED: And I was the circulator
7 of the petition. The people that signed the
8 petition, some of them had come to the last
9 hearing whose names were on the sheet. they were
10 not able to come back to this hearing because we
11 didn't know whether or not we would be able to
12 bring those individuals into the hearing.

13 MR. BENNET: But I think Ms. Lewis --

14 MS. RASHEED: The names are on the
15 sheet.

16 MR. BENNET: No, I understand. But I
17 think her question is they allege that because
18 there's a question about those three, those three
19 that they challenged, that you were probably not
20 present at any of the --

21 MS. RASHEED: No, I was present. And

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1 Mr. William Ellerby, I actually was at his door
2 talking to him.

3 MR. BENNET: But all the other three,
4 like you said --

5 MS. RASHEED: I was present on the
6 street.

7 MR. BENNET: Were you present for all
8 those other 27 or 29, you were?

9 MS. RASHEED: Yes, I was.

10 MR. BENNET: Were the circumstances
11 that you had somebody helping you and you were -
12 -

13 MS. RASHEED: No, Ms. Brown is the
14 President of the civic association. She lives
15 around the corner from my house. I was walking
16 up the street to her home. So we were out
17 together, and some of those signatures, Ms. Brown
18 wasn't even with me when I got.

19 MR. MCGHIE: So did you have Ms. Brown
20 help you? Was she helping you basically?

21 MS. RASHEED: No, me and Ms. Brown

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1 were just walking up and down the street. Ms.
2 Brown lives on Alabama Ave., she lives like three
3 or four homes down from Mr. Hershey and two doors
4 over from Mr. Ellerby.

5 We were walking in the community,
6 because it's several people, they don't open
7 their door up for people sometimes, for people
8 that they don't know. So I was actually at some
9 of these individuals' homes, I was talking to
10 them. I didn't finish circulating the petition
11 till late in the evening, so.

12 MR. MCGHIE: So did you?

13 MS. LEWIS: Was there a question you
14 wanted to address to the Board perhaps you can
15 facilitate?

16 DR. HERSHEY: I'd be curious to know
17 how I signed the petition that I received from
18 the hand of Sharon Brown. Not until this day,
19 and actually the day of the hearing, that was the
20 first time I ever met Veda Rasheed, the very first
21 time. I accepted the petition from Sharon Brown

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1 on the street.

2 You had these bright yellow pieces of
3 paper, you walk around. People know who you are.
4 You can recognize a person a mile away, and if
5 you're running for ANC, you can certainly
6 recognize them farther.

7 I signed her petition and Sharon Brown
8 signed my petition. If the candidate had been
9 there, I'd gladly ask her to sign my petition as
10 well, because one signature from a registered
11 voter is a good signature, and she was not
12 present.

13 MR. BENNET: Were you present when
14 they --

15 MS. RASHEED: I was present on the
16 street.

17 MR. BENNET: When Mr. --

18 MS. RASHEED: Yes, I was present on
19 the street.

20 MR. BENNET: So you just weren't
21 physically there with him, but you were --

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1 MS. RASHEED: Yes.

2 MR. BENNET: Okay.

3 DR. HERSHEY: At the time, just for
4 the record, sir, Kenneth Ellerby was engaged in
5 a conversation with Sharon Brown. I walked
6 across the street to Kenneth, and three of us had
7 a conversation. Kenneth signed directly after
8 me, saying sort of with some apprehension about
9 signing two candidates' petitions, and said,
10 after he'd already signed mine, Is it okay if I
11 sign two petitions.

12 And I said absolutely, knowing that
13 getting Kenneth's name on that petition would
14 just be another person that would serve as a
15 witness just to say that at this moment in time,
16 Sharon was walking around with this petition.

17 And Kenneth, at the very same time I
18 did, not separately, but at the very same time,
19 the three of us were in front of his house,
20 engaged in a conversation. Sharon signed my
21 petition, which you have, and I signed her

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1 petition, which I highlighted.

2 MR. DARK: Excuse me, and just a point
3 of clarification, maybe you can find out.

4 MR. BENNET: We're way over our time,
5 but go ahead.

6 MR. DARK: Okay, when Ms. Rasheed said
7 that she was on the street, is she claiming that
8 she personally witnessed the signatures inside
9 the houses from the street, or how did that work?
10 That was, just so we wanted to get the facts clear
11 on that.

12 MR. BENNET: Well, I think that is
13 real clear, Ms. Rasheed said she was there, she
14 was in the vicinity, you're saying you didn't see
15 her. So I mean, I'm not sure it's, the worth
16 that report. I'll give Ms. Rasheed an
17 opportunity to respond to that.

18 MS. RASHEED: I agree with the
19 Chairman, I don't have anything further.

20 DR. HERSHEY: I note during the brown
21 bag, which I went to, which again shows that the

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1 Board of Elections really stretches itself to
2 provide lots of information and education on how
3 to do this properly, if you go to a farmers'
4 market and you lay it down and you're not
5 physically in control of that petition and you
6 circle around, go ahead and sign my petition and
7 I'll go back and pick it up, you have lost control
8 of that petition.

9 You are no longer in control of it,
10 you are no longer witness to people who signed
11 that petition. And that's what happened on that
12 day. I don't know where she was. If I saw her,
13 I'd gladly ask her to sign my petition.

14 MR. BENNET: Okay. I think we're
15 clear on that. You want to take a vote on that?

16 MR. MCGHIE: Yeah, sure. I think
17 there's no need for rebuttal. So we just go
18 straight to the closing argument. If either
19 party wants to make a closing argument, they'll
20 have one minute, beginning with the candidate.
21 Do you, would you like to make a closing argument?

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1 MS. RASHEED: I'm sorry?

2 MR. MCGHIE: Would you like to make a
3 closing argument?

4 MS. RASHEED: No, I don't have
5 anything to say. I would just, no, I don't have
6 anything to say.

7 MR. MCGHIE: Okay, the challenger?

8 MR. DARK: Yeah, our closing
9 statement is just that --

10 MR. BENNET: You want to take the mic.

11 MR. DARK: Oh, I'm sorry. You know,
12 we just wanted a hearing for what we put in that,
13 what was put in the affidavit about not
14 personally witnessing, not personally
15 circulating and not personally inquiring of all
16 the signatures. We submitted three affidavits
17 which do cast doubt on the other signatures.

18 And we think that it sets a bad
19 precedent when the process isn't followed and
20 then affidavits are signed that aren't true. And
21 as we've had the burden of proof and we went

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1 through and brought at least three examples, like
2 I said, at least three of where the process wasn't
3 followed and the affidavit is inaccurate.

4 MR. MCGHIE: Okay, as I indicated
5 earlier, the Board has until Monday, September 10
6 to resolve this matter. And either party,
7 depending on the results, can appeal it directly
8 to the Board of Appeals within three days. Any
9 questions?

10 PARTICIPANT: No, thank you.

11 MR. MCGHIE: The next matter is Joseph
12 Johnson versus Shaquita McBroom. Could you state
13 your -- are you the challenger or the candidate?

14 MR. JOHNSON: The challenger.

15 MR. MCGHIE: Okay, would you state
16 your full name and address for the record.

17 MR. JOHNSON: Joseph Johnson, 1729
18 Alabama Ave., SE, Washington, DC, zip code 20020.

19 MR. MCGHIE: Okay, the candidate is
20 not present. Ms. Joiner, was the candidate
21 properly notified of this hearing?

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1 MS. JOINER: Yes, Mr. McGhie, I called
2 her every day since I set the hearing. I called
3 her this morning, and we also served her notice
4 via email.

5 MR. MCGHIE: Okay, the Board's
6 regulations allow us to proceed ex parte if one
7 of the parties is not present. Actually, the
8 Board at this time will entertain a motion to
9 proceed ex parte without the candidate present.

10 MS. LEWIS: So moved.

11 MR. BENNET: Mr. Gill? Move to Ms. -
12 -

13 MR. GILL: Second.

14 MR. BENNET: Second, okay, great. I
15 vote yes as well, so we have unanimous, we'll
16 move forward.

17 MR. MCGHIE: Okay, I recognize that
18 you were here while I explained the procedures
19 earlier. Do you have any questions?

20 MR. JOHNSON: I, no.

21 MR. MCGHIE: Okay, would the

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1 Registrar of Voters give her preliminary report?

2 MS. SMITH: Yes, thank you. On
3 August 8, Shaquita McBroom submitted a nominating
4 petition to appear on the ballot as a candidate
5 in the November 6, 2018 general contest for the
6 office of ANC SMD 8E-01. The petition was posted
7 for public inspection for ten days, as required
8 by law, and challenged on August 20, 2018 by
9 Joseph Johnson, a registered voter in the
10 District of Columbia.

11 My preliminary review of the petition
12 challenged indicates that Ms. McBroom submitted
13 a total of 39 signatures. The minimum
14 requirement for this office is 25 signatures of
15 District voters who are duly registered in the
16 same SMD as the candidate.

17 Challenger Joseph Johnson filed a
18 total of 31 challenges of signatures enumerated
19 by line and page number on individual challenge
20 sheets filed for each petition page. The
21 petitions signatures were challenged pursuant to

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1 Title 3 DCMR 1607.1 of the Board's regulations.

2 My review of the challenge indicates
3 that a total of 18 out of the 31 challenges are
4 valid. This leaves the candidate's nominating
5 petition with 21 signatures, four signatures
6 below the number required for a ballot access.
7 Thank you.

8 MR. MCGHIE: Mr. Johnson, do you
9 accept the recommendation of the Registrar of
10 Voters?

11 MR. JOHNSON: Yes.

12 MR. MCGHIE: And Ms. Joiner, do you
13 concur in that recommendation?

14 MS. JOINER: Yes.

15 MR. MCGHIE: Okay, then there is
16 nothing further.

17 MR. BENNET: Would you like to many
18 any additional comments to the Board?

19 MR. JOHNSON: No, I would not.

20 MR. BENNET: Okay.

21 MR. JOHNSON: Thank you.

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1 MR. BENNET: Thank you.

2 MR. MCGHIE: That concludes this
3 matter. Okay, the next matter is Elissa
4 Silverman, Challenger, versus Candidate Kathryn
5 Allen. Can the parties come forward.

6 And this is not a, this is not a
7 petition challenge here. We're here for the
8 motion from Ms. Silverman to subpoena witnesses.
9 So would both parties please state your full name
10 and address for the record, beginning with the
11 challenger.

12 MR. GONZALES: Good morning, Joseph
13 Gonzales on behalf of Council member Silverman.
14 My address is 322 Emerson St., Washington, DC.

15 MS. LINDENBAUM: Dara Lindenbaum on
16 behalf of the candidate, Kathryn Allen. My
17 address is 1090 Vermont Ave., Suite 750,
18 Washington, DC 20005.

19 MR. MCGHIE: Okay, we have a copy of
20 the motion for the requesting a subpoena. Did
21 you file any written response?

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1 MS. LINDENBAUM: No, we received the
2 motion last night at 11 p.m., so we were not able
3 to do it in half an hour this morning.

4 MR. BENNET: You are Ms. Allen, is
5 that correct?

6 MS. LINDENBAUM: No, I am her counsel.

7 MR. BENNET: Sorry?

8 MS. LINDENBAUM: I am her counsel.

9 MR. BENNET: Okay, and your name is?

10 MS. LINDENBAUM: Dara Lindenbaum.

11 MR. BENNET: Dara Lindenbaum, okay.

12 MR. MCGHIE: Okay, state your
13 motions.

14 MR. JOHNSON: We request the issuance
15 of subpoenas of five witnesses critical to the
16 challenge of nominating petitions by Kathryn S.
17 Allen, which will be before this board on Friday.
18 As set forth in our written pleadings, three of
19 the four circulators have disclaimed that they
20 signed the petitions.

21 In addition to that, we provided a

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1 sample of affidavits from purported signers
2 establishing that they did not in fact sign those
3 petitions. In fact, the Registrar determined
4 that almost 1,000 of the challenged petitions
5 were not valid signatures.

6 We want to bring these circulators in
7 and provide evidence before this tribunal that
8 they in fact did not sign, or the circulator
9 petition itself was invalid in total, and
10 preserve that in the record with our initial
11 challenge and stated explicitly in our memorandum
12 accompanying the challenge.

13 If there's any questions, I'd be happy
14 to answer them.

15 MR. BENNET: Why don't we hear from
16 Ms. Allen, then I've got a bunch.

17 MS. LINDENBAUM: Sure. So the motion
18 should be denied for two main reasons. First,
19 the subpoenas are unnecessary and could prolong
20 this process. The Registrar has done a careful
21 and exhaustive review of the signatures and has

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1 made her determination. Issuing these subpoenas
2 will simply prolong the inevitable and
3 disenfranchise the will of the voters.

4 Number two is timing. The challenger
5 is asking this board to issue subpoenas for a
6 hearing that is two days away. The first issue
7 here is really a practical one. The earliest
8 these folks could possibly be served is late this
9 afternoon. That gives them one day to clear
10 their schedule for a Friday hearing. I certainly
11 couldn't do that with one day notice, and I doubt
12 any of these folks could either.

13 The second issue is process and
14 fairness. Pursuant to 3DCMR 430.5, a person may
15 request that the Board quash or modify the
16 subpoena prior to the time specified for
17 compliance. One day is simply not enough time
18 to give an individual to seek counsel and file an
19 application to quash.

20 Therefore, we respectfully request
21 that you deny this motion.

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1 MR. GONZALES: May I respond?

2 MR. BENNET: Sure.

3 MR. GONZALES: As set forth in our
4 pleadings, this is an important case. It goes
5 to the integrity of the process and the
6 nominating process in the District of Columbia.
7 It's critical that these witnesses appear. We
8 have people signing over here, we have people
9 signing over there. Live testimony is the
10 preference before any tribunal in this country.

11 We need to get these people in here
12 and see what they have to say. The evidence so
13 far supports the challenge that there was
14 widespread fraud. And so it's critical that we
15 get them in here and put them under oath and get
16 to the bottom of what happened.

17 In terms of timing, we just got
18 yesterday the decision from the Registrar.
19 Immediately when we got that, and I got it after
20 the actual defect list and its explicit
21 determinations around 5:15 yesterday, we went to

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1 work identifying who we wanted to subpoena and
2 getting a motion to this tribunal to set forth
3 our reasons for doing so.

4 There's no other way we could have
5 done it, and we worked our fastest to get it done.

6 MR. BENNET: During the time that you
7 were meeting with and discussing with Counsel,
8 did you try to get these persons in to be in those
9 meetings to discuss what they did or didn't do,
10 particularly the circulators?

11 MR. GONZALES: So, I have had some
12 communication. My concern is this, that having
13 done a number of hearings both in DC Superior
14 Court, federal court, and throughout this city,
15 there's a big difference between people talking
16 to you in person and then coming and being put
17 under oath.

18 Sometimes that testimony isn't the
19 same thing they told you then. And especially
20 when that's the case, there's a concern that they
21 may not show up at all.

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1 And so from our perspective, it's
2 irresponsible not to do that, not to get these
3 subpoenas. Because this is an important issue,
4 and we want to ensure that they are here to give
5 that testimony.

6 MR. BENNET: I appreciate your
7 response, but it's not to my question. My
8 question is during the time that you were meeting
9 with Mr. McGann last time he was here, was the,
10 he's the attorney that was working through the
11 issue, did you make an effort to get those persons
12 into those meetings so that you guys would have
13 an opportunity and Mr. McGann could have an
14 opportunity to have some direct conversation with
15 them during that time frame?

16 MR. GONZALES: My first meeting with
17 Mr. McGann was yesterday. We did not bring
18 anybody except the parties, and it was our
19 understanding that it was a prehearing meeting.

20 MR. BENNET: So you hadn't had any
21 other, they hadn't had any preliminary

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1 discussions prior to yesterday?

2 MR. GONZALES: We had some
3 communications over the phone about witnesses,
4 yes.

5 MR. BENNET: Okay, all righty. Any,
6 Ms. Lewis? Let me just kind of give you, and we
7 want to try to make a decision pretty quickly
8 after we adjourn here today. Big concern that I
9 have is just the timing.

10 I mean, I appreciate your position and
11 how you, you know, kind of came to where you are.
12 I also appreciate the, I won't say the desire and
13 maybe the necessity, to have those circulators
14 particularly, testify in this matter.

15 Friday is just too short of a time.
16 However, we have until Monday to close this
17 matter legally. And so what I will recommend,
18 I'll say it now, if we do subpoena anybody, it
19 would be for a Monday hearing, not for a Friday
20 hearing. It's just, I'm, now my two Board
21 members could vote differently than the Chair,

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1 but that's where I, that's kind of just to give
2 you a heads up, that's kind of where I'm coming
3 from.

4 I do agree, though, that it's
5 important that we hear from the persons that, at
6 least the circulators, like with regard to what
7 they did and didn't do. And unfortunately, and
8 I'm not blaming anybody for the timing, but the
9 timing is such that two days would be a real
10 challenge. And I'm concerned about this board
11 doing something that ends up creating some really
12 bad precedent.

13 So that's where I'm leaning, just to
14 give you a heads up.

15 MR. GONZALES: I appreciate that, and
16 I think Counsel --

17 MS. LINDENBAUM: Yeah, can I just say
18 one quick thing?

19 MR. BENNET: Sure.

20 MS. LINDENBAUM: Monday is Rosh
21 Hashanah, which is the holiest Jewish holiday.

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1 So I do not know the circumstance of these
2 circulators and what their religion is. I
3 certainly know that I do not plan to be here, I'm
4 planning to be in temple on Rosh Hashanah. And
5 I believe the challenger has raised that as well.

6 So I think setting Monday as a day for
7 a possible hearing is problematic for a number of
8 people involved.

9 MR. BENNET: I appreciate that. And
10 unfortunately, you know, we have to conduct the
11 city's business, and the city's not closed on
12 that day. While I respect, certainly respect the
13 religious practices of every religion, but the
14 city's not closed that day.

15 And that puts us in a bit a quagmire.
16 So while I appreciate it, I'm not sure that Monday
17 won't be, if we do have hearings, I'm not sure
18 that Monday won't be the day.

19 MS. LINDENBAUM: Okay, I certainly
20 understand that. And one more point is that I
21 think on timing, while unfortunately we did only

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1 have the premeeting yesterday, this challenge was
2 filed 15 days ago, something like along those
3 lines.

4 MR. BENNET: Yeah.

5 MS. LINDENBAUM: So the motion for
6 subpoenas could have been filed at any time after
7 or during that date range. Yesterday was simply
8 not the first day that that was possible. They
9 knew about these canvassers from the beginning,
10 they were the center of their challenge here.
11 And this was all information that they had at
12 that point.

13 MR. GONZALES: And one response to
14 that, your honor. We didn't get the decision by
15 the Registrar --

16 MR. BENNET: I'm not your honor.

17 MR. GONZALES: I'm sorry.

18 MR. BENNET: Chairman.

19 MR. GONZALES: Chairman. We didn't
20 get the response until yesterday. Immediately
21 we went to work. But part of it is, and if you

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1 look at the evidence that we submitted,
2 tremendously strong evidence that there was fraud
3 rife throughout the circulators that were
4 challenged.

5 And so we did not know until yesterday
6 that not all of them would be discounted. In
7 fact, we had a very strong belief that they would,
8 given the abundance of evidence that we
9 suggested. And so that's why we didn't do it at
10 that point.

11 MR. BENNET: I appreciate that. Ms.
12 Lewis, I see you're still pondering here. Mr.
13 Gill, do you have any questions? Mr. Gill, you
14 may be on mute. Or you may not have taken the
15 last sip of coffee.

16 MR. GILL: I'm sorry, I'm just having
17 trouble pushing mute.

18 MR. BENNET: Do you have any, no
19 questions?

20 MR. GILL: No, just, I mean I, you
21 said it all. This is, unfortunately the timing

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1 is not, you know, we just, we are at the mercy of
2 the election calendar, and there's just not a
3 whole heck of a lot we can do about that.

4 MR. BENNET: Yeah.

5 MS. LEWIS: In terms of either party,
6 have you all had the opportunity to reach out to
7 anyone to see if anyone can be available, you
8 know, whether it's for your side or your side on
9 Friday?

10 MR. GONZALES: So, I have had the
11 opportunity to reach out to people. I will
12 represent now that Mr. Howard seemed open to the
13 possibility of appearing. Specific to Friday, I
14 haven't had that conversation with him, but we
15 have spoken about this and that representation -
16 -

17 MR. BENNET: Mr. Howard is the
18 circulator?

19 MR. GONZALES: One, yes, he's one of
20 the circulators and the one with the most
21 signatures at issue.

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1 MR. BENNET: That's the one that has
2 the 2,000 signatures?

3 MR. GONZALES: Yeah.

4 MR. BENNET: Okay. Is he local?

5 MR. GONZALES: Yes.

6 MR. BENNET: Of the five people, I
7 think there are five, right?

8 MR. GONZALES: Yes.

9 MR. BENNET: Which ones do you believe
10 are most essential in order? If you were to rank
11 the five, how would you rank them relative to the
12 ones that are most important to your claim or to
13 your challenge?

14 MR. GONZALES: So --

15 MR. BENNET: I don't mind if you take
16 a minute to take a look. And I'll be happy to
17 sit here and wait.

18 MR. GONZALES: So the three people
19 that we absolutely can't do without are Howard,
20 Parker, and Lewter.

21 MR. BENNET: And who?

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1 MR. GONZALES: And Lewter, L-E-W-T-E-
2 R. I think the other people are very important
3 as well, but with respect to Harris, most of hers
4 have been invalidated. But it's still important
5 getting to the bottom of this. When, you know,
6 more than 90% of your signatures have been
7 invalidated, that's something that we should all
8 take quite seriously.

9 And with respect to Thompson, he was
10 not a circulator. However, it's clear that he
11 was critically involved with a lot of this. To
12 the extent we're not sure, but we know that Ms.
13 Allen has already conceded that there was some
14 connection with malfeasance and him involving
15 obtaining signatures.

16 MR. BENNET: But he didn't have that
17 many though, as I recall.

18 MR. MCGHIE: So Thompson was not a
19 circulator.

20 MR. BENNET: Yeah, Thompson was not,
21 okay. So anything you want to conclude?

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1 MS. LEWIS: In terms of your motion,
2 your citing quotations, are these actual direct
3 quotes from the Washington Post article?

4 MR. GONZALES: Yes.

5 MS. LINDENBAUM: And we object to any
6 evidence that's coming from the Washington Post
7 article.

8 MR. GONZALES: From our position,
9 this is simply proffered as to the relevance of
10 subpoenas, it's not in lieu of testimony.

11 MR. BENNET: Yeah, we get it, we get
12 it. Yeah, we are, we'll temper our view based
13 on that information.

14 MS. LEWIS: Would affidavits,
15 notarized and signed affidavits, be able to get
16 to the heart of what we're hoping to get to?

17 MR. GONZALES: With respect to the
18 circulators themselves, live testimony is always
19 the preference.

20 MS. LEWIS: Absolutely. I'm a trial
21 lawyer, I completely get that. But just in terms

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1 of the conundrum we're in right here, we're just,
2 I think, trying to think creatively and
3 efficiently of how to kind of try and be as
4 accommodating to all parties as possible.

5 MR. GONZALES: I think they would be
6 inferior. Whether they would be adequate, that
7 would be up to the Board. And I think with at
8 least some people, we need to get some people in
9 here to testify.

10 MR. BENNET: How would you feel about,
11 I'm going to let you take that, do it later. How
12 would you feel about a mixture? If, I'm
13 struggling with a Friday date. And I do, I
14 really do, I mean, this is, I'm a religious person
15 myself, and I struggle with the issue around
16 Monday. But the calendar is what it is.

17 But if persons were not, and I'm also
18 struggling with the Board having precedents of
19 subpoenaing people who can't come and also
20 putting out subpoenas. So then what do we do?
21 You know, do I refer that person to the Attorney

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1 General for prosecution, for, you know, ignoring
2 a Board Subpoena of less than 48 hours? I mean,
3 that's, I struggle with that.

4 But, so part of what I'm, part of what
5 Ms. Lewis kind of started down the road, and maybe
6 I'll add to that, is what about a mixture of live
7 testimony or, you know, testimony, a person
8 appearing and affidavits? I mean, how do you
9 feel about those kinds of, you know, kind of
10 having a mix?

11 MS. LINDENBAUM: I can say --

12 MR. BENNET: Yeah, please.

13 MS. LINDENBAUM: We would have a
14 problem with affidavits on this because we
15 wouldn't have the ability to cross-examine them
16 on these issues.

17 MR. BENNET: Yeah.

18 MS. LINDENBAUM: And I think the
19 statements that have been made in the Washington
20 Post that are discussed that are circumstantial
21 evidence are quite wishy-washy, and I think that

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1 there could be a number of different things drawn
2 from their statements that can help or hurt both
3 sides.

4 And when we're talking about an oath
5 that they've already signed, that we believe that
6 they've already signed, that's on these
7 petitions, I think having an affidavit just
8 equally matches that. And the evidence there, I
9 don't think that could outweigh the evidence of
10 the oath that they have signed on their petition.

11 MR. BENNET: I think that's a no.

12 MS. LINDENBAUM: That is a no, sir.

13 MS. LEWIS: And I don't have --

14 MR. BENNET: Wait, wait, wait.

15 MS. LEWIS: Oh, I apologize.

16 MR. BENNET: Let me let you respond
17 to a mixture of affidavits and in-person
18 testimony.

19 MR. GONZALES: As long as the right
20 people were on the side of testifying, I think we
21 could agree to that.

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1 MS. LEWIS: Does anyone have the
2 article, and I'm assuming it's just one article,
3 because I've not yet seen it. So I'd be
4 interested if anyone has a printout.

5 MR. MCGHIE: I have it.

6 MS. LEWIS: You do have it? Okay.

7 MS. LINDENBAUM: And again, we're
8 objecting for the record.

9 MR. BENNET: Mr. McGann, can I get
10 your thoughts on this matter? Although I'm sure
11 I'll get plenty of it later.

12 MR. MCGANN: Yes, sir. There's,
13 Rudolph McGann, Staff Attorney for the Board of
14 Elections. There's precedent for subpoenaing
15 circulators. However, we've never subpoenaed a
16 circulator to come within two days.

17 And so I don't even know how you would
18 really enforce that in court because the period
19 is such a short amount of time. As Ms.
20 Lindenbaum asserted, they wouldn't even have an
21 opportunity to quash the subpoena before the

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1 deadline would pass.

2 So subpoenas are difficult. During
3 our prehearing conference, I did ask if the
4 challengers wished to get cooperative witnesses
5 who seemed to be on their side with respect to
6 the initial statements that we heard from the
7 newspaper publications to just come on their own
8 volition.

9 But as was already stated today, it
10 would be difficult to know what their actions
11 would be without the subpoena. So we're kind of
12 in a catch-22 at this point in time.

13 MR. McGHIE: One suggestion I guess I
14 could throw out. I guess the fact that the news
15 article threw into question the validity of the
16 signatures of your circulator, it would behoove
17 you to see if you can get some type of voluntary
18 compliance for your circulators to come in and
19 defend what they did.

20 But as for that, what I would suggest
21 is that the Board consider issuing subpoenas

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1 returnable on Monday and still schedule a hearing
2 on Friday. And then at the hearing on Friday,
3 we could entertain affidavits if any affidavits
4 are submitted. And of course, affidavits will,
5 the weight of the affidavit, you know, is the
6 weight of the affidavit.

7 And if we can get voluntary compliance
8 with any of the circulators, either you
9 contacting them or you contacting them, and they
10 voluntarily come in, we could hear the testimony
11 of the witnesses on Friday. And the subpoenas
12 are still out there for Monday. And if you can
13 get somebody on Monday If we -- assuming we might
14 be able to resolve the whole matter on Friday.

15 If we can't resolve it on Friday, then
16 we'll still have our hearing on Monday. And if
17 you can get somebody to represent you on Monday,
18 or our regulations also allow us to proceed ex
19 parte. So one way or another, the Board will
20 hear the matter if one of the parties cannot make
21 it.

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1 MS. LEWIS: Just another suggestion.
2 I'm not sure if anyone has vacation plans for
3 this weekend, but, you know, I think that it's
4 possible that we could potentially consider to
5 hear this matter on a Saturday or Sunday. I know
6 that it is a --

7 MR. BENNET: Not Saturday.

8 MS. LEWIS: Okay, apparently a Sunday
9 then. I know it's a little challenging with
10 weekends and peoples' varying schedules, but I
11 think this matter is extremely important, and I
12 think that we have to figure out some sort of
13 creative solution to try and make sure that it's
14 fair to all parties.

15 And so, you know, I can certainly make
16 myself available, you know, at some point that we
17 could perhaps agree on, you know, for the
18 betterment of all parties for a Sunday.

19 MR. BENNET: Let me ask you this. I
20 really want to get there. This is a big deal.
21 Could you guys check with at least Howard,

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1 Parker, and Lewter and see what their
2 availability is Friday to Monday? I would
3 actually rather not issue subpoenas. I
4 appreciate the motion. If I have to issue a
5 subpoena to get to talk to people, I will. Well,
6 I'll talk to my two Board members about agreeing
7 to that.

8 However, I'd rather not, I'd really
9 rather not do that. We have always been able,
10 we are generally able to function in an
11 environment where we're able to get testimony
12 back and forth and kind of get a complete record.

13 And so if I can get people to
14 voluntarily come in, I'd rather do that. Because
15 the question is what happens if indeed they don't
16 respond. And then I've got a whole other process
17 to go through, and we still don't solve the
18 problem. We still don't have a decision for you,
19 other than without that testimony.

20 And then those people, who may or may
21 not have been corrupt in their activities, end up

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1 dealing with a matter that could, you know, that
2 involves the Attorney General and all that, and
3 they'd have to probably get their own counsel.
4 And it could just really be a real challenge, and
5 I think it defeats the purpose of why we're here.
6 I'll do it if I have to.

7 MS. LEWIS: I do -- I'm sorry.

8 MR. BENNET: So what I'd like, unless
9 my two Board members are, what I'd like for you
10 guys to do is to get on the phone now, see if you
11 can convince folks to come in and see us, either
12 Friday afternoon or Sunday afternoon. And we
13 will be, or Sunday evening. We'll be, or
14 something between now and Monday.

15 I'd love to accommodate the holiday,
16 religious holiday, Jewish holiday on Monday. May
17 not be able to, but I would like for you guys to
18 try and figure out a way for us to get to at least
19 live testimony from at least those, from at least
20 two of the three that you believe are critical to
21 your matter. Give you an opportunity to cross-

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1 examine and for us to hear that.

2 So I'd like to do that. I'd like for
3 my Board member to give me her thoughts, and also
4 my General Counsel on that.

5 MS. LEWIS: Can I give you separate
6 thoughts, and then --

7 MR. BENNET: Sure, you're more than
8 welcome.

9 MS. LEWIS: The one thing I have not
10 heard, and forgive me if I've just missed this
11 piece, but what is the motivation behind the
12 request for the subpoena? Is there some concern
13 that people will not appear voluntarily?

14 MR. GONZALES: So yes, there's that
15 concern. And I'd also note, Mr. Chairman has
16 indicated that that's not the practice in this
17 court. But Mr. Chairman's also noted this is
18 kind of an exceptional circumstance, and there
19 may be reverberations beyond just this hearing
20 because of what goes on here.

21 And if we look at precedent that is

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1 similar to that, to this, that occurred. And so
2 it's our position that maybe exceptional things
3 need to be done, given the importance of this,
4 that I think this board has already acknowledged.

5 But yes, there is a concern, and I'm
6 comfortable representing that I think there may
7 be a concern on some of their parts as well. And
8 therefore I think it would be --

9 MR. BENNET: You mean the potential
10 witnesses?

11 MR. GONZALES: The potential
12 witnesses. And therefore I think it would be
13 irresponsible on my part if I didn't take every
14 step to try to make sure that these witnesses
15 were here to testify on this critically important
16 matter.

17 MS. LINDENBAUM: Can I jump in?

18 MR. BENNET: Sure.

19 MS. LINDENBAUM: I believe this is an
20 important matter, but I do, with all due respect
21 to all the candidates, I don't think this is

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1 necessarily an exceptional matter. We've been
2 through these petition fights for years, and
3 there are always allegations that there are
4 fraudulent signatures. There's always some
5 batch of them, there are the signatures don't
6 match the other.

7 I simply don't see this as a truly
8 exceptional situation that requires subpoenaing
9 people with two days' notice.

10 MR. BENNET: I appreciate that. Any
11 other thoughts, Ms. Lewis?

12 MS. LEWIS: Why is this an exceptional
13 matter from your perspective?

14 MR. GONZALES: The level of alleged
15 fraud is exceptional. Even the Registrar's
16 Office, who didn't look at, as they're not
17 required to, all of the issues that we
18 identified, found significant, almost I think 50%
19 of the signatures were invalid. And that's not
20 even counting the rest that we also think are
21 invalid.

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1 So I'm, from my review of the case law
2 and the decisions rendered by this court, that's
3 pretty significant. And I think anybody saying
4 that look, we may have up to 30, 40% fraud here,
5 that's significant.

6 MS. LINDENBAUM: I do need to say that
7 those numbers, the numbers, the fact that half
8 may not have been found valid, that's not because
9 they were found not valid because of fraud. It
10 was a number of reasons, because the voter wasn't
11 registered to vote, it was because the circulator
12 hadn't registered as a non-resident circulator.

13 There was just a small number of these
14 signatures that were thrown out because the
15 signature did not match the voter's signature on
16 file, which is fraud. It is simply not fraud if
17 a voter has, is registered by signed the petition
18 at a different address, or is not registered and
19 believes they should be.

20 MR. BENNET: Definitely. We can work
21 on that and I appreciate that.

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1 MS. LINDENBAUM: Thank you all.

2 MR. BENNET: Mr. McGhie, let me before
3 I give them direction, do you want to?

4 MR. MCGHIE: No, the only thing I was
5 going to say, well, I thought it was exceptional
6 and not just a plain vanilla fraudulent
7 signatures that we normally see. I have never
8 really had somebody quoted in the newspaper as
9 saying I did not circulate these signatures. And
10 even though it's hearsay, I think it's something
11 that we've got to look into.

12 MR. BENNET: Okay, anybody else have
13 anything else to say before I give some
14 direction? I'm going to ask you guys -

15 MR. BENNET: You good, Mr. Gill?

16 MR. GILL: Yeah.

17 MR. BENNET: Okay. I'm going to ask
18 you guys this -- it's 12:38 now. I'm going to
19 ask you guys to, at 1:05, to meet me back here.
20 In the meantime, I'd like for you both and Mr.
21 McGann to get on the phone, call the folks that

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1 you can get in contact with, and ask them about
2 their availability for Friday.

3 And get some sense, I need Mr. McGann
4 to be on all those calls so he can tell me, to
5 get some sense of whether people will come
6 voluntarily or not. If they will not, we're
7 going to consider issuing subpoenas. The actual
8 date will not likely be Friday. But we've still
9 got to meet the calendar.

10 So I'm going to ask you guys, we're
11 going to adjourn this meeting, or we're going to
12 suspend this challenge hearing and suspend this
13 hearing on this motion and give you guys about 30
14 minutes to figure out who can get here and when.

15 MS. LINDENBAUM: Just, I don't have
16 access to these folks. There were our
17 circulators so --

18 MR. BENNET: If somebody has
19 telephone numbers, if you've got email addresses.

20 MR. GONZALES: I think we could, we'll
21 all call together.

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1 MS. LINDENBAUM: Yeah.

2 MR. BENNET: Yeah, I mean give it a
3 try. I'm trying to you know, to accommodate.
4 And we have to hear these people and they got to
5 be here. And we have to conclude by Monday. And
6 so let's go try to work this, okay. And Mr.
7 McGann, I'm going to count on you to give us, to
8 give the Board some direction as to what your
9 belief is in terms of what we can do. If --

10 MS. LINDENBAUM: Can -- I'm sorry, I'm
11 so sorry.

12 MR. BENNET: No, no, you're fine.

13 MS. LINDENBAUM: But before you shut
14 it down, I did want to give one other option here.

15 MR. BENNET: Sure.

16 MS. LINDENBAUM: And one thing that
17 we haven't discussed.

18 MR. BENNET: Great.

19 MS. LINDENBAUM: Since this is just a
20 motions hearing and we weren't going to raise any
21 of the issues on the merits, but one thing that

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1 we did raise in the preconference meeting and
2 that I put on the record as one of our issues is
3 the challenges to a circulator named David
4 Office.

5 And the challenge was that he was a
6 non-registered, out-of-state circulator. And
7 Mr. Office collected a significant number of
8 signatures, I believe it was around 650 or 700 of
9 them. Mr. Office did register as a non-resident
10 petition circulator.

11 However, he did put a different name
12 other than Kathryn Lewis's down, Kathryn Allen's
13 down on his non-resident circulator affidavit.
14 So it is an open question on if those signatures
15 are valid that he collected. If they are, I
16 believe that we could withdraw all of these
17 signatures and still make ballot access, which
18 would negate the need to subpoena these folks.

19 MR. BENNET: My suggestion is that if
20 that's a matter that we will, that has already
21 been raised as a part of the challenge, and it's

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1 a matter that we will ultimately end up having to
2 hear outside of this motion, I suggest that I
3 give you another ten minutes and you discuss that
4 and make some assessment as to how you want to
5 move forward accordingly.

6 MR. GONZALES: So we are -- so it's
7 not Counsel's fault, but this is the first time
8 that this issue was raised yesterday. We're
9 presently researching it. And to the extent that
10 it was going to be raised at the formal hearing,
11 which was tentatively scheduled for Friday, we're
12 in the process of preparing a fulsome response.
13 We do oppose that.

14 MR. BENNET: That's fine. If you, so
15 if you can't deal with it in those ten minutes,
16 fine, I take it back. So, but if you happen to
17 have a couple spare minutes in the next half hour
18 to kind of deal with it, great.

19 MS. LEWIS: I do have a question.

20 MR. BENNET: Please.

21 MS. LEWIS: Not to get to the merits,

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1 I completely understand where we are right now.
2 But you did raise that, so --

3 MR. BENNET: That but started the
4 violence (Laughter.)

5 MS. LEWIS: Sorry. But, so if the
6 issue that he, Mr. Office, registered in perhaps
7 another matter or for another candidate as a
8 circulator, and you're essentially saying that
9 this defect was cured, and you can use this as
10 corroboration of the fact that he was an out-of-
11 state circulator, but he just did not follow the
12 protocol in this particular matter?

13 MS. LINDENBAUM: Yes, I wasn't sure
14 if I brought that at all in my stuff, right. So
15 he registered in June, so right when he started
16 circulating petitions for Ms. Allen, he also
17 registered for Rustin Lewis. So in this same
18 time frame that he registered as a non-resident
19 circulator.

20 And the non-resident circulator form
21 and the regs say that really the purpose of this

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1 is so that you can get the information for this
2 person so they agree to be subject to the District
3 of Columbia law and process laws. And by signing
4 this, even though it was for a different
5 candidate, he's done that.

6 So the necessity of this non-resident
7 petition circulator form has been met. It's a
8 technical and minor error for him not to have
9 filled out, in addition to Rustin Lewis, who's
10 running in the same race here, to also put Kathryn
11 Allen's name as another person whose signatures
12 he was circulating for.

13 So to be absolutely clear, I think we
14 may have a different, we would have had a
15 different situation is maybe it was people
16 running for different position, or in of course
17 different election cycles.

18 But here it was the same election
19 cycle, same position for this at-large City
20 Council race, and he's accepting all the service
21 of process and other things that come with the

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1 non-resident petition circulator.

2 I view this as a technical error, and
3 that about 700 signatures shouldn't be thrown out
4 and voters shouldn't be disenfranchised because
5 this circulator erred by not writing in another
6 name on here.

7 MR. GONZALES: So --

8 MR. BENNET: But we're not hearing
9 that.

10 MR. GONZALES: We're not hearing
11 that, but let me just say this: That argument is
12 in direct contravention of the existing municipal
13 regulation. That's not all, but that's one of
14 our primary points. But we're still working on
15 our response.

16 MR. BENNET: We obviously can't
17 resolve that today. So okay, you have rules. We
18 will see you at 1:15. Mr. McGann.

19 MR. MCGANN: Yes, sir.

20 MR. BENNET: Work, okay, thank you.

21 (Whereupon, the above-entitled matter

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1 went off the record at 12:41 p.m. and resumed at
2 1:36 p.m.)

3 MR. BENNET: We're back on the record
4 now. Let me kind of start off by thanking you
5 for trying to work through this, work it out. It
6 is really important for us, and we do see this as
7 an exceptional circumstance where we really need
8 to make sure that we do everything we can to
9 accommodate the parties.

10 So first, what we'd like, and this is
11 in response to your motion. So we want to modify
12 your motion in terms of what we agree to. What
13 we'd like to do is, since we have, I understand
14 you've spoken with Mr. Howard. Of the five
15 people, it appears that he's the most critical of
16 the five, that he's voluntarily, he's willing to
17 voluntarily come in on Friday.

18 So we'd like to, what we'd like to do,
19 what we're going to do is to schedule the hearing
20 for Friday morning at ten o'clock with Mr.
21 Howard. We haven't been able to have any contact

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1 with, I understand if you were not able to
2 informally contact anybody else other than Mr.
3 Howard. Let me get through, okay, and I'll let
4 you.

5 So, and we will also issue to Mr.
6 Howard a subpoena for Friday. Part of what we're
7 trying to do, everybody, all the parties seem to
8 have really big issues with Monday, and I really
9 appreciate it. So we want to try and accommodate
10 that as best possible.

11 Anybody else that you were able to get
12 in contact with of the five people and are able
13 to come on Friday voluntarily, we will certainly
14 hear their testimony on Friday. We are issuing
15 a subpoena to Mr. Howard, one, since he's
16 volunteered, since he's indicated verbally that
17 he's able to come in and he volunteers to do so.

18 I have an issue with regard to issuing
19 subpoenas for somebody to come in two days. So,
20 but since he's said he's open, he's voluntary,
21 and so we're going to do that and issue the

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1 subpoena and have the hearing at Friday at ten
2 o'clock.

3 I will not issue subpoenas for Friday
4 for anybody else, unless those persons are, you
5 are able to get in contact with them and they're
6 willing and volunteer to come in on Friday. We
7 will also, we are also open, and I will schedule
8 the hearing for Sunday afternoon for anyone else
9 who is able to come in voluntarily.

10 While we will issue subpoenas, we are
11 not able to require that somebody appear on
12 Sunday with a subpoena. So, but if they're able
13 and willing to come in on Sunday, we will hold a
14 hearing Sunday afternoon to hear those persons to
15 accommodate the unavailability or potential
16 unavailability on Monday of the parties.

17 And let's see. Any other things that
18 we? Oh, yeah. If you want us to issue subpoenas
19 for the, anybody else that's available Friday,
20 then we need to know by tomorrow by noon so we
21 can issue subpoenas for those persons as well.

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1 And let me just go back and repeat.
2 If we issue a subpoena today for someone to appear
3 on Friday, and they haven't volunteered to appear
4 on Friday, the time frame is so short we just
5 don't believe that the validity of the subpoena
6 would be upheld. And it just would end up
7 creating even more minutiae in the process, and
8 I think would not allow us to get to the issues
9 that are really critical here.

10 The other thing with regard to Friday,
11 and I promise I'm going to let you speak, the
12 other thing with regard to Friday is we will also
13 hear on Friday the other issue that appears to
14 have been brought up regarding, I don't remember
15 the exact matters around that. Do you remember?

16 MS. LEWIS: Yeah, as it relates to the
17 out-of-state registration of the petition
18 circulator. We will hear that issue as well.

19 MR. BENNET: Okay. And so that's our
20 response to your subpoena, I mean, sorry, to your
21 motion. And I believe that that addresses the

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1 major issues, at least that I heard in the earlier
2 part of the discussion. So I will let you
3 respond to that initially.

4 MR. GONZALES: Thank you, Mr. Chairman.
5 So to simplify things, I think we'll withdraw our
6 request with respect to Ms. Harris. We will be
7 seeking an affidavit from her, and I understand
8 that they will challenge the affidavit. And if
9 that indeed occurs, we'll address it at the time.
10 But I think that simplifies things.

11 MR. BENNET: Okay.

12 MR. GONZALES: In terms of the other
13 three, we're going to try to get in touch with
14 them. Let me talk about Thompson and Parker
15 first.

16 MR. BENNET: Okay.

17 MR. GONZALES: Thompson and Parker.
18 Mr. Parker is or was, I guess I just learned that
19 for certain that he is not the Campaign Manager
20 for Ms. Allen anymore. But he was. And so the
21 reason that's important is because he's

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1 professionally involved in this.

2 In fact, he's given statements and he
3 knows that this challenge was going forward. And
4 his proximity to the candidate and to the issue
5 is incredibly close. It's immediate. And so
6 the type of concerns that your honor, I'm sorry,
7 Mr. Chairman raised earlier that, look, this may
8 not be fair, I think they're lessened to some
9 degree with someone like him.

10 With Mr. Thompson, to a lesser extent,
11 it's the same reasoning. He's clearly involved
12 in this, he knows that this is going on, he's
13 made public statements regarding it. And
14 apparently he was hired by Ms. Allen's campaign.
15 And so those same concerns aren't applicable,
16 those same concerns that Mr. Chairman identified
17 earlier are not applicable to him as well.

18 Final one's Ms. Lewter, and the
19 concerns that Mr. Chairman raised are applicable.
20 Indeed, it looks like she may have been a victim
21 all along here. Why inconvenience her with two

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1 days? So we're going to try to get in touch with
2 her. And I guess then if we get in touch with
3 her by noon tomorrow, we'll ask for the subpoena.

4 The one thing that I would suggest is
5 it is possible that you could issue the subpoena
6 today with respect to her. And if indeed she
7 doesn't appear, we'd withdraw the request. We
8 would withdraw the request so she would face no
9 sanction associated with that, and so that we
10 wouldn't have any concerns with non-compliance
11 with the subpoena.

12 MR. BENNET: This is Ms. Lewter?

13 MR. GONZALES: Yes, with Ms. Lewter.
14 And I think that would be fair to her, I think it
15 would address the concerns that the Board has
16 identified. But that's our position, and I
17 understand that the Board has already, the Board
18 has laid out a framework here, but that's just a
19 suggestion.

20 MR. BENNET: Yeah, before I respond
21 to you, do you want to address anything?

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1 MS. LINDENBAUM: I think that any
2 subpoenas issued here, except for when somebody
3 says they're going to come voluntarily, you still
4 face the same problems, it's a due process
5 problem I believe, that it does not give them
6 time to quash or to move to have it modified.
7 And that's a fundamental matter of fairness that
8 simply cannot, they can't get over within one
9 day. Be it Friday or Sunday.

10 MS. LEWIS: So just from both parties'
11 perspective, are you all thinking that you may
12 want us to be available on Sunday? Just so we
13 can make sure for our own planning purposes that
14 we hold that time frame open?

15 MR. GONZALES: Yes.

16 MS. LINDENBAUM: I don't have any
17 witnesses that I would bring in, so not for me.

18 MS. LEWIS: Okay.

19 MR. BENNET: Okay, so potentially
20 Sunday afternoon. One of the things that I did
21 not say is that whatever affidavits that you can

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1 get that you commented about earlier, we'd
2 certainly be happy to have those and to consider
3 those as well, either as a, you know, either in
4 lieu of someone testifying or in addition to
5 someone testifying, quite honestly, but --

6 MS. LEWIS: And that's the same for
7 you, Ms. Lindenbaum. We're not just directing
8 that to one particular party.

9 MS. LINDENBAUM: To be clear, you
10 would need those Friday, not Sunday, right?

11 MS. LEWIS: We would need affidavits
12 by Monday.

13 MR. BENNET: To consider. We have to
14 have a decision out by Monday. So it'd be great
15 to have those affidavits Friday. We, you know,
16 Sunday, whatever. But we have to have a decision
17 out. And we will consider them any time prior
18 to issuing the decision.

19 MS. LINDENBAUM: My point is more that
20 if they were to submit an affidavit on Sunday or
21 Monday, and we don't have a hearing, I wouldn't

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1 have the opportunity to refuse the affidavit.

2 MR. BENNET: That's correct.

3 MS. LINDENBAUM: Or, and so I think
4 that that could be a problem.

5 MR. BENNET: That's correct.

6 MR. MCGHIE: If they submit an
7 affidavit on Sunday, you can respond Sunday
8 evening. I mean, because we check our email. So
9 in the --

10 MR. BENNET: And we're actually all
11 weekend.

12 MR. MCGHIE: Yeah, so if you have any
13 objections to the affidavit --

14 MR. BENNET: This weekend.

15 MR. MCGHIE: Respond by, state your
16 objections by email or whatever, and we'll
17 address that so we can make a decision on Monday.

18 MR. BENNET: But I think your points
19 though in terms of fairness is not a bad one
20 relative to when we should have affidavits. So
21 if we get an affidavit, it should be by Sunday.

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1 MS. LINDENBAUM: Yeah, I just think
2 especially in this case where there are now
3 conflicting statement going on all over --

4 MR. BENNET: Very different.

5 MS. LINDENBAUM: Without cross-
6 examining, we have a problem.

7 MR. BENNET: No, I get it. No, I
8 think affidavits should be in by Sunday.

9 MR. MCGHIE: And one more thing with
10 respect to the new issue, if we're going to
11 address it on Friday. I know you said you would
12 only work in our response to the new issue. Is
13 it possible that you could submit whatever you
14 have in writing Thursday morning, like by ten
15 o'clock, and then you respond Thursday by close
16 of business?

17 MR. GONZALES: Yes.

18 MR. BENNET: Okay, all right. So
19 this is how we're going to respond to your motion,
20 and that is that we'll subpoena, we will, since
21 Mr. Howard has volunteered, we will confirm that

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1 by email and also submit a subpoena to him. We
2 will have a hearing on the matter of those
3 petitions on Friday.

4 We will also hear and consider
5 affidavits from any of the other five persons on
6 Friday. If there's someone who's able to come
7 in and they volunteer, if you let us know today,
8 we'll get them a subpoena out too. And we will
9 hear them.

10 We will accept affidavits until Sunday
11 relative to anybody that we have not had an
12 opportunity to appear before us. And we will
13 hold Sunday afternoon open, probably in the three
14 o'clock time frame, to have a hearing for any
15 person on Sunday afternoon that would voluntarily
16 come in and do that.

17 We will, the deadline for that,
18 though, has to be by Friday morning, by the
19 hearing Friday morning. I don't, don't call us
20 Saturday and say, hey, we got somebody to come in
21 and we'll be there Friday, that's a Sunday

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1 afternoon. So by the end of the hearing on
2 Friday, we need to know if you've got others that
3 are willing and volunteering to come in for us to
4 be heard on Sunday afternoon.

5 MR. GONZALES: And until tomorrow
6 noon we can still request subpoenas for people
7 that we are able to get in contact with, correct?

8 MR. BENNET: Yes, that's correct.

9 MR. GONZALES: Thank you.

10 MR. BENNET: So we have that down on
11 the record. Are there any other things we need
12 to make clear? Ms. Lewis?

13 (Off-mic comments.)

14 MS. LEWIS: So in terms of the
15 suggestion about, I think it was as it relates to
16 Ms. Harris?

17 MR. BENNET: No, Lewter.

18 MS. LEWIS: Oh, Ms. Harris or Lewter?
19 Who was the one where you said you withdraw the?

20 MR. GONZALES: Yes. So we would
21 withdraw Ms. Harris, yes.

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1 MS. LEWIS: Withdrawing Ms. Harris.

2 MR. GONZALES: Yes.

3 MS. LEWIS: But for Lewter, you were
4 indicating?

5 MR. GONZALES: For Lewter, our
6 request is that the Board issue a subpoena, which
7 we would try to get served immediately, we have
8 the resources already in place to get that done
9 by personal service. And then if she did not in
10 fact appear, we would withdraw the subpoena. And
11 the reason we would withdraw it is to protect her
12 from any consequences that she would have if she
13 didn't appear.

14 MR. BENNET: No, I don't want to do
15 that. And I'm not going to. But I think you're
16 going to work to try and get her to voluntarily
17 appear. And if indeed she agrees to that, we'll
18 issue a subpoena by tomorrow.

19 MR. GONZALES: And then we'll
20 personally serve it on her.

21 MR. BENNET: Perfect, okay.

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1 MS. LEWIS: Okay.

2 MR. BENNET: I think we've struck a
3 way forward. Great work. Thank you so much.
4 And we appreciate the opportunity to move this
5 forward. So with that, I think we're adjourned.

6 MS. LEWIS: Thank you.

7 MR. BENNET: Thank you so much, we'll
8 see you Friday.

9 (Whereupon, the above-entitled matter
10 went off the record at 1:51 p.m.)

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