

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

+ + + + +

WEDNESDAY

DECEMBER 3, 2014

+ + + + +

The Regular Board Meeting of the District of Columbia Board of Elections convened in Room 280 North, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:30 a.m., Deborah K. Nichols, Chairman, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

DEBORAH K. NICHOLS, Chairman
DEVARIESTE CURRY, Member
STEPHEN I. DANZANSKY, Member

BOARD OF ELECTIONS STAFF PRESENT:

CLIFFORD D. TATUM, Executive Director
KENNETH MCGHIE, General Counsel
CECILY COLLIER-MONTGOMERY, Director of the
Office of Campaign Finance

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

10:41 a.m.

1
2
3 CHAIR NICHOLS: Good morning. I
4 hereby call to order the regular meeting of Board
5 of Elections for December 2014. It's Wednesday,
6 December 3rd, 2014. The time is 10:41 a.m. We
7 are meeting in Room 280 North of One Judiciary
8 Square.

9 I am Deborah K. Nichols, Chairman of
10 the Board. Present with me this morning are
11 board members Devarieste Curry and Stephen
12 Danzansky. Also present this morning are Mr.
13 Kenneth McGhie, our general counsel; Mr. Clifford
14 Tatum, our executive director; and Ms. Cecily
15 Collier-Montgomery, the board's director of
16 campaign finance.

17 MS. COLLIER-MONTGOMERY: Good morning.

18 CHAIR NICHOLS: Without objection, the
19 agenda for this morning is hereby adopted.
20 Unless there are corrections to the minutes of
21 the regular board meeting of October 2014, they
22 are adopted subject to minor edits.

1 Are there any matters that board
2 members wish to address in this public meeting?

3 (No audible response.)

4 Hearing none, we will now move on to
5 the report of the board's executive director, Mr.
6 Clifford Tatum.

7 MR. TATUM: Thank you, Madam Chair.

8 The items on my report today include
9 the certification of the November 4th, 2014
10 general election results. As a result of those
11 election results, a certification of the vacancy
12 of the Office of Ward 4, member of the council of
13 the District of Columbia and other general
14 election matters.

15 I would propose that for the sake of
16 time and brevity of the record that I will read
17 the election results for the citywide and the
18 ward based contests into the record by naming the
19 winner of each contest. And as we move down the
20 ballot in to the ANCs, I would propose that we
21 incorporate the official result's summary report
22 into the record so that the winners of the ANCs

1 become a part of the record as opposed to reading
2 each individual name.

3 Madam Chair, at the conclusion of the
4 November 4th general election day, the board
5 began processing absentee ballots and special
6 ballots. We concluded the tabulation of all
7 special ballots on November the 21st, 2014 and
8 pursuant to D.C. Code 1001.09(a), a post-election
9 audit began on November 24th and concluded on
10 December the 1st.

11 During the audit we experienced a few
12 discrepancies in the hand tally of the results
13 compared to the machine count. But only one
14 precinct's results exceeded the margin of error.
15 As a result of that discrepancy, we chose a
16 second precinct from the same Ward and audited
17 its results.

18 The results of the second audit,
19 precinct audit, was within the margin of error as
20 provided by the statute and we were able to
21 conclude the audit.

22 Accordingly -- and I might add, the

1 discrepancies noted did not effect any of the
2 contests for the November 4th election.
3 Therefore, I propose that we certify and announce
4 the winners of the November 4th general election.
5 And I will do so by announcing their names
6 accordingly and ask the board to adopt the
7 certification.

8 For the delegate to the U.S. House of
9 Representatives, the winner is Eleanor -- the
10 highest vote getter was Eleanor H. Norton,
11 Eleanor Holmes Norton, with 143,923 votes.

12 The winner of the mayor of the
13 District of Columbia, the highest vote getter,
14 Muriel E. Bowser, with 96,666 votes.

15 The winner of the chairman of the
16 council of the District of Columbia is Mr. Phil
17 Mendelson with 137,889 votes.

18 The winner of the at-large member of
19 the council of the District of Columbia seat,
20 there are two seats that were vacant for this
21 particular election, the first seat goes to Anita
22 D. Bonds, with 85,575 votes. And Elissa

1 Silverman with 41,300 votes.

2 The next contests are the Ward-based
3 contests, Ward 1, member of the council, the
4 winner and highest vote getter is Brianne K.
5 Nadeau with 17,024 votes.

6 The Ward 3 member of the council
7 winner, with the highest votes, is Mary M. Cheh,
8 with 20,314 votes.

9 The winner of the Ward 5 member of the
10 council, with the highest votes, Kenyan McDuffie,
11 with 19,290 votes.

12 The winner of th Ward 6 member of the
13 council, with the highest votes if Charles Allen,
14 with 23,668 votes.

15 The attorney general contest of the
16 District of Columbia, the winner with the highest
17 votes was Karl A. Racine, with 63,774 votes.

18 The winner of the United States
19 Senator, with the highest votes, was Paul
20 Strauss, with 116,901 votes.

21 The winner of the United States
22 Representative, with the highest votes, I

1 Franklin Garcia, with 114,073 votes.

2 Going back to the Ward-based contest
3 for the State Board of Education, the Ward 1
4 member winner with the highest votes is Laura
5 Wilson Phelan, with 6,903 votes.

6 The Ward 3 member of the State Board
7 of Education winner is Ruth Wattenberg, with the
8 highest votes of 7,869 votes.

9 The winner of the Ward 5 member of the
10 State Board of Education, with the highest votes,
11 Mark Jones, with 17,410 votes.

12 And the Ward 6 member of the State
13 Board of Education winner, with the highest
14 votes, is Joe Weedon, with 13,225 votes.

15 And the last citywide measure was the
16 Initiative Measure Number 71, Legalization of
17 Possession of Minimal Amounts of Marijuana for
18 Personal Use Act of 2014, for the initiative
19 there were 115,050 votes, against was 49,168.

20 Madam Chair, I'd ask that we
21 incorporate the summary report generated on
22 December 2nd, 2014 into the record to incorporate

1 the AMC winners into the official record.

2 CHAIR NICHOLS: All right. It is
3 done.

4 I will now entertain a motion to
5 certify the results of the November 4th, 2014
6 general election as read by the executive
7 director.

8 MR. DANZANSKY: So moved, Madam Chair,
9 that we certify the results of the November 4
10 election, 2014 election.

11 MS. COLLIER-MONTGOMERY: I second.

12 CHAIR NICHOLS: All in favor, aye.

13 (Chorus of ayes.)

14 All opposed.

15 (No audible response.)

16 Ayes have it.

17 (Interruption due to public service
18 announcement.)

19 MR. TATUM: Madam Chair, as a result
20 of the certification, the election results, the
21 mayor-elect, Ms. Muriel Bowser, who was the
22 sitting Ward 4 council member has submitted a

1 letter of resignation to the board, announcing
2 her resignation to be effective as of noon on
3 January 1, 2015. By submitting that resignation
4 to us today, we are able to certify a vacancy for
5 the Ward 4 council member seat. And accordingly,
6 would need to certify the vacancy and then
7 proceed with establishing a special election
8 date.

9 CHAIR NICHOLS: All right. So having
10 received a letter of resignation on December 2nd
11 from Mayor-elect Muriel Bowser, who is the Ward 4
12 member of the council, and that resignation being
13 effective January 1, 2015 at noon, the board must
14 now certify a vacancy in the office and schedule
15 a special election.

16 Mr. McGhie will outline the procedure
17 for certifying a vacancy and scheduling the
18 special election.

19 MR. MCGHIE: Yes, Title 3 DCMR Chapter
20 9 governs the procedure of the District of
21 Columbia Board of Elections, in the event a
22 vacancy occurs prior to the expiration of the

1 term of office of a ward member of the council in
2 the District of Columbia.

3 As you stated, the board received a
4 letter of resignation from Muriel Bowser on
5 December 2nd, 2014. Accordingly, 3 DCMR Section
6 903.3 states that within five working days of
7 receipt, the board must certify the seat vacant.

8 Therefore, pursuant to 903.3, I'm
9 requesting that the board, at this time, consider
10 a motion declaring the office of Ward 4 member of
11 the D.C. council vacant as of January 1st, 2015,
12 noon, pursuant to the letter of resignation from
13 Mrs. Bowser.

14 (Interruption due to public service
15 announcement.)

16 CHAIR NICHOLS: All right. I will
17 entertain a motion to certify the vacancy in the
18 office of Ward 4 member of the D.C. council as of
19 January 1, 2015 at noon.

20 MR. TATUM: Madam Chair, so moved.

21 CHAIR NICHOLS: May I have a second?

22 MR. DANZANSKY: Second.

1 CHAIR NICHOLS: All in favor, aye.

2 (Chorus of ayes.)

3 All opposed.

4 (No audible response.)

5 Ayes have it.

6 MR. MCGHIE: The next three -- Title
7 3 DCMR Section 910.2 states, "At the time of
8 certification of a vacancy, the board shall, if
9 applicable, call a special election. A call for
10 a special election shall include the following:
11 the date upon which the special election is to be
12 held, the date upon which nominating petition
13 forms will be made available to candidates, and
14 other relevant election calendar information." I
15 believe the executive director has a
16 recommendation at this time as to the date that
17 we should schedule a special election.

18 CHAIR NICHOLS: Mr. Executive
19 Director, what is your recommendation?

20 MR. TATUM: Madam Chair, the
21 recommendation is for the special election to be
22 held on April 28th, 2015.

1 CHAIR NICHOLS: All right. Mr.
2 General Counsel.

3 MR. MCGHIE: At this time, I would ask
4 the board to consider a motion accepting the
5 executive director's recommendation.

6 CHAIR NICHOLS: All right. I'll
7 entertain -- all in favor?

8 (Chorus of ayes.)

9 All opposed?

10 (No audible response.)

11 Ayes have it.

12 MR. MCGHIE: Okay. Then there's
13 nothing further with respect to certifying the
14 vacancy and scheduling the special election.

15 CHAIR NICHOLS: All right. Mr. Tatum.

16 MR. TATUM: Madam Chair, as it relates
17 to the April 28th, 2015 special election, the
18 staff will make nominating petitions available on
19 Monday, December 8th, 2014. And the circulation
20 period will be from Monday, December 8th, 2014
21 through January 28th, 2015. The deadline is at
22 January 28th, 2015 at 5 p.m.

1 CHAIR NICHOLS: All right.

2 MR. TATUM: And we will make the
3 calender available to anyone that would like to
4 see it, in our office and as well as posting it
5 to the website. And that's all I have.

6 CHAIR NICHOLS: All right. Thank you,
7 Mr. Tatum.

8 Are there any questions from members
9 of the board?

10 (No audible response.)

11 All right. We will now hear the
12 report of the board's General Counsel, Mr.
13 McGhie.

14 MR. MCGHIE: Yes. The first thing I
15 have on my agenda is emergency and proposed
16 regulations to amend the 3 DCMR Section 910,
17 special elections.

18 The amendment, through Chapter 9,
19 establishes the timeframe in which the board must
20 conduct special elections to fill vacancies.
21 This is a regulation that we should have done a
22 while back. The regulations currently state that

1 the -- the special election the board has up to
2 144 days to schedule a special election. That's
3 the old law; the new law states that the special
4 election should be held on a Tuesday, occurring
5 at least 70 days and not more than 174 days after
6 the date of a vacancy. So this juts puts our
7 regulations in compliance with the law.

8 And so I would -- I request, at this
9 time, a -- I'll entertain a motion to adopt this
10 as an emergency and proposed rulemaking.

11 CHAIR NICHOLS: I'll entertain a
12 motion to that --

13 MR. TATUM: Yes, I move we --

14 CHAIR NICHOLS: -- extent.

15 MR. TATUM: -- we adopt the emergency
16 proposed regulations on Section 3 DCMR Section
17 910. I'm sorry. 3 DCMR Section 910, special
18 elections.

19 CHAIR NICHOLS: All right.

20 MR. TATUM: Conform to the law.

21 CHAIR NICHOLS: All right. A motion
22 is before us. All in -- all in favor, say aye.

1 (Chorus of ayes.)

2 All opposed?

3 (No audible response.)

4 Ayes have it.

5 MR. MCGHIE: Okay. The second thing
6 I have on my agenda is just a litigation status
7 update. There's just two matters that are
8 pending in court.

9 The first one is Sewell versus the
10 D.C. Board of Election Ethics. This was a
11 strange complaint that we got where -- from Mr.
12 Sewell alleging that the board and campaign
13 finance was harassing him. We filed a motion to
14 dismiss with failure to state a claim, which was
15 originally granted. But then Mr. Sewell re-filed
16 this complaint, and so, we had to file another
17 motion to dismiss, and that is currently pending.

18 The second one is -- is one that I
19 guess the board familiar with. We've mentioned
20 in several of our meetings, McMillian versus the
21 Board of Election. And this is the one dealing
22 with the rent is too damn high complaint. We

1 filed our motion to dismiss, and that is still
2 pending.

3 CHAIR NICHOLS: All right. Thank you,
4 Mr. McGhie.

5 Are there any questions of Mr. McGhie?

6 (No audible response.)

7 All right. We'll move on to the
8 report of our campaign finance director, Ms.
9 Cecily Collier-Montgomery.

10 MS. COLLIER-MONTGOMERY: Yes. I will
11 submit the stats for the Office of Campaign
12 Finance for the months of November 2014 and also
13 for October 2014, for the record.

14 And the stats will be presented at the
15 website of the Office of Campaign Finance before
16 the close of business today.

17 But I would like to point out, for
18 members of the public, that a notice has been
19 published at our website on November the 17th,
20 2014, of the significant amendments to the
21 Campaign Finance Act, which will be effective
22 January the 31st, 2015, pursuant to the Campaign

1 Finance Reform and Transparency Act of 2013.
2 There will be training in the Office of the
3 Campaign Finance -- in the Office of Campaign
4 Finance, starting tomorrow, on the new law. And
5 that will be in our office at 2000 14th Street.
6 We are located on the fourth floor, and the
7 training will start at 12 o'clock. And it's held
8 between 12 to 1, for anyone who would like to
9 attend.

10 And that completes my report.

11 CHAIR NICHOLS: Thank you, Ms.
12 Montgomery.

13 Are there any public matters to come
14 before the board this morning?

15 Ms. (inaudible), would you please come
16 to the table and identify yourself for the
17 record.

18 MS. BRIZILL: Good morning. My name
19 is Dorothy Brizill. I'm a resident and vote in
20 the District of Columbia. And my home address is
21 1327 Girard Street, Northwest, Washington, D.C.

22 I would like to ask the board a

1 question with regards to the election returns for
2 the November election. And it's a question that
3 was put to me two weeks ago, at a meeting at the
4 -- of the Ward 7 Democrats.

5 And essentially, I would like Mr.
6 Tatum to give some of his input as regards -- why
7 there were so many under-votes in the November
8 election. Especially for the position of at-
9 large member of the council. I don't have the
10 final certified returns, but I do have your
11 printout of the return that you posted on your
12 website on November the 20th.

13 And you're correct in that Anita Bonds
14 received 85,424 votes. And the next highest vote
15 getter was Elissa Silverman, who received 41,285
16 votes. But the under-votes in that race were
17 81,552 votes. So, yes, Ms. Bonds was the highest
18 vote getter, but as a candidate, even though
19 unofficial, the next highest vote getter was the
20 under-votes. Do you have any idea of why there
21 were so many under-votes? Was it because of the
22 design of the ballot? Was it people targeting

1 their vote? Do you have any sense? Because this
2 became a major subject of discussion at this Ward
3 7 Dems meeting.

4 MR. TATUM: No. Generally what we see
5 are voters who are going to the -- into the
6 polling place and would simply make one
7 selection. Some voters simply will not go to the
8 bottom of the ballot. I think, anecdotally, we
9 had voters who said they didn't want to vote for
10 a second person, is what we saw in the early
11 voting. So I suspect it was just simply voter
12 choice.

13 MS. BRIZILL: Are you -- are you
14 confident that the voter guide -- the design of
15 the ballot informed people that they had the
16 option of voting for two people? Because the
17 question was raised to me that there was a
18 concern about -- in that area.

19 MR. TATUM: Well, the instructions on
20 the paper ballot indicate that it's a vote for
21 two as well as on the touch screen. And the
22 paper ballot is included as a sample ballot

1 within the voter's guide.

2 MS. BRIZILL: And the position was on
3 the face of the ballot, and you didn't have to
4 turn it over on the paper ballot?

5 MR. TATUM: No. It was on the front
6 side of the ballot.

7 MS. BRIZILL: Okay. And in the voter
8 guide, you just said you could vote for two, but
9 you didn't -- you didn't, you know, highlight it?

10 MR. TATUM: I don't recall whether it
11 was highlighted, but it did say "vote for two."
12 And I think, historically, it's been --

13 CHAIR NICHOLS: It's always --

14 MR. TATUM: -- vote for two.

15 CHAIR NICHOLS: -- it's nothing new
16 about the way it's been designed as I --

17 (Interruption due to public service
18 announcement.)

19 MS. BRIZILL: Prior to this board
20 being in place, we've had a situation wherein
21 there was an under-count in certain races,
22 because people failed to flip over the ballot.

1 And that certain races were on the other side of
2 a ballot. So that's why -- I did not vote a
3 paper ballot, so I never saw a paper ballot. But
4 I just was wondering whether or not the problem
5 was that -- the design of the ballot.

6 CHAIR NICHOLS: Everything was on --

7 MR. TATUM: The ANC and the --

8 CHAIR NICHOLS: Initiative.

9 MR. TATUM: -- Initiative were on the
10 back side of the ballot. But all the main -- all
11 the major contests were on the front side.

12 MS. BRIZILL: Thank you.

13 CHAIR NICHOLS: Thank you. Any other
14 members of the public who wish to come before the
15 board?

16 (No audible response.)

17 All right. There being no further
18 business before us, this meeting is adjourned.
19 The time is 11:02 a.m. It is still Wednesday,
20 December 3rd.

21 (Whereupon, the above-entitled matter
22 went off the record at 11:02 a.m.)

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Before: DC BOE

Date: 12-03-2014

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