

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

+ + + + +

WEDNESDAY

MARCH 6, 2019

+ + + + +

The District of Columbia Board of Elections convened a Regular Board Meeting in Room 280 North, 1015 Half Street, S.E., Washington, D.C., 20003, pursuant to notice at 10:00 a.m., Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

MICHAEL BENNETT, Chair
MIKE GILL, Member
DIONNA MARIA LEWIS, Member

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

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

2 (10:19 a.m.)

3 CHAIR BENNETT: Okay, good morning.

4 We are -- I'm going to call the meeting to order.

5 My clock's not on.

6 MEMBER GILL: I have 10:19.

7 CHAIR BENNETT: Okay, so we're 19
8 minutes late. Thanks for showing up early.

9 We'll start by introducing the folks
10 here, to my far right, Ms. Cecily Montgomery,
11 Director of the Office of Campaign Finance. To
12 her left is Mr. Michael Gill. Board member to
13 his left and my right is Mr. Ken McGhie, General
14 Counsel. To my left is Ms. Alice Miller,
15 Executive Director of the Board of Elections.
16 And hopefully, we will have Ms. Dionna Lewis --

17 Is this on? Now it's on. Can you
18 hear me okay, sir?

19 Hopefully, we'll have Ms. Dionna
20 Lewis, Board Member, here as we proceed. We
21 decided to start the meeting a little bit early
22 because we have a hard stop certainly by noon.

1 Anyway, so we apologize for being just a little
2 bit late to our early start.

3 First of all, we would like to have an
4 adoption of the minutes. Mr. Gill, can I get a
5 motion?

6 MEMBER GILL: Motion to adopt the
7 minutes.

8 CHAIR BENNETT: I second, and so the
9 minutes are adopted unanimously. I'm sorry, the
10 agenda is adopted unanimously.

11 Can I get a motion of adoption for the
12 minutes from the last meeting, Mr. Gill?

13 MEMBER GILL: Just to make sure we're
14 all --

15 CHAIR BENNETT: Okay.

16 MEMBER GILL: -- doing this correctly,
17 I think we just adopted the minutes.

18 CHAIR BENNETT: Oh, okay.

19 MEMBER GILL: Let me make a motion to
20 adopt the agenda.

21 CHAIR BENNETT: All right. That's
22 seconded, and the agenda is adopted. And so we

1 -- and that's unanimous. We're moving fast here.

2 And then, the third item on the
3 agenda, since it's been adopted, our Board
4 Matters, Mr. Gill do you have anything for the
5 Board?

6 MEMBER GILL: No, I don't.

7 CHAIR BENNETT: Okay, and I don't have
8 any Board Matters separately. So let's start out
9 with Ms. Cecily Montgomery. Before you start,
10 Ms. Jenkins do we have somebody on the line?

11 MS. JENKINS: Yes, he wasn't there
12 earlier, but he's there now.

13 CHAIR BENNETT: Okay. And Mr. Sindram?

14 MR. SINDRAM: Morning, Mr. Chair.

15 CHAIR BENNETT: Good morning, Mr.
16 Sindram. Thank you.

17 So we're at item 4 on the agenda, and
18 we're starting with the report of the Office of
19 Campaign Finance, Ms. Cecily Montgomery.

20 MS. COLLIER-MONTGOMERY: Yes, good
21 morning. First I would like to report that on
22 February the 19th, 2019, that the Office appeared

1 before the Council's Committee on the Judiciary
2 and Public Safety to present the Fiscal Year 18
3 performance report for the Agency as well as the
4 Fiscal Year 19 performance plan.

5 Before I get into activity of the
6 Agency for the past month, I would like to report
7 on where we are with the Fair Elections Program.
8 On February the 28th, 2019, the Agency met with
9 the planning committee that was organized for the
10 purpose of assisting the Agency with the
11 implementation of the program.

12 And the purpose of that particular
13 meeting was to basically discuss the comments
14 that we had received on the proposed regulations
15 to implement the Fair Elections Program.

16 Basically, what was presented and published in
17 the DC Register were chapters 42 and 43. 42
18 governs the procedures of the Fair Elections
19 Program, and 43 addresses the verification
20 process for the program.

21 And during public comment period, we
22 did receive comments from several members of the

1 public concerning their recommendations as to the
2 proposal. And we did consider those
3 recommendations, and for the most part, they were
4 included in the draft regulation.

5 So the purpose of the meeting was to
6 discuss the revisions to the proposed
7 regulations, and we also at that time determined
8 that we meet with our planning committee at least
9 once every six weeks through the remainder of the
10 calendar year.

11 The next thing is that on, I believe
12 it was February the 27th, 2019, we had a meeting
13 with Gottlieb Simon who was the Executive
14 Director of the Office of the Advisory
15 Neighborhood Commission. And the purpose of that
16 meeting basically was to confirm the public
17 outreach that the Agency has proposed in terms of
18 meeting with the ANC commissions from April of
19 2019 through October 2019, basically for at least
20 twice weekly to present to the members of the
21 community who are present at the meetings, what
22 the purpose of the Fair Elections Program is.

1 And to basically give an overview to let the
2 community know that the Fair Elections Program is
3 available and what it will mean to prospective
4 candidates, as well as to members of the
5 community who may wish to contribute to the
6 candidates who are seeking to participate in the
7 program or who are, in fact, participating in the
8 program.

9 And basically, in terms of the
10 contributor, what it will do is it will provide a
11 match for the contribution that residents of the
12 District of Columbia may make to candidates who
13 are participating in the program by matching it
14 in a match of public funds five-to-one to every
15 contribution that is made from a member of the
16 public up to a certain limit.

17 Also, I would like to report that we
18 are in the process of developing a temporary site
19 for the e-filing system basically to provide for
20 the e-filing of financial reports from
21 prospective candidates in the program as well as
22 for candidates who are actually participating in

1 the Fair Elections Program.

2 And we're preparing for the potential
3 that if there are candidates out there who may
4 register to, again, seek to participate in the
5 program, that we will be able to provide an
6 electronic -- a site at our website online where
7 prospective candidates will be able to file their
8 financial reports.

9 And so, we're preparing that -- for
10 the availability of that for July 31st of 2019,
11 because that is the next filing date, the next
12 potential filing date at which prospective
13 candidates could possibly file. And that
14 temporary site will be presented to us before the
15 end of this month. And hopefully,
16 administratively, it will be completed during the
17 month of April. So I wanted to put that on the
18 record as well.

19 Other than that, we are working on
20 brochures which we hope to be able to disseminate
21 at the ANC meetings. And we also are working on
22 a fact sheet that we hope to make available which

1 will provide information pertinent to qualifying
2 for the program during the 2020 election cycle.

3 In the Office of the General Counsel,
4 we are currently also looking at the other
5 jurisdictions just for some, again, insight into
6 how they handle their debate process.

7 In our Public Information and Records
8 Management division, during the month of
9 February, there were no filing dates for
10 principal campaign committees, political
11 committees, political action committees, or our
12 independent expenditure committees. During the
13 month of February, however, the reports, the
14 summary financial statements were due from the
15 ANC candidates who participated in the 2018
16 election cycle.

17 The reports were due on February the
18 19th, 2019. There were 401 required filers, 370
19 of the candidates timely filed their reports.
20 There were 31 who failed to file, and those
21 candidates have been referred to the Office of
22 the General Counsel for the initiation of the

1 enforcement process. And all 370 of the
2 candidates who timely filed, electronically filed
3 their reports with us.

4 The list of the referrals, the names
5 of the candidates who were referred to the Office
6 of the General Counsel will be included in our
7 stats which will be published at our website at
8 the end of today.

9 We also referred to the Office of the
10 General Counsel several other candidates in the
11 2020 -- I'm sorry, the 2018 election cycle who
12 failed to timely file the \$500 exemption report.
13 And also their names will be available at our
14 website at the end of this day as well.

15 We had one committee that registered
16 during the month of February, that is the DC Term
17 Limits Campaign, that is an initiative committee
18 and they registered with our office on February
19 the 4th, 2019. We also conducted --

20 CHAIR BENNETT: Okay. Sorry, Ms.
21 Miller. Continue.

22 MS. COLLIER-MONTGOMERY: -- entrance

1 conferences during the month of February. They
2 conducted an entrance conference on February the
3 28th, 2019. There were two participants Corina
4 Hernandez, the Treasurer of the DC Young
5 Democrats and Vanessa J. Robinson, the Treasurer
6 of the DC Term Limits Campaign, again, an
7 initiative committee.

8 In our audit branch -- a report that
9 the audit branch conducted, 445 desk reviews of
10 political action committees, constituent service
11 fund, principal campaign committees, as well as
12 of our Advisory Neighborhood Commission
13 candidates who filed their summary financial
14 statement.

15 With our audits, we have one
16 full-field audit that is ongoing, and this one is
17 with respect to a candidate who participated in
18 the 2018 election cycle, that is Sheika Reid for
19 Ward 1. And that full-field audit was initiated
20 on August the 29th, 2018.

21 We have also initiated four full-field
22 audits of newly-elected officials to the School

1 Board as a result of the 2018 election. They are
2 Frazier O'Leary from Ward 4, Committee to Elect
3 Zachary Parker 2018, Jessica Sutter for School
4 Board, and Emily for Education.

5 The audit notification letters were
6 issued on February the 12th, 2019. And the audit
7 records are due in the Office of Campaign Finance
8 on March the 4th, 2019.

9 We also have several periodic random
10 audits which are ongoing. And these periodic
11 random audits are of political action committees
12 with respect to the January 31st, 2019, filing
13 AFSCME PAC, Economic and Protection Party, Ward 7
14 Democrats, and ABC of Metro Washington DC PAC.
15 Those audit letters were issued on February the
16 26th, 2018. And the audit records are due in the
17 Office of Campaign Finance on March the 11th,
18 2019.

19 We also issued two audits during the
20 month of February. The first was Anita Bonds
21 2018, which was issued on February the 28th,
22 2019, and Muriel Bowser's Constituent Service

1 Fund which was issued on February the 4th, 2019.
2 Our audits are available for public review at our
3 website. And, again, the activity report for the
4 Office will be published at the website before
5 the close of business today for your review.

6 And that completes my report, but I
7 would ask the General Counsel to provide the
8 report for the legal division of the Agency.

9 CHAIR BENNETT: Great, thanks.

10 MR. SANFORD: Good morning Mr.
11 Chairman and distinguished Board members, my name
12 is William Sanford, General Counsel for the
13 Office of Campaign Finance. During the month of
14 February, the Office of Campaign Finance received
15 a total of 14 referrals. The Office conducted
16 and completed a total of 19 informal hearings and
17 issued a total of 19 audits which include the
18 following. Ten orders were issued for failure to
19 timely file in which -- failure to timely file
20 reports in which no fines were imposed.

21 Two orders were issued, a failure to
22 respond to request for additional information,

1 which were dismissed. And seven orders were
2 issued for failure to timely file reports in
3 which a total \$10,050 in fines were imposed.

4 Five were imposed against the
5 following respondents. A fine of \$750 was
6 imposed against DC Choice. A fine of \$1,750 was
7 imposed against Melik At-Large. A fine of \$1,750
8 was imposed against Holmes for DC. A fine of
9 \$1,750 was imposed against Dustin Canter for
10 Mayor. A fine of \$1,750 was imposed against
11 Justin Green At-Large. A fine of \$600 was
12 imposed against Nate Brown Mr. Ward 6. And a
13 fine of \$700 was imposed against Committee to
14 Elect Alpha Bah, Esquire.

15 During the month of February 2019, the
16 office did not receive any payments of fines.

17 During the month of February 2019, the
18 Office of the General Counsel maintained a single
19 open investigation. The investigation is
20 investigation number OCF Full Investigation
21 2018-002. The complainant in this matter is
22 Emily Naden. That was filed on December 4th,

1 2018. The respondent is Councilmember Brandon
2 Todd. The alleged infraction is inappropriate
3 use of government resources. That investigation
4 has been completed, and the audit is pending.

5 During the month of February 2019,
6 there were no requests for interpretive opinions
7 and no show cause proceedings were conducted.
8 And that should conclude my report.

9 CHAIR BENNETT: Thank you, Mr.
10 Sanford.

11 Ms. Montgomery, any other matters?

12 MS. COLLIER-MONTGOMERY: No. That
13 concludes the report from the Office of Campaign
14 Finance.

15 CHAIR BENNETT: Thank you. I'll let
16 the record reflect that Board Member Dionna Lewis
17 is present.

18 Next item on the agenda is the
19 Executive Director's report, Ms. Alice Miller.

20 MS. MILLER: Thank you, Mr. Chairman.
21 I'm going to step a little bit out of the norm
22 from how I normally do this and start with taking

1 a moment to recognize the Board's social media
2 postings, just because we did it a little
3 differently this past month and I want to give
4 all the credit to the staff, primarily LaVonna
5 McCann who is sitting out there and Rachel Coll.

6 We took a little different approach.
7 LaVonna who is primarily assigned to our voter
8 registration services came to me and asked if she
9 could take a stab at doing something with social
10 media with the posting since our social media
11 person had resigned in December. And she had
12 some great ideas to keep the traffic coming in so
13 that social media pages would be relevant during
14 this election year.

15 With Rachel's oversight and in
16 recognition of Black History Month, LaVonna
17 drafted a post for all three social media
18 accounts, Facebook, Twitter, and Instagram with
19 information on the Voting Rights Act and included
20 a photograph of the actual document which you see
21 up there portraying the declaration.

22 So after that, Rachel then asked

1 LaVonna to come up with different posts for each
2 week focusing on Black History Month. And the
3 next posts you'll see are three individuals who
4 are honoring civil rights activists who were
5 murdered in Mississippi after they assisted Black
6 voters in registering. And that was followed by
7 recognizing Octavius Catto who's from
8 Philadelphia, an educator, and activist who
9 helped to rally the African-American vote for
10 more than a century before the modern civil
11 rights movement.

12 As we move into March, LaVonna is
13 working on similar posts highlighting prominent
14 women in history who supported the intersection
15 of women's rights and civil rights. The March
16 1st post honors Anna J. Cooper, celebrating
17 suffrage movements by African-American feminists.

18 Also interspersed with these posts was
19 an idea to keep voter registration on the minds
20 of our social media followers. So, on
21 Valentine's Day, there was a post with a cartoon
22 and a heart to plead to our voters to update

1 their registration information.

2 So, I just want to recognize the
3 creativity of the staff, specifically and
4 especially LaVonna whose idea it was to engage
5 and educate the voters in a way that's relevant
6 to our mission, but also highlights things in a
7 little different way in this off-election year.

8 We've gotten a lot of, I guess, thumbs
9 up on these posts. And it's just a little
10 different to do things and points out things
11 differently as we, you know, recognize things
12 related to voting, but just in a different way.

13 CHAIR BENNETT: Well, I think you and
14 the staff will get at least one other thumbs up,
15 and I think maybe three from the other Board
16 members on that.

17 MS. MILLER: Logging onto Twitter now.

18 CHAIR BENNETT: So, and that's great.
19 Great ideas. It's good stuff.

20 MS. MILLER: Thank you.

21 CHAIR BENNETT: It's always good to
22 connect with the voting public.

1 MS. MILLER: All right. Thank you.

2 All right. And as to other business,
3 our final EAVS report for DC was due to the EAC
4 on March 1st. We submitted the report on
5 February 26th. It's the final draft from the
6 initial one that we submitted last month. The
7 EAC reviews the drafts and follows up with the
8 Agency with any questions or information that may
9 seem inconsistent. There were no follow-up
10 questions.

11 Just to recap, the information
12 collected on the report consists of data from
13 across the nation on the state of American
14 elections made public through the federal
15 government through the EAC's website. It will be
16 public sometime in June, I believe.

17 But the data collects information
18 about ballots cast, voter registration, overseas
19 and military voting, election day activities,
20 voting technology, and things of that nature.

21 We provided information on the total
22 number of precincts, number of poll workers, the

1 age of poll workers, provisional ballots cast,
2 counted, mail-in ballot information, same-day
3 registration, voting equipment use, and other
4 information related to the general election.

5 All of our numbers added up, so we
6 don't have any further questions or other
7 information to provide for our EAVS report to the
8 EAC.

9 Also, just as the Office of Campaign
10 Finance, we did provide our budget oversight
11 testimony in responses to questions. In
12 February, we had a few questions that were
13 followed up by a few questions that need to be
14 followed up on, which have also been submitted to
15 them earlier this week.

16 We've been working with the new VR
17 system vendor, VRS, in scheduling our kickoff
18 meetings. We're looking to schedule one of those
19 meetings the middle of next month -- I think,
20 actually, next week. The data conversion process
21 has begun. They've received our voter
22 registration data. And we'll be meeting with the

1 members of the staff who were involved in
2 actually attaching the data so we can figure out
3 what needs to be done, who has problems, who has
4 issues, and how deployment can actually take
5 place and be as seamless as possible.

6 I do want to take one minute and do
7 one other thing. We have a lot intradistrict
8 voters who worked with us during the election.
9 And we could not get things done without their
10 work. So, what we have done, is we got these
11 little plaques made for them.

12 CHAIR BENNETT: That's awesome.

13 MS. MILLER: And had it delivered to
14 them. They weren't very expensive if you want to
15 give us that. And it just recognizes them,
16 because we know we have to come back. And it
17 says, thank you for your support during the 2018
18 election cycle with their name engraved on it and
19 the Board's emblem.

20 And it's, you know, just a thank you
21 from us to them. And they're very appreciative
22 of it. We can't give everybody these. We give

1 certificates to our poll workers, and some other
2 folks get certificates as well.

3 CHAIR BENNETT: Thanks. I'd suggest
4 that maybe next time we do that, we take a moment
5 at our monthly meeting to bring people in and
6 actually have a little ceremony and recognize,
7 this is really critical and important. So I
8 would like for there to be maybe greater public
9 recognition.

10 MS. MILLER: I want to give the credit
11 to Ms. Adams for that. She had those made.

12 CHAIR BENNETT: Yeah, those are great.
13 And I tell you, and all the Board members, and
14 I'm sure that I speak for them all. But we visit
15 many, many sites on election day and see the hard
16 work and sometimes the challenges that people go
17 through. We go by there to say hello and all
18 that, not necessarily to lend a hand. And I
19 often see the -- not frustration, but just the
20 hard work and challenges that people end up going
21 through on days.

22 But people there they -- you know, to

1 vote and they will run out sometimes at lunchtime
2 or run out, take a break from work. They've got
3 a long line, people get frustrated, but I have
4 not seen one occasion where a person who has
5 volunteered or getting paid at the polls that are
6 working that don't do everything they possibly
7 can to accommodate voters and to get people in
8 and out efficiently.

9 And especially the last time, where we
10 had lots of backups and unfortunately a few more
11 mechanical challenges than we would like. But I
12 would really like to have an opportunity to shake
13 people's hands, and I'm sure the other Board
14 members would too. And let's do a public
15 recognition the next time.

16 Mr. Gill, are you good? Ms. Lewis?

17 MEMBER LEWIS: I think that's a great
18 idea.

19 CHAIR BENNETT: Great, okay. And
20 anybody who is here, thank you for your service
21 and thanks for the hard work. It is not easy, to
22 say the least, and we recognize that. So we will

1 try and do that.

2 That's a great idea. Thank you for
3 taking that initiative.

4 MS. MILLER: That's it. That's it for
5 me.

6 CHAIR BENNETT: All right, next item
7 on the agenda, General Counsel's report, Mr.
8 McGhie.

9 MR. MCGHIE: Okay, the first thing I
10 have on my agenda is a proper subject matter
11 determination on proposed initiative, it's
12 entitled, District of Columbia Term Limits
13 Campaign DC TLC initiative. Now, when the board
14 conducts a proper subject matter determination
15 hearing, it doesn't really pass on the merits of
16 an initiative.

17 The citizens of the District of
18 Columbia, if you're a registered qualified
19 elector can propose an initiative on any subject.
20 An initiative means that you're trying to propose
21 a law in the District of Columbia. So, you're
22 trying to create a law, or you're trying to amend

1 a law in the District of Columbia.

2 And like I said, you can do it on
3 pretty much anything you want to except with
4 respect to certain subjects. So when the Board
5 is making its determination on whether it's a
6 proper subject, it's just looking to see whether
7 or not it doesn't violate any of the prohibited
8 areas for the initiative, that it does not
9 appropriate funds. You cannot have an initiative
10 that appropriates funds which means that you
11 can't have an initiative that takes away the
12 discretion from the Council as far as funding an
13 initiative.

14 So if you have mandatory language in
15 your initiative that says money shall be directed
16 towards this activity. That's appropriating
17 funds, and that's not going to be allowed.

18 You can't have an initiative that
19 negates or limits the Budget Act, which means
20 that something in your proposed initiative is
21 targeting a current budget of the Council. And
22 it's neither negating or limiting a provision in

1 there.

2 Obviously, you can't have an
3 initiative that violates the U.S. Constitution.
4 You can't have an initiative that's contrary to
5 the Home Rule Act. You can't have an initiative
6 that violates the Human Rights Act. And one of
7 the last things is that you have to properly file
8 all your documents, a State or organization, with
9 the Office of Campaign Finance.

10 So as long as your proposed initiative
11 doesn't fall into one of those categories, it
12 will be deemed a proper subject for an initiative
13 in the District of Columbia, and your measure
14 will be able to move forward.

15 CHAIR BENNETT: Okay. Has the -- I'm
16 sorry, has the proponent of the proposed measure,
17 measures statutory clerical requirements which
18 affect this filing?

19 MR. MCGHIE: Yes, they properly filed
20 all of the documentation that was necessary with
21 the Office of Campaign Finance.

22 CHAIR BENNETT: Okay, are there any

1 comments from the opponents of the measure?

2 Anyone here?

3 MR. MCGHIE: Is there anybody who
4 would like to be heard as an opponent of the
5 measure? Step forward and now take a seat.

6 Okay, would you please state your name
7 and address for the record, and if you're
8 representing an organization, please state your
9 organization.

10 MR. WALTER: Good morning, Mr.
11 Chairman, and members of the Board of Elections.
12 My name is Zach Walter, and I'm Assistant General
13 Counsel to the Council of the District of
14 Columbia. I'm here today on behalf of Phil
15 Mendelson, Chairman of the Council of the
16 District of Columbia to request that the Board
17 find that the District of Columbia Term Limits
18 Campaign initiative is not a proper subject
19 matter for initiative in the District of Columbia
20 because the proposed initiative is contrary to
21 the terms of Home Rule Act.

22 The proposed initiative would amend DC

1 Official Code 1-1001.08 to provide in part, that
2 no person elected to the office of mayor,
3 chairman of council, attorney general, member of
4 the council, or State Board of Education shall
5 serve for more than two full consecutive
6 four-year terms.

7 However, Sections 402 and 421 of the
8 District Charter define the sole qualifications
9 for any candidate seeking to run for mayor or
10 member of the council. Prohibiting candidates
11 for office based on the length of the service
12 constitutes the establishment of a qualification
13 to hold that office.

14 According to the substantial weight of
15 a legal authority, when a Constitution or a
16 charter document enumerates specific eligibility
17 requirements for a particular office, the
18 specification in that regard is exclusive. And
19 no measure other than a constitutional or a
20 charter amendment may establish additional or
21 different qualifications for office.

22 The U.S. Supreme Court recognized this

1 principle in U.S. Term Limits versus Thornton,
2 where the Court invalidated an amendment to the
3 Arkansas Constitution, which among other things,
4 prevented any person elected to three or more
5 terms as a member of the U.S. House of
6 Representatives from placing their name on the
7 ballot for election to the U.S. House of
8 Representatives from Arkansas.

9 In declaring that statute
10 unconstitutional, the Supreme Court necessarily
11 recognized that the imposition of a term limit
12 was tantamount of the imposition of an
13 impermissible qualification beyond those
14 enumerated in the Constitution.

15 Similarly, in Gerberding versus
16 Monroe, the Washington Supreme Court struck down
17 Initiative 573 that prevented individuals who had
18 held state legislative seats or certain state
19 constitutional offices for a prescribed time
20 period from filing a Declaration of Candidacy and
21 appearing on the ballot for those offices.

22 In holding that statute

1 unconstitutional, the court found that one, term
2 limits added non-incumbency as a new
3 qualification which went beyond the
4 qualifications set forth in the state
5 constitution. Two, the exclusive list of
6 qualifications in the constitution could only be
7 altered by constitutional amendment. And three,
8 a statute, whether adopted by the legislature or
9 by the people could not add qualifications for
10 state constitutional officers where the state
11 constitution set those qualifications.

12 Like the rejected measures in U.S.
13 Term Limits and Gerberding, the proposed
14 initiative here at issue would impose a degree on
15 non-incumbency as a new qualification for certain
16 elected District officials. In so doing, it
17 would directly contravene the District Charter,
18 which is the sole and exclusive source of such
19 qualifications.

20 The charter contemplates a process by
21 which additional qualifications for office such
22 as term limits might be imposed. Namely, the

1 charter amending process set forth in Section 303
2 of the Home Rule Act. However, that process
3 requires both an act passed by the Council and
4 ratification by majority of the registered
5 qualified electors of the District.

6 For these reasons, the Board should
7 find that the proposed initiative is not a proper
8 subject of initiative. Thank you for the
9 opportunity to testify. And I'm able to answer
10 any questions you might have.

11 CHAIR BENNETT: Thanks. Any
12 questions, Ms. Lewis?

13 MEMBER LEWIS: No, thank you.

14 CHAIR BENNETT: Mr. Gill?

15 MEMBER GILL: No.

16 CHAIR BENNETT: Can you explore -- I
17 have one. Can you explore this in -- or is there
18 any DC or local case law or state case law that
19 identifies term limits as a requirement -- or as
20 a qualification rather?

21 I know the Arkansas case you cited
22 initially was for a federal seat. Obviously, it

1 was for Congress.

2 MR. WALTER: That's right.

3 CHAIR BENNETT: Did you cite anything
4 that addressed it at the local level, either at
5 state or --

6 MR. WALTER: We are not aware of any
7 District of Columbia courts analyzing this
8 question or holding in either direction on this
9 matter. I'd say that the Supreme Court opinion
10 stands for the proposition that term limits are
11 qualifications. And I don't think that opinion
12 in that regard is like unique to the Federal
13 Constitution.

14 I would say that --

15 CHAIR BENNETT: Yeah, but all of the
16 cases that you have are focused on federal seats
17 and not local -- not state or local seats. I'm
18 not arguing --

19 MR. SANFORD: Oh, well Gerberding is
20 focused on a state seat. And we cited in our
21 written testimony to an ALR annotation that
22 actually goes through cases across the country.

1 CHAIR BENNETT: Okay.

2 MR. WALTER: The vast majority of
3 jurisdictions around the country have agreed with
4 our position on this.

5 CHAIR BENNETT: Okay.

6 MR. WALTER: And I would also point
7 out that we have an opinion from the Corporation
8 Counsel, now the Attorney General's Office from
9 1988 opining that such an initiative would
10 violate -- or such an act of the Council would
11 violate the District Charter and the General
12 Counsel opined as early as 2001 on this matter
13 saying the same thing.

14 CHAIR BENNETT: Okay, I know we have
15 the memorandum from Chairman Mendelson. Do we
16 have any other backup documents that they
17 submitted?

18 MEMBER GILL: No.

19 CHAIR BENNETT: Obviously no.

20 MEMBER GILL: No.

21 CHAIR BENNETT: We don't. Could you
22 provide those to us as well?

1 MR. WALTER: I'd be happy to.

2 CHAIR BENNETT: That would be great.

3 All right, thanks. I don't have any other
4 questions. Do you have any questions for Mr. --

5 MR. MCGHIE: No, at this -- no.

6 CHAIR BENNETT: Thanks so much.

7 Thanks for appearing.

8 MR. MCGHIE: Okay, so as he mentioned

9 --

10 MR. SINDRAM: Mr. Chair.

11 MR. MCGHIE: -- a letter from --

12 CHAIR BENNETT: Hold on, one second.

13 Yes, sir?

14 MR. SINDRAM: Yes, I'd like to weigh
15 in on this term limit initiative if I may.

16 CHAIR BENNETT: Mr. Sindram, thank you
17 for that -- but when I get to public matters --
18 if you could hold that. This wouldn't be the
19 proper time to weigh in on that, sir.

20 MR. SINDRAM: Yes, sir.

21 CHAIR BENNETT: All right, thank you.

22 Okay, Mr. McGhie --

1 MR. MCGHIE: All right, so as he
2 mentioned we have a letter from Mr. Mendelson
3 dated February 28th, 2019, I ask that that be
4 made a part of the record. We also have other
5 comments from the Office of the Attorney General,
6 Mr. Carl Racine. He concurs, with the opinion of
7 Mr. Mendelson.

8 And I'll just read one paragraph that
9 pretty much summarizes his legal memorandum. It
10 says, Section 402 and 421(c)(1) of the charter
11 provide an exhaustive list of qualifications for
12 serving as the mayor or a member of the council.
13 Because these qualifications are exclusive, they
14 cannot be altered either by the council or by the
15 electors without amending the charter first.

16 Therefore, we conclude that the
17 measure is not a proper subject for an initiative
18 because it violates the Home Rule Act by seeking
19 to alter these fixed qualifications through
20 normal legislation. And I ask that Mr. Racine's
21 memo dated February 28 also be made a part of the
22 record.

1 CHAIR BENNETT: Okay.

2 MR. MCGHIE: And I'd like to also call
3 Mr. McGann from my office to give the opinion of
4 the Office of General Counsel.

5 CHAIR BENNETT: Great, thank you. Mr.
6 McGann?

7 MR. MCGANN: Good morning, Chairman,
8 Board members. My name is Rudolph McGann. I'm
9 staff attorney with the Board of Elections. With
10 respect to the initiative that's being proposed,
11 the summary statement is as follows -- bear with
12 me.

13 The summary statement would make
14 certain positions eligible for a
15 two-consecutive-term limitation on elected
16 offices that are part of the charter. And as
17 such, they would be in conflict with the charter,
18 because the charter does not have any type of
19 restrictions upon the amount of times you can run
20 for office for the positions of mayor,
21 councilmembers, and school board members.

22 Each of the elected positions for

1 consideration are for term limits in the DC TLC,
2 which is the District of Columbia Term Limits
3 Campaign, are created by the charter. And the
4 qualifications for those offices can't be changed
5 without following the charter-amended procedure
6 code filing at DC Code 1-203.03.

7 Following the council passage of an
8 act to amend the charter, the act must be
9 ratified by a majority of registered qualified
10 electors in the District of Columbia voting in a
11 referendum. The charter cannot be amended
12 through the initiative process.

13 A perfect illustration of this concept
14 is the Office of the Attorney General. Not only
15 did the nomenclature change from the Corporation
16 Counsel, but the position became an elected
17 office in the District of Columbia. A
18 fundamental change was achieved by a charter
19 amendment.

20 In conclusion, DC TLC presents an
21 improper subject for initiative, because it
22 improperly attempts to amend the charter by

1 implementing an additional qualification that an
2 individual has not served two consecutive terms
3 immediately preceding the election. The Ward
4 cannot accept this attempt to change the charter,
5 and I would respectfully opine that the DC TLC is
6 not a proper subject and the Board should refuse
7 the measure.

8 CHAIR BENNETT: Thank you, Mr. McGann.
9 Any questions, Mr. Gill?

10 MEMBER GILL: No. So, just -- Rudy,
11 I mean, just to summarize, in your opinion, it
12 fails on its attempting to amend the charter and
13 there's a separate process for that --

14 MR. MCGANN: Correct.

15 MEMBER GILL: -- which takes it out of
16 this. And then the actual change itself would
17 put a qualification on an elected office that's
18 already -- that's not currently enumerated.
19 Therefore, it's putting a limitation on the
20 office.

21 MR. MCGANN: Correct.

22 MEMBER GILL: Which is the point of

1 it, but -- all right, those are the two. Okay.
2 Sometimes when proponents talk about this they
3 want to sort of like -- all right, let's get at
4 those two issues then.

5 MR. MCGANN: What I could recommend
6 for the proponent in the alternative is that they
7 could -- or what's been sanctioned by the courts
8 is putting forth an initiative in the form of a
9 resolution which is basically along the lines of
10 -- similar to the resolutions in a council where
11 there's an expressed opinion by the electorate
12 that this should be forwarded as an amendment to
13 the charter. And that can be put to a vote
14 through initiative.

15 So questions can be put to a vote, but
16 you could not change the charter by merely having
17 an initiative.

18 MEMBER GILL: Thanks.

19 CHAIR BENNETT: Any questions Ms.
20 Lewis?

21 MEMBER LEWIS: No, thank you. That
22 was helpful.

1 CHAIR BENNETT: Okay, great. Mr.
2 Sindram -- thank you, Mr. McGann.

3 Mr. Sindram, my esteemed colleague,
4 Board Member Lewis, commented that you may have
5 wanted to speak as an opponent of the measure,
6 and if that's the case, my apologies for stopping
7 you from speaking. And I'd ask you if you would
8 like to speak as an opponent of the initiative?

9 MR. SINDRAM: Thank you Mr. Chair, Ms.
10 Lewis, no actually I wanted to speak as a
11 proponent.

12 CHAIR BENNETT: Okay, we're about to
13 get there. Okay, thank you Mr. Sindram, if you
14 could hold on.

15 MR. SINDRAM: Sure.

16 CHAIR BENNETT: Do we have any
17 proponents? Mr. McGhie, do you want to --

18 MR. MCGHIE: So just state your full
19 name and address for the record.

20 MR. BUTLER: Good morning everyone.
21 I'm James Butler, 1600 Maryland Avenue NE,
22 Washington, DC 20002. Mr. Chairman and members

1 of the board --

2 MR. MCGHIE: No, no, let me stop you.
3 You're the proposer of the measure, so you'll
4 have an opportunity to respond to everybody, the
5 opponents and the proponents, so you'll go last.

6 MR. BUTLER: Okay.

7 MR. MCGHIE: I think, unless -- are
8 there any other proponents of the measure that
9 would like to be heard?

10 CHAIR BENNETT: Mr. Sindram, I think.
11 You certainly are willing -- you certainly are
12 able to speak now if you'd like, Mr. -- as a
13 proponent.

14 MR. SINDRAM: Thank you, Mr. Chair.
15 I'm a bit confused --

16 CHAIR BENNETT: Mr. Sindram, can you
17 identify yourself for the record, sir?

18 MR. SINDRAM: Michael Sindram,
19 disabled veteran, served our country more than
20 most, Organization Justice -- I didn't say Just
21 Ice -- for all DC/Disabled Veteran of which I
22 happen to be one.

1 I'm confused because Mr. McGann used
2 a resolution, initiative, referendum, saying
3 something may or may not be viable.

4 CHAIR BENNETT: Mr. Sindram, can you
5 hold on one second? Unfortunately, we're not
6 able to -- we've got to move the speaker around
7 so you can be heard by the audience properly --
8 by the folks here.

9 Now, try again, Mr. Sindram. Can you
10 start your speaking again, Mr. Sindram?

11 PARTICIPANT: He hung up.

12 CHAIR BENNETT: Well, we may have cut
13 him off.

14 PARTICIPANT: Or maybe I cut him off.

15 CHAIR BENNETT: Sorry, we'll take a
16 hold until we get Mr. Sindram back.

17 Do we have any other proponents of the
18 bill other than -- of the measure rather? Other
19 than the --

20 MR. SINDRAM: Hello.

21 PARTICIPANT: Can you hear us?

22 MR. SINDRAM: Yes.

1 CHAIR BENNETT: Mr. Sindram, we're
2 going to -- when we lost you, we moved on to one
3 other person. So, I'll hear this next person,
4 and then we'll come back to you, sir.

5 MR. SINDRAM: Thank you.

6 CHAIR BENNETT: Okay. Yes, sir.

7 MR. YOUNG: Good morning, Chairman,
8 Board members, the public. My name is Virgil J.
9 Young, Jr. I'm a native Washingtonian, current
10 District resident. I'm a military veteran served
11 on active duty as a tank platoon leader, airborne
12 paratrooper, 1984 graduate at the University of
13 District of Columbia, 1994 MBA graduate at Howard
14 University, and a 2013 Master of Science graduate
15 from George Washington University.

16 We've heard from the opponents of
17 this. I'm a proponent. The opponents say that
18 the Home Rule Charter does not allow for this.
19 I'm not an attorney. So the current law might be
20 such. However, we all know that at one time
21 slavery was the law of the land.

22 So just because something is the law

1 currently, doesn't make it right. Now, for
2 people here in Washington, DC, I was born in
3 1959. I'm 59 years of age. I'm almost 60. And
4 I just believe that I've seen so much change,
5 potholes, infrastructure is all messed up.

6 You know, I'm still looking for a job.
7 I'm more than qualified. I see people walking
8 around with undergraduate degrees getting jobs.
9 It's who you know and who likes you. It's not
10 based on merit. So if I'm having a rough time, I
11 know that my brothers and sisters, both White,
12 Black, Hispanic, Asian, straight, gay,
13 transgender -- I know everybody's having a hard
14 time. People who are not having a hard time,
15 they seem, you know -- life is la-di-da-dee.

16 So the bottom line is this, we're
17 going to overturn this thing, okay? We're going
18 to do what we've got do, okay? I know I do what
19 I have to do.

20 We're going to change some things
21 around here. People being in office forever, and
22 they feel comfortable. And when you feel

1 comfortable enough where you feel you don't
2 represent me, Virgil Young, then there's a
3 problem, because I've earned everything that I've
4 done. I worked hard. I don't do any drugs. I
5 do what I'm supposed to do. I've checked all of
6 the boxes, and I'm still catching H-E-L-L.

7 So, you're backing me up against a
8 wall -- all this legal stuff -- no. We're going
9 to take what you thought you were giving, okay?
10 I'll ask you again, can you help us, can you help
11 the community? You're not doing it. So we're
12 going to take what you thought you were giving.

13 We're going to overturn this stuff.
14 We're going to put in who care about this city.
15 Take care of poor people, step one. Don't worry
16 about any digitized signs. Okay, get 50,000 --
17 you're not getting 50,000 back. 200,000 in
18 stock, well, we've got to get that back. Where's
19 your mind?

20 You look like somebody that we're
21 supposed to be, but your behavior is
22 dysfunctional. And we are tired of the

1 dysfunctional behavior, okay? So sit back, I'll
2 just be in control, and we're going to make a
3 change. The Lord's going to see to it. Thank
4 you.

5 CHAIR BENNETT: Thank you.

6 MEMBER LEWIS: Mr. Young, I think we
7 missed your address. Sir, would you please
8 identify?

9 MR. YOUNG: Oh, my address is Ward 4,
10 1728 Verbena Street NW, 20012-1049.

11 MEMBER LEWIS: Thank you, sir.

12 CHAIR BENNETT: Okay.

13 MS. DAVIS: Good morning --

14 CHAIR BENNETT: Good morning.

15 MS. DAVIS: -- to all of you out
16 there. I'm from the old school.

17 CHAIR BENNETT: Can you identify
18 yourself and address?

19 MS. DAVIS: I'm Dorothy Davis at 1416
20 Saratoga Avenue NE, Apartment 2, Washington, DC
21 20018.

22 CHAIR BENNETT: Thank you.

1 MS. DAVIS: Like I said, I'm from the
2 old school. Sometimes there's got to be a
3 change. And it's got to be a change for the
4 better. This like my partner just said, I don't
5 know anything about that law thing, because
6 there's nobody up here in here going by the law.

7 It's time for a change. They sat on
8 that Board. They're forgetting who they're
9 sitting there for. They came one day, and they
10 spoke, campaigned, I'm doing this for the
11 constituents. They are not doing a thing for us.

12 I have a Councilmember McDuffie in my
13 Ward 5. He did not do anything. It's time for
14 them to move after two years. It's bad enough
15 that we've got the Supreme Court, they stay there
16 until they die. Nobody moves them, and some of
17 them need to be gone.

18 It's time for all this legality that
19 you all are talking about, those two guys -- no
20 offense, I'm telling the truth. We don't need
21 all that, because if they were going by all those
22 laws, we wouldn't be where we are at now.

1 Like my partner said, low-income
2 housing is being taken out of the city. Our
3 large families don't have anywhere to go once
4 they do. They let these contractors come in
5 here, and they buy them out, and they kick us
6 out. It doesn't matter what color we are. We
7 have some poor Whites, Hispanics, whatever.

8 But do they care?

9 No.

10 They forgot that they work for us. We
11 don't work for them. And it's time for them to
12 get up off of their rumps and let some young
13 people come in, people that have been through
14 something, know how to get up and help our
15 constituents. Because it's time for them to sit
16 there and all they do is pretend that they are
17 working for us.

18 We can't get appointments in with
19 them. They're so busy. We can't go down there
20 and tell them what's going on in our community.
21 They claim they want to hear, but they don't.

22 So it's time for them to go. They

1 don't need to be there. And I don't care what
2 color you are, if you aren't working for the poor
3 and the needy -- you need to get up and go.

4 Stop coming in DC -- in the District
5 of Columbia and think you change DC. They can't
6 even change in their own communities where they
7 are. And they are sitting up there in the White
8 House and do the same thing. They're sitting
9 right down here on this Board and do the same
10 thing.

11 The council clearly is not working for
12 us, so they need to go. If you are over the top
13 of them, move them.

14 Look at Evans. He has been there too
15 long. And look what he has done now. All of
16 them are doing it. It just hasn't come up yet.

17 It's time for them to go because we
18 are sick and tired of being sick and tired.

19 I've been out here, and I'm 73 years
20 old this May. And like my brother said, there
21 have been some changes, but there have not been
22 any changes for us or for the poor.

1 You all need to do your job and change
2 that order, whatever they have in the law, and
3 this, and that, and the other. We don't have --
4 don't look at us and look down on us like we
5 don't have the education to know when it's time
6 for you to move. Sometimes we have to clean our
7 house. So it's time for that house to be
8 cleaned, from the mayor on down to the school
9 board.

10 Because if the school board was doing
11 so much, our kids wouldn't be molested --
12 wouldn't be molested in other ways. And wouldn't
13 be in there throwing them up against the wall,
14 those kids -- teachers in there don't have any
15 patience with the children. The board of
16 education is not doing anything. The Mayor is
17 not doing anything. And the council is not doing
18 anything.

19 Get them out and put somebody in
20 there. Start checking backgrounds like you are
21 supposed to check them. And make sure they are
22 for the people and for families.

1 Because it's time. I'm sick and tired
2 of being sick and tired. All that that the young
3 man has brought up here about how this law is
4 this, and you can't do this, come over here with
5 some doggone plain English. They are not doing
6 their job, and you know it.

7 I don't know if you were paid, or if
8 they promised you something because everything in
9 this city gets paid or is promised something. So
10 you are not for us. And even this color, most of
11 them are not for us.

12 We can look at the other colors that
13 are not for us, but when it's time for our color
14 to be backbiting and stabbing us in the back, and
15 holding us down -- all of us -- I heard my
16 councilmember say, you've got pull yourself up by
17 your bootstraps. Well, if we had some strings,
18 we could pull them up. But we don't have the
19 strings to pull them up. We look for all of you
20 to pull them up. Because we get out there and we
21 fight, we are protesting now. Get up.

22 Let them know that when you find out

1 that they're not doing their job and they've been
2 there too long, get rid of them. It's time.

3 Now, I don't know how long do all of
4 you have on your Board where you sit?

5 CHAIR BENNETT: We have three-year
6 terms.

7 MS. DAVIS: After three-year terms you
8 vote someone else in, right?

9 CHAIR BENNETT: Well, the Mayor has to
10 decide if she wants to nominate somebody else and
11 then --

12 MS. DAVIS: That's what I'm saying.
13 The Mayor's not going to decide, because she
14 doesn't decide on the councilpeople. Get rid of
15 them.

16 CHAIR BENNETT: The mayor nominates,
17 and the council confirms.

18 MS. DAVIS: Yeah, that's why the
19 council said they'd confirm. All they do is
20 confirm, and confirm, and confirm. But they
21 don't get up from behind their desks and come in
22 the neighborhoods and see what the people need.

1 They are not working for us. They are working
2 for themselves. Money is coming in under the
3 table. We know this.

4 But like I said, it's the law. And
5 the law -- the scales of justice are not too good
6 either, you know. So get rid of them right now.

7 CHAIR BENNETT: Thank you.

8 MR. BUTLER: If I might speak out of
9 turn a little bit --

10 CHAIR BENNETT: Okay.

11 MR. BUTLER: -- if I may.

12 So proponents of the law believe that
13 this thing might be dead. I think if I can speak
14 just momentarily, I can add some insight to
15 assure them there's another vehicle that we can
16 use to still get to the same destination.

17 CHAIR BENNETT: Okay, but let me -- if
18 you don't mind, let me get to -- then we have one
19 more proponent.

20 MR. BUTLER: Absolutely.

21 CHAIR BENNETT: And then I think we'll
22 get to you unless there's another proponent.

1 MR. BUTLER: Again, there are a couple
2 more proponents actually. I just didn't want
3 that passion to come out in that manner where
4 they're thinking that it is completely dead, but
5 I think adding this insight they'll see that
6 actually we can still arrive at the same
7 destination through a different vehicle.

8 CHAIR BENNETT: I appreciate that, but
9 let's get through the --

10 MR. BUTLER: Fair enough.

11 CHAIR BENNETT: Okay. Thank you. Mr.
12 Sindram? And then we'll get to another person.
13 We've had Mr. Sindram waiting for a while. Mr.
14 Sindram?

15 I think you must be on mute, sir.

16 MEMBER GILL: I think Michael's
17 finally intimidated.

18 MR. SINDRAM: Can you hear me now?

19 CHAIR BENNETT: Yes.

20 MR. SINDRAM: Thank you, Mr. Chairman.

21 Okay, Michael Sindram, disabled
22 veteran, served our country more than most. I

1 want to extend gratitude to the fellow serviceman
2 who testified.

3 I defer the Board's attention to
4 Article 6 of the United States Constitution,
5 which in relevant parts states and I quote, this
6 Constitution, and the laws of the United States
7 which shall -- keep in mind, shall, is a
8 mandatory legal term, not discretionary -- shall
9 be made in pursuance thereof. And all treaties
10 made, or which shall be made, under the authority
11 of the United States, shall be the supreme law of
12 the land. That's known as the Supremacy Clause.

13 Let's turn over to Amendment Number
14 IX. It reads and I quote, the enumeration in the
15 Constitution of certain rights, shall not be
16 construed to deny or disparage others retained by
17 the people.

18 Amendment X, the powers not delegated
19 to the United States by the Constitution, nor
20 prohibited by it to the states, are reserved to
21 the states respectively, or to the people. In
22 other words, we the people are the sovereign

1 body, all right?

2 Where does the public trust weigh in
3 in all this? Well, the banner above your head or
4 in the office there is George Washington's
5 insignia. George Washington was primed to be
6 president for life, king or whatnot. And he
7 declined. He imposed term limits, all right?

8 And so that sets the precedent. This
9 is not a case of first impression, and all this
10 gobbledygook of hyper-technicality, initiative
11 versus resolution versus initiative, that's
12 hyper-technical. And it's making for we the
13 people -- taking our authority away.

14 And I defer to the Initiative 77 which
15 we the people resoundingly passed. And because
16 Philip Heath Mendelson and company take issue,
17 they overturn it. So why bother having any kind
18 of ballot measure when the motley crew at the
19 marble -- at the granite palace, the Wilson
20 Building will overturn it, okay? And that's what
21 this comes down to.

22 Behind this, no doubt, is Ward 2, Jack

1 Evans. He has been Councilman for life and
2 currently under investigation. That should tell
3 us already that there is something amiss, all
4 right?

5 The public trust should be first and
6 foremost at the council, but it is not. Because
7 permitted is, you can have outside employment,
8 all right? Jack Evans is an attorney. Mary Cheh
9 is full-time professor at George Washington
10 University. Catania was a lawyer, and on and on
11 and on.

12 So again, where does the public trust
13 fit in this? It doesn't. It's secondary if it
14 weighs in at all. That ought not be. Folks are
15 taking an oath to uphold the public trust. And
16 they're not doing that, all right?

17 If you look at our neighbor in
18 Montgomery County, Robin Ficker, had a ballot
19 initiative, term limits, which was successful.
20 There are a number of cases that are right on
21 point to indicate term limits are very much an
22 issue for us to be deliberated by we the people

1 in the District of Columbia. And that right
2 ought not be taken away, and it ought not be
3 usurped by Philip Heath Mendelson, or Jack Evans,
4 or anybody else.

5 Not unlike Measure 77 where, again, we
6 the people resoundingly approved it. And then
7 Mendelson takes issue, no, we don't want it, so
8 we'll do away with it. That's not how our system
9 works.

10 And for us veterans, for that to
11 happen, that's a slap in the face. We put our
12 life on the line for due process and fundamental
13 fairness. There's been much bloodshed for the
14 right. And that's why we're not dumping
15 grenades, bullets, and mortars because we
16 veterans have put soldiers -- have put our life
17 on the line.

18 And if you take this away from us,
19 what do we come down to? There's not much
20 difference between what we claim is a democracy,
21 the United States, and a Communist entity, sad
22 but true.

1 So, I implore you, Mr. Chair, and
2 kudos to Mr. Butler. You keep fighting the good
3 fight, and the good fight is the one you win. So
4 I implore the Commissioner to please let this
5 move forward. However you want to play it with
6 the nomenclature, initiative, measure, ballot,
7 resolution, whatever it is. But we have a right,
8 a constitutionally guaranteed right to weigh in
9 on this. And term limits are very much a viable
10 topic, as seen in Montgomery County and
11 elsewhere, notwithstanding the Supremacy Clause
12 of the Constitution.

13 Thank you, Mr. Chair. Any questions,
14 I'd be delighted to field them when you see fit.

15 CHAIR BENNETT: Thank you, Mr.
16 Sindram. I think we're going to go to our next
17 proponent of the measure.

18 MS. ROBINSON: Good morning.

19 CHAIR BENNETT: Good morning.

20 MS. ROBINSON: My name is Vanessa
21 Robinson. I live at 4635 6th St SE, Washington,
22 DC. I am a Ward 8 constituent for the past 18

1 years.

2 And I am here today to speak out about
3 this initiative simply because as people of Ward
4 8, some of the people who are incumbent and have
5 been in the office for a term, don't feel the
6 importance of going across the Anacostia to see
7 what the constituents over there need. They sit
8 down there on Pennsylvania Avenue and make all of
9 these different rules and do whatever they need
10 to do.

11 Our Mayor didn't even come to Ward 8
12 when she was running this past election. You
13 know why?

14 Because she felt comfortable, she felt
15 she was going to get elected whether she came
16 over there or not. It's like a slap in the face
17 to the people who live there.

18 She doesn't care.

19 We need to not allow people to sit in
20 a position that you're being paid. This is not a
21 volunteer job, wherein you will be able to step
22 out and see what the people need. It's not fair

1 to them.

2 We don't even have a grocery store in
3 Ward 8. I'm going to send good food. What is
4 good food, some friends of hers -- does she go
5 and put a little corner store?

6 We need a grocery store. You go
7 around in Ward 1, Ward 4, Ward 5, all these
8 different places, they have not only a grocery
9 store but a choice of grocery stores. We bring
10 in stuff, we put a Whole Foods in southwest, but
11 you're still on this side of the Anacostia.

12 It has nothing to do with the people
13 of Ward 8. A lot of them don't even have
14 transportation. So what are you supposed to do,
15 get on the bus and go to Whole Foods or go to
16 Harris Teeter which is across the Anacostia to go
17 grocery shopping?

18 The Mayor doesn't care because she
19 feels comfortable. She feels comfortable because
20 she doesn't have to go across the bridge to see
21 what the people need. She's a servant of the
22 people. That's all of Washington, DC, not just

1 the wards you choose to go to. Not just the
2 wards you live in and say, listen, I need your
3 vote. I want your vote. I'll serve you.

4 We don't need her to come over there
5 and build a lot of two-bedroom apartments for all
6 of these families with two, and eight, and 10
7 children, or five and six children. Where are
8 they supposed to stay when all of this is
9 finished? They build all these high-rise
10 buildings and put two-bedroom apartments in them,
11 and there's nothing for the people of Ward 8
12 where they live.

13 You don't meet the needs. We're
14 tearing down Barry Farm. Okay, that's
15 improvement. We're going to get a new building,
16 but will the buildings be able to accommodate the
17 people who were living there before?

18 No, not two-bedroom apartments. Where
19 are they supposed to stay? And it's definitely
20 not affordable. So it's like a play on words. I
21 heard them coming up talking about what the law
22 says. Well, it's time to change the laws. And

1 we need to allow the people to be a part of the
2 change, by putting this on the ballot so the
3 people can vote and determine whether or not you
4 stay in your seat till death do us part,
5 especially when you're not serving the people.

6 They're not serving us over on the
7 other side of the Anacostia. They are just
8 riding down there doing what they do, leaving --
9 getting two and three jobs.

10 Why does someone on the City Council
11 have to work two full-time jobs, when there are
12 so many people who don't even have a job across
13 over in Ward 8. They are not trying to employ
14 any of them.

15 So we need to put people in position
16 who will look out for the people and then go back
17 and check on the people. The Mayor came over
18 there when she was running against Vincent Gray
19 trying to get in. Well, she came over to Ward 8.
20 She came over to my church. But she didn't come
21 this election because she feels comfortable.

22 We need to get that accountability out

1 of our people who represent us. They work for
2 us. We don't work for them. They work for us.
3 And we need them to know that by putting
4 something in place so they'll be more accountable
5 when it's election time. And they will show some
6 evidence of what they are doing for the people
7 because none of them down there are doing
8 anything for the people.

9 Trayon can't do it all by himself. He
10 represents Ward 8, but he's only one vote. So we
11 need someone who looks out for the whole city so
12 that the whole city can move ahead, not just
13 certain areas. And meet the needs -- basic
14 needs, a grocery store? That doesn't seem like
15 too much to ask.

16 They build all these high-rise
17 buildings, and they can't get a grocery store, a
18 Giant, a Safeway, a Harris Teeter across the
19 Anacostia? There's something wrong with that
20 picture.

21 So I'm glad that you gave us the
22 opportunity today to speak about term limits

1 because term limits will help us limit the people
2 who are sitting in a position to make a
3 difference. We need that in the District of
4 Columbia. Thank you for your time.

5 CHAIR BENNETT: Thank you.

6 MEMBER LEWIS: I just before -- oh,
7 right, we have another proponent. I'll let you
8 come up, and then I'll just make some remarks.

9 MR. CLARK: Good morning.

10 CHAIR BENNETT: Good morning.

11 MR. CLARK: My name is Michael Clark.
12 I'm a Washington, DC, resident. I live at 105
13 Seaton Place NW. I'm a proud resident of Ward 5
14 in the Bloomingdale neighborhood.

15 And I'm here to stand in support of
16 the term limits initiative. I know that earlier
17 there was a lot of talk about whether this is an
18 appropriate subject matter. I think that the
19 passion that we just heard from those DC
20 residents says that the voters of DC believe it
21 is an appropriate subject matter, and that they
22 want to have a say in whether we impose term

1 limits on certain elected offices.

2 I think that the board itself has in
3 1994 said that this is something that we should
4 put towards the voters of DC. In a previous
5 decision, we had term limits. The DC City
6 Council in 2001 came back and repealed the will
7 of the voters.

8 So I think that previous action does
9 say that this has been and still is a big concern
10 for DC residents, but it was appropriate for the
11 Board of Elections to consider for a ballot
12 initiative. And as a millennial, I do see that
13 not having term limits here in DC, it chokes
14 democracy. It stands as a barrier for many young
15 voters who don't think that their vote counts.

16 For many young leaders -- I'm a former
17 Youth Mayor of DC. So I've seen a lot of leaders
18 who have great ideas and have great contributions
19 that they are interested in making to our cities.
20 Who feel like there's not a place for them in
21 their government. Who feel like there's not a
22 place for them in their city, because there are

1 people who have been there for all of their
2 lives.

3 You know, if you're 24 years old, and
4 you live in Ward 2, you've only had one
5 Councilmember. There are some people who have
6 only known one or two Councilmembers, and they
7 still haven't seen the changes in their
8 communities that allowed -- that the previous
9 testifiers have talked about.

10 You know you can have -- and I think
11 we all love -- we love certain leaders in our
12 city. But I do think it's a shame and disgrace
13 that there is not a constitutional -- or a check
14 that voters have approved that says just because
15 you've been here for 30 years if you don't show
16 me 30 years' worth of work you won't be there.

17 Now, if I go to my job, and I go to
18 work, and I'm there for eight years, and I can't
19 get the basic tasks done of providing for my
20 constituents or getting my basic job done,
21 they're not going to let me hang around just
22 because I'm there and just because everybody

1 knows my name.

2 I think the voters of DC have said, in
3 2001 they said on a continuous basis, and you're
4 hearing it here today, that this is something
5 that we want to be able to send a message to our
6 leadership saying that we're in support of. And
7 I think that the least of the consideration could
8 be let's take it to them and put it on the
9 ballot.

10 So thank you all for your time. Have
11 a great day.

12 CHAIR BENNETT: Thank you. Do you
13 want to say something else?

14 MEMBER LEWIS: Yes, I just want to
15 take a point of personal privilege for a moment
16 and just speak on behalf of the entire Board when
17 I say we hear you. We hear you.

18 I'm a third-generation Washingtonian.
19 I'm an east-of-the-river native and current
20 resident. And we hear you. I think we care very
21 much on this Board about the issues that you have
22 expressed. We care very much about seeing

1 fruitful changes in this city and making sure
2 that all of our constituents are represented.

3 With that in mind though, this Board
4 is limited. Unfortunately, we only have but so
5 much ability, if you will, to do certain things.
6 And here today, one of the things that we are
7 listening for is certain criteria quite frankly.
8 And those are just the things that we're hampered
9 by, unfortunately.

10 So we will take all of the comments
11 back. We will have to look at what the law says.
12 We will have to look at what the current guidance
13 says. And we'll have to make a determination
14 after we do that. But I just wanted to emphasize
15 that whatever place we land on, just make sure
16 that you all understand that we hear you.

17 This Board is a very compassionate
18 Board. We have all long-time DC residents here
19 on this Board, represented on this Board,
20 including the staff that works with the Board of
21 Elections. And so, with that in mind, I don't
22 want anyone to think that any of the comments

1 that have been expressed today are sitting on
2 deaf ears because they certainly aren't. I mean,
3 for those of you who live east of the river, I
4 live east of the river. I've been a homeowner
5 there for the last -- this would be seventh year.
6 My parents live in Kingman Park, and that's where
7 I'm from.

8 So, we get it. We hear you. And then
9 I think the final thing I just wanted to say is
10 take all this motivation and this passion -- I've
11 seen a lot of you out there before doing your
12 civic duties. Make sure that you get your people
13 out to the polls to vote. I think that as a
14 Board that is something that is very important to
15 us, to make sure that voters are enfranchised, to
16 make sure that people are not just staying home
17 on election day because they don't think that
18 their vote matters. Because if that's the
19 mindset that you have, then it really won't
20 because it won't be counted.

21 So that's just the final thing I
22 wanted to say before I think we hear from the

1 proponent. Thanks for your time today.

2 MR. SINDRAM: Point to order, Mr.
3 Chair?

4 CHAIR BENNETT: Yes sir.

5 MR. SINDRAM: In lieu of Ms. Lewis'
6 comments, why bother voting if you're going to
7 neutralize the vote? Initiative 77 -- and as
8 pointed out this has already been an initiative,
9 a referendum, a resolution, whatever you want to
10 call it that we the people have approved long ago
11 and far away. And once again, the motley crew at
12 the granite palace said, we don't want it. We're
13 going to overturn it. And we're going to do
14 otherwise.

15 So, again, Ms. Lewis, you know, faith
16 without works is that -- show me your faith by
17 your works. You want us to come out and vote.
18 We do. But results count. And if our vote
19 doesn't matter, because Initiative 77 and the
20 referendum, the term limit that was passed by we
21 the people was overturned why bother voting?

22 CHAIR BENNETT: Thank you Mr. Sindram.

1 Since you're such a loyal participant, I took a
2 little bit of a privilege in giving you a second
3 opportunity at that, so thank you.

4 We're now going to hear from the
5 proponent.

6 MR. BUTLER: Again, good morning.
7 Good morning members of the Board, Mr. Chairman,
8 members of the public at large, I thank you for
9 all being here today.

10 We've heard some passionate arguments
11 of proponents of this, I'm going to abstain from
12 giving my feelings regarding, sort of, this --
13 the social impacts of term limits, because I
14 think you all know that I wouldn't have proposed
15 the law if I didn't feel there were some
16 favorable social impacts to further the ends of
17 democracy.

18 But let me talk for a minute with
19 regards to what's the opposition. The opposition
20 was proffered by Carl Racine's office and a
21 similar opposition proffered by Phil Mendelson's
22 office.

1 And Ms. Lewis, you made a very good
2 point, that you are -- as much as you feel
3 emotional about some of these things that come
4 before you, you're still bound by the law. And I
5 respect that. I respect the position of the
6 General Counsel's office too that came through
7 Mr. McGann, that stated that they believe
8 essentially the vehicle to get to -- this to
9 voters is improper.

10 That doesn't mean that we can't get
11 there. It just simply means it takes a little
12 bit longer. And so, what we've done over the
13 last couple days are some friendly amendments.
14 In the absence of a significant amount of law, I
15 was hesitant to make -- bless you.

16 CHAIR BENNETT: Thank you.

17 MR. BUTLER: I was hesitant to make a
18 friendly acquiescence or amendments to this
19 because in 1994 we had a prior opinion of the
20 General Counsel or the Corporate Counsel at that
21 time that indicated opposition to term limits,
22 yet in 1994, it made its way all the way through.

1 Now, the legislator history is more
2 than scant. So we couldn't find why. And why
3 the attorney generals or the General Counsel in
4 1988, that that opinion was not adhered to, and
5 why it made its way to the ballot as a general
6 initiative in 1994 and by about 62 percent it
7 passed. That's a problem -- that's a problem in
8 the system. We know that.

9 But again -- also, another point is
10 that when the charter -- the Home Rule, generally
11 referred to as the Charter, when it was created,
12 clearly at that time, the Office of Attorney
13 General was not there. And we didn't have State
14 Board of Education members at that time. They
15 weren't referred to then -- State Board of
16 Education members.

17 So that tells me that an argument
18 could be made that we could take a
19 straight-line-ballot initiative and vote that way
20 for term limits with them. But for the ease of
21 this office's work and for voters' understanding
22 of this, what I do believe we should do is make

1 some acquiescence and amend to some extent -- I'd
2 like to read to you -- it won't be long from what
3 my friendly amendments will be.

4 Because DC voters -- let me clear and
5 unequivocal, DC voters will determine whether or
6 not they are in favor of term limits. Now what
7 Council does after that is going to be up to
8 them. We know the Council makes its decisions
9 the way it does, sometimes arbitrarily and
10 otherwise based on their own self-interests.

11 But let me read this too. The summary
12 statement will be read. Currently, the District
13 of Columbia does not have term limits for its
14 elected officials. If approved by voters, this
15 ballot initiative would advise the DC City
16 Council to amend the DC Charter to establish
17 two-term limits, consecutive terms for the office
18 of mayor, chairman of the council, members of the
19 council, members of the State Board of Education,
20 and the attorney general.

21 This resolution would be advised --
22 would advise the DC City Council to amend the DC

1 Charter to establish term limits eliminating the
2 amount of time that an elected official can hold
3 the office of mayor, chairman of the council,
4 members of the council, members of the State
5 Board of Education, and the attorney general.

6 And I did read to you the entire
7 thing, because I'd like to be a little more
8 explanatory -- kind of casual explanatory. I
9 believe that we can propose this, and I think Mr.
10 McGann agreed with me, that we can propose this
11 as a ballot initiative that uses the language of
12 a resolution, advising Council to amend the
13 Charter.

14 So if you get, you know, a higher
15 number of people that say, hey, we want council
16 advice to amend the Charter, then that goes to DC
17 Council. DC Council looks at it and says, hey,
18 we're going to amend the Charter, puts it in the
19 form of a referendum and voters get to ultimately
20 vote.

21 It's just this two-step process. It's
22 just the same thing -- well, a different vehicle

1 and a little bit longer to get there. So if it
2 is your opinion today, based on the General
3 Counsel's opinion that was read through Mr.
4 McGann, that we resubmit the initiative. We can
5 do that, and we're okay with doing that.

6 In fact, I have copies too that we can
7 even prior to the formal submission, if we can
8 get an advisory opinion from the Attorney
9 General, I am agnostic to that. I mean, if
10 that's the course you wanted to take or just roll
11 on it based on internally.

12 But yeah, so, I want the proponents of
13 this law to be very clear, we still get to vote
14 on -- voters in DC will get to vote on whether
15 they want to see term limits. It's simply that
16 we will do it as a resolution advising Council to
17 adopt it, Council adopts the resolution, presents
18 the referendum, and DC voters vote on it.

19 Any questions?

20 CHAIR BENNETT: Well, what we
21 currently have before us is what you had
22 submitted earlier.

1 MR. BUTLER: Mr. Chairman, I aware of
2 --

3 CHAIR BENNETT: Yeah, I'm not --
4 please, don't -- I'm not -- I'm just trying to
5 make sure the record's clear. I'm not
6 challenging you.

7 MR. BUTLER: Oh, no, my apologies.

8 CHAIR BENNETT: Yeah, so what we have
9 to make a decision on today or at some point in
10 the near future unless you withdraw it is what we
11 have before us.

12 So I just want to be clear on the
13 record and also clear to the folks here that we
14 -- while your potential change is interesting, we
15 don't have that to rule on at this point. So I
16 think we will move forward based on what we have.
17 And then you will consider -- what I hear you
18 saying, you will consider maybe doing things a
19 little differently depending on the outcome of
20 our decision on what's currently enforced.

21 MR. BUTLER: Yeah, and we may move
22 prior to your decision. It just makes road a

1 little bit easier quite frankly. If you have
2 this opposition -- really, let me be clear. What
3 DC needs is a legal opinion on this.

4 CHAIR BENNETT: I'm not suggesting
5 that, you know, one way or the other. We do have
6 other -- like we have the counsel -- we had the
7 Attorney General here, we have our own General
8 Counsel. I think we have a fourth opinion that
9 is opposed to your initiative.

10 MR. BUTLER: All memoranda though,
11 unfortunately -- I think that what we really need
12 is a court decision in the District of Columbia
13 Superior Court, ratified by the Court of Appeals
14 is what we need. So that way it can be precedent
15 for the future. I mean, we saw -- the electorate
16 went willy-nilly and passed it through in 1994,
17 and it shouldn't have happened. But it did.

18 So what we -- I think the real thing
19 is what we need is some stare decisis to guide
20 us. Because we don't have that right now, and
21 all of the oppositions from -- based on this
22 memoranda that have been authored, I think we're

1 going to preempt any decision that you make right
2 now and just file a new ballot initiative
3 containing the language that I just read to you.
4 I think that's the smart way to do it. And quite
5 frankly, based on the recitation of some that it
6 requires an amendment of the Charter. I think we
7 can advise -- the voters can advise DC Council to
8 amend the charter.

9 CHAIR BENNETT: Just to be clear, I
10 mean, whatever you decide to do is completely up
11 to you. But just to be clear, we'll only address
12 those things that we have before us that have
13 been provided. And whatever you decide to do
14 going forward is completely up to you. So we'd
15 certainly appreciate that.

16 MR. BUTLER: Let me say something too,
17 and I hope I didn't come off harsh when I
18 responded to you initially --

19 CHAIR BENNETT: No, you didn't.

20 MR. BUTLER: -- because this has been
21 the third or fourth time before the Board. And
22 you all do wonderful work. I'm greatly, deeply

1 from my heart appreciative for all the work, for
2 all the phone calls that you take that I call
3 emergency calls when they're really not. And so
4 I really do appreciate the work that you all do.
5 I know it's not easy so -- from my heart thank
6 you so much.

7 CHAIR BENNETT: Thank you, we
8 certainly appreciate that. And stop making
9 emergency phone calls.

10 MR. BUTLER: For the record, I'll do
11 that.

12 CHAIR BENNETT: Just kidding.

13 Do we have anything else, Mr. -- I'm
14 sorry, Mr. Gill can you -- do you have questions
15 for our General Counsel?

16 MEMBER GILL: Maybe just a question
17 for our General Counsel. What would be the
18 process, again, if a ballot initiative is turned
19 down by the Board? Can that be appealed? That
20 can be appealed.

21 MR. MCGHIE: That can be appealed,
22 yes.

1 MEMBER GILL: But the appeal is going
2 to be on our decision which may not get to the
3 merits of what you're trying to get to in terms
4 of an actual -- something within the District
5 that has a court --

6 MR. BUTLER: Yeah, that would be slow
7 dancing it I think, I really do.

8 MEMBER GILL: All right. So that's --
9 I'm just sort of working through --

10 MR. BUTLER: Mr. Gill, I think there's
11 a couple ways that this could happen from my
12 understanding is that a sitting -- if we were to
13 move forward with it a sitting councilmember or
14 someone affected by the law could then --

15 MEMBER GILL: Right.

16 MR. BUTLER: -- sue on it because
17 they'd have the proper standing. That should
18 have happened actually in 1994, but it didn't.

19 MEMBER GILL: So that gets to my -- I
20 should have asked Rudy this, but I figured it
21 would come up -- sorry. So what happened in '94?
22 Walk us through the history of --

1 CHAIR BENNETT: Don't go far, sir.

2 MR. BUTLER: Okay.

3 MR. MCGANN: For the record, Rudolph
4 McGann, Staff Attorney, Board of Elections. The
5 record --

6 MEMBER GILL: And you want to say that
7 for the record you weren't there, right?

8 MR. MCGANN: That's the first thing --

9 (Laughter.)

10 MR. MCGANN: For the record, there
11 isn't anything in the record with respect to why
12 the Board went against the advice and the consent
13 of the Corporation Counsel at times now known as
14 the Attorney General's Office.

15 MEMBER GILL: So we wouldn't have
16 anything to look at to --

17 MR. MCGANN: So I believe, I think, if
18 I were to venture a guess, I believe there was
19 just as much passionate discourse in favor of
20 proposing the initiative that we saw today -- and
21 I think the Board went with that sentiment and it
22 was processed as an initiative that no one sued

1 because the public didn't want to sue. And I
2 don't believe anybody from the Council would want
3 to sue because it was a --

4 MEMBER GILL: Right, it's not a viable
5 --

6 MR. MCGANN: -- we agreed, a political
7 football so to speak. And it went along
8 blithely, it passed, and soon as a councilmember
9 was subject to the term limit, the Council passed
10 legislation nullifying that, which was in their
11 power to do as it was for ordinary legislation by
12 virtue of being an initiative.

13 MEMBER GILL: Okay. Thank you.

14 MR. MCGANN: I don't have anything in
15 terms of the Board at that time as it was
16 constituted how they felt about the initiative
17 other than they obviously passed it and found it
18 to be a proper subject. But there's no Order or
19 anything to memorialize what their thought
20 process was at the time.

21 MEMBER GILL: Thanks, Rudy.

22 CHAIR BENNETT: Any other questions

1 for Mr. McGann?

2 MEMBER GILL: No.

3 CHAIR BENNETT: Ms. Lewis, any other
4 questions or comments?

5 (No audible response.)

6 CHAIR BENNETT: This has been quite a
7 robust period and comments so thank you for all
8 of your interest and as I said earlier, while we
9 -- our only -- our focus will be on whether or
10 not the matter's a proper subject for an
11 initiative to be on the ballot, it is still very
12 important for us to hear the other things around
13 the initiative. They're not necessarily
14 certainly directly related to our decision-making
15 process, but certainly adds to the richness to
16 the matter.

17 Because this is not just about like
18 what the law says or not just about these have
19 passed or not. This does impact lives, so I
20 think it's important to get that kind of
21 information on the record. So thank you all for
22 your participation and for your interest in this

1 today.

2 So we're going to move on. Mr.
3 McGhie, actually this is still on you. You're
4 still up.

5 MR. MCGHIE: Okay, that would conclude
6 the matter with respect to proper subject matter
7 determination on the proposed initiative.

8 CHAIR BENNETT: And, excuse me -- and,
9 by the way, we will -- the Board will deliberate
10 on this after this meeting is concluded. And I'm
11 not quite sure when we'll actually come out with
12 a decision, but it will be forthcoming shortly.
13 So thank you, Mr. McGhie.

14 MR. MCGHIE: The next matter on my
15 agenda is Proposed Rulemaking to Amend Title 3
16 DCMR Chapter 3, Advisory Opinions of the Board,
17 Chapter 37, Investigations and Hearings, Chapter
18 42, The Fair Elections Program, and Chapter 43,
19 The Verification Process. These are all the
20 Office of Campaign Finance regulations, so I will
21 defer to the General Counsel for the Office of
22 Campaign Finance to explain what these

1 regulations do.

2 MR. SANFORD: Good morning, again, Mr.
3 Chairman and distinguished Board members --

4 CHAIR BENNETT: Good morning, Mr.
5 Sanford.

6 MR. SANFORD: -- we're all getting
7 started again. Regarding these proposed
8 regulations, I would say that the majority of the
9 regulations are related to the Fair Elections
10 Program. And as the Board knows, on the December
11 board meeting, the Board did approve proposed
12 regulations, they were published in the DC
13 Register, January 4th, 2019. And we were
14 soliciting comments from a group that has been
15 assembled that's known affectionately as the Fair
16 Elections Coalition. And we received numerous
17 comments that were significant.

18 And as a result of those comments,
19 which have been incorporated into the former
20 proposed regulations, we amended the regulations
21 to -- the new newly proposed regulations to
22 include those comments as well as some

1 significant recommendations that came from the
2 Office of the General Counsel for the Board of
3 Elections.

4 As a result of that, we are requesting
5 that the Board publish the -- adopt the proposed
6 amendment and that the matter be republished to
7 give the public a larger opportunity to reveal
8 and comment on the significant changes that have
9 occurred since the regulations were previously
10 published. And if you have any specific
11 questions, I'll be glad to address them.

12 Chapter 37 is the penalty section in
13 the regs. It addresses fines and penalties.
14 Chapter 42 and 43 are the new sections that were
15 added to the regulations that are exclusively for
16 the Fair Elections Program. And they are the
17 Fair Elections Program under Chapter 42, and the
18 verification process under Chapter 43.

19 CHAIR BENNETT: Okay. Let me just, I
20 guess, address a couple of things. One is it is
21 -- I won't say unusual, but it is always the
22 desire of the Board when we have proposed regs

1 that are in the DC Register for 30 days, that the
2 next action would be to vote on those regs as
3 permanent.

4 However, in this case, we decided to
5 repropose the regs as proposed and put it in the
6 DC Register a second time as proposed for a
7 couple of reasons. And Ms. Montgomery testimony
8 earlier -- but there were several comments that
9 we got over the last few weeks -- few months as
10 relates to those regs that were material and that
11 we thought were significant enough for us to
12 modify the regs.

13 In addition, we also have asked the
14 Council -- and I want to put this on the record,
15 we have also asked the Council through Councilman
16 Allen, our oversight councilmember, to consider
17 proposing various changes to the statute of which
18 we think we are going to probably ask for --
19 maybe a few more changes to the statute that will
20 support the operationalizing of the statute into
21 the Fair Elections Program.

22 And so the regulations that are being

1 proposed now are based on the statute as it
2 currently exists. And hopefully what will happen
3 is we'll get some -- it would be great if we got
4 all of the changes -- the Council and the mayor
5 agree to all of the changes that we are
6 requesting be made to the statute to support the
7 operationalizing and administration of the Act.

8 And then once that happens, then that
9 will allow us to finalize the regulations so that
10 we have a clear set of regulations for the public
11 to consider when there is an effort to be a part
12 of this program.

13 I think it's important -- like I said,
14 just for the record, because that's not our
15 normal course of business. We normally would
16 have proposed after 30 days and then vote on the
17 regulations in a final form. We just aren't
18 there yet.

19 We are running flat-out to make sure
20 that we have a successful rollout of the Fair
21 Elections Program. The regulations are a key
22 part of that, and we want to make sure that those

1 are right and we also need the support and the
2 help of the Council and the Mayor's office in
3 order to ensure that we have a statute that we
4 can implement appropriately.

5 Any comments from Mr. Gill in that
6 regard? Ms. Lewis, any comments right now?

7 MEMBER GILL: No.

8 CHAIR BENNETT: Okay, so Mr. Sanford
9 do you have anything else to add?

10 MR. SANFORD: I would just briefly add
11 that going back to Chapter 37, it's one of the --
12 it's an existing chapter. There were no
13 references to Fair Election Program. So those
14 changes are minor changes, primarily cosmetic
15 changes in Chapter 37.

16 The significant changes are in Chapter
17 42 and 43 which were the additional chapters that
18 specifically address the Fair Elections Program.

19 CHAIR BENNETT: Great, thank you. Ms.
20 Montgomery, do you have anything else you wish to
21 add to his --

22 MS. COLLIER-MONTGOMERY: The only

1 thing that I would add is I would like to thank
2 the public, especially the members of the
3 planning committee who submitted comments to our
4 --

5 CHAIR BENNETT: Can you put your --
6 can you put it a little closer, Ms. Montgomery?
7 I think it's on, just needs to be a little
8 closer.

9 MS. COLLIER-MONTGOMERY: Again, I
10 would like to thank the members of the planning
11 committee and the members of the public who
12 submitted comments to our rules because they were
13 extremely helpful in terms of making revisions in
14 certain areas.

15 And the planning committee has been a
16 tremendous help to us in preparing for the
17 rollout of the Fair Election Program.

18 CHAIR BENNETT: Yeah, let me echo your
19 thanks for that. We really do appreciate and
20 need -- particularly in this case where we have a
21 brand-new program. We really do need the
22 public's help and support as well as the Council

1 and the administration. This is an incredibly
2 important program -- public financing is brand
3 new in the District. And this Fair Elections
4 Program is in fact public financed in a number of
5 jurisdictions around the country we've looked at
6 -- that, in fact, does have public financing.

7 But we've got a bit of a -- and we've
8 been able to use some of their -- or take their
9 lead in some areas. But we've got a pretty
10 unique government environment here, and it's
11 going to take all of us focused on this to make
12 sure that we, in fact, do public financing the
13 right way in the District of Columbia.

14 So, thank you, not just for the
15 public, but also thanks for the staff, Ms.
16 Montgomery, Mr. Sanford and your entire team, our
17 new Program Chair Mr. Erick Jackson. Everybody's
18 working really hard. I just want to make sure
19 that this a -- and our attorney. I just want to
20 make sure that everybody's aware of that and that
21 we say that publicly, so thank you. We have a
22 lot of work to do between now and then.

1 Okay, thank you. Mr. McGhie, you want
2 to continue?

3 MR. MCGHIE: Yes, I'd ask the Board to
4 Entertain a motion to adopt this as proposed
5 rulemaking to be sent to the DC Register for a
6 30-day comment period.

7 CHAIR BENNETT: I have a motion?

8 MEMBER LEWIS: So moved.

9 MEMBER GILL: Second.

10 CHAIR BENNETT: The Department moved
11 to seconded. All in favor?

12 (Chorus of aye.)

13 CHAIR BENNETT: And the ayes are
14 unanimous.

15 The other thing I want to also make
16 sure so that it will move to the DC Register as
17 proposed remain. I also want to say as well that
18 if for some reason or another there is a need for
19 permanent regs that we have to do on an emergency
20 basis I will call a special meeting of the Board
21 to consider that. But if not, then we'll vote
22 the 30-day period, continue to work for --

1 hopefully, get the items that we need from a
2 statutory-amendment perspective and move forward
3 accordingly.

4 Thank you very much, Mr. McGhie. And
5 I ask if you have one other item on your agenda?

6 MR. MCGHIE: Yes, just one other item,
7 a litigation status update. Everyone is familiar
8 with Referendum 008 and what underlying factors
9 were with that. The Superior Court, as you know,
10 ruled against us and so we're in the Court of
11 Appeals on part of the matter. So with respect
12 to the matter that the Superior Court ruled
13 against us, we filed on it on appeal. And we're
14 still just waiting on a briefing schedule from
15 the Court of Appeals.

16 On the other matter that remains, the
17 Superior had dealt with Count 2 on whether or not
18 it was a proper subject for an initiative. On
19 February 25th, the parties filed a joint motion
20 to extend the initial scheduling conference,
21 which the clerk granted on February 27th. So the
22 parties are currently scheduled to appear at the

1 conference on April 5th.

2 CHAIR BENNETT: Great, thank you.

3 Anything else, Mr. McGhie?

4 MR. MCGHIE: Nothing further.

5 CHAIR BENNETT: Any questions for Mr.

6 McGhie, Ms. Lewis?

7 MEMBER LEWIS: No, thank you.

8 CHAIR BENNETT: Any questions, Mr.

9 Gill?

10 MEMBER GILL: No.

11 CHAIR BENNETT: All right. We are now

12 at the point of the Agenda of any Public Matters

13 or the Board. And I think we've heard from quite

14 a few members of the public, particularly on that

15 -- specifically on the matter associated with the

16 term limits. But if there is anything else, we'd

17 like to entertain that at the moment. And I'd

18 ask that we be specific and succinct in our

19 comments.

20 Any other public matters?

21 MR. SINDRAM: Mr. Chair?

22 CHAIRMAN BENNETT: We have one coming

1 up in the parties Mr. Sindram, so thank you.

2 MS. MARLIN: Good afternoon.

3 CHAIRMAN BENNETT: Good afternoon.

4 Try the other one.

5 MS. MARLIN: Good afternoon.

6 CHAIRMAN BENNETT: There we go. Thank
7 you so much.

8 MS. MARLIN: I think it's good
9 afternoon, I'm not sure.

10 CHAIRMAN BENNETT: Well, yes, I think
11 it's still morning, I'm not sure.

12 MS. MARLIN: Good morning --

13 CHAIRMAN BENNETT: We have a few more
14 minutes.

15 MS. MARLIN: -- Chairman Bennett and
16 Mr. McGhie. I've had the opportunity to become
17 acquainted with both of you. And good morning to
18 the rest of the Board Members.

19 My name is Robin Marlin and I'm here
20 to, actually, I'm going to present some findings,
21 but at the conclusion of my findings I want to
22 request that a hearing be held in the matter that

1 I'm going to discuss briefly with you.

2 As you know, Chairman, I did testify
3 before Chairman Allen on this very same matter.
4 I've been in contact with that office and I've
5 been instructed, also, to bring that matter
6 before you.

7 CHAIRMAN BENNETT: And I did receive
8 your email earlier in the week, so thank you for
9 that.

10 MS. MARLIN: Okay.

11 CHAIRMAN BENNETT: And I don't mean to
12 rush you, so take your time. I'm sorry.

13 MS. MARLIN: Okay, that's okay. I'll
14 read fast.

15 CHAIRMAN BENNETT: No, no, your fine.

16 MS. MARLIN: Okay. Well, upon, being
17 informed on November 25th at Villareal D.
18 Johnson, which is a candidate in the general
19 election 2018, did not reside at 2411 33rd Street
20 within the 60 day period mandated for a person to
21 reside in SMD 7D05. That would enable him to
22 qualify for candidacy for the ANC seat.

1 As a direct result of learning this
2 information from both his neighbors and confirmed
3 by his landlord, which I have presented evidence
4 to the Board to that effect, a challenge was
5 filed against Mr. Johnson's residency.

6 On January 9, 2019, Ms. Brooks, the
7 registrar's office, informed Mr. Johnson of the
8 challenge. And she ended that letter, that she
9 sent to him, and this is a quote, "if you like to
10 respond to the residency challenge, you must do
11 so on or before February 9th of 2019."

12 Subsequent to that letter, Mr. McGann
13 sent an email revision to Ms. Brooks' letter to
14 Mr. Johnson, and that letter was dated January
15 11th, 2019. And he too ended that letter with
16 saying, "please provide your response by January
17 25th, 2019 so that the Board can relay your
18 response to Ms. Marlin and relay her concerns
19 regarding your qualifications to hold the ANC
20 seat for the current SMD."

21 I emphasize those two final statements
22 in the letters because, what I've come to realize

1 through discussions with the Commission, the ANC
2 Commission this has affected, is that those
3 comments almost offer an option as opposed to a
4 direction for Mr. Johnson to respond.

5 To date, I have no knowledge that Mr.
6 Johnson has responded to the letter that was sent
7 from the registrar's office. So, my first
8 question, not for you to answer it now, but my
9 first question would be, what is the procedure
10 the Board would institute when a respondent does
11 not respond to a challenge or respond back to the
12 board of registrars?

13 I'm just want to scan through here so
14 I don't have to read everything. With that said,
15 since Mr. Johnson didn't response, Mr. McGann
16 initially asked Mr. Johnson to substantiate his
17 residency from June 9th, from the date of that
18 date, to the date that he filed his petitioners.

19 When Mr. Johnson didn't respond to
20 that, I inquired as to what the next step would
21 be. And Mr. McGann instructed me, in an email
22 dated February 6, 2019, that the responsibility

1 was on me now, after I had proved, one, residency
2 matter, that now I had to prove an additional
3 residency matter stating that I would have to
4 prove that he did not live on, live at 2814 Erie
5 Street prior to June 9th.

6 But actually, I feel that these proofs
7 should have been asked when Mr. Johnson signed
8 his declaration for candidacy. If he was
9 changing residencies, you all, I shouldn't say
10 you all, the law has an opportunity for, I guess
11 the registrar's office staff, to ask for proof of
12 residency.

13 I think that's 501, 504.7(a) through
14 (h). Gives an outline of items that you would be
15 asked if you're coming in to register or change
16 your registration or changing your address. And
17 to my knowledge, those items were not asked of
18 Mr. Johnson.

19 And if they were, I think going
20 forward, if a person is appearing to be a
21 candidate, not a voter, if I'm coming in to pick
22 up petitions to run for a seat and no one asks me

1 where I live, it should not then be on the
2 challenger or the ANC Commission to try to prove
3 residency.

4 So with that said, the registrar's
5 letter was a little confusing in that the
6 beginning of her letter indicated that I was
7 challenging his voting rights, which was not
8 true. I really don't care where he votes or if
9 he does vote, I hope he does vote. I was
10 challenging specifically his qualifications of
11 being a candidate in an election. And the 60 day
12 requirement --

13 CHAIRMAN BENNETT: Based on his
14 residency?

15 MS. MARLIN: Based on what he
16 documented on his declaration of candidacy. So,
17 Mr. McGann did acknowledge that his declaration
18 was in conflict of the letter I received from the
19 landlord as to when Mr. Johnson actually moved
20 into the community.

21 So, I will go back to the ANC, so then
22 the registrar sent a letter to the ANC telling

1 them, well, this, you're going to have clear this
2 up, that we're not going to handle it. Because
3 you have this person sitting in the seat you need
4 to, to the registrar's point, she encouraged Mr.
5 Johnson to resign, which he has not done and I
6 don't think he's going to do it.

7 She asked, in her letter, that, well,
8 I encourage you to resign. And then asked the
9 ANC to hold special hearing to hear this matter.

10 Well, the ANC feels like, or felt as
11 they expressed that this is not a matter for them
12 to determine whether a person lives here, lives
13 there, it's actually the responsibility of the
14 Board of Election, when you come in to either
15 register to vote or change your residency or if
16 you want to become a candidate.

17 So, during the January meeting, well
18 I guess this is March, I'm sorry, February ANC
19 community meeting, they decided they were going
20 to send that responsibility back to the Board.
21 And I did convene that to Mr. McGhie in an email.

22 I did note that in the law there's an

1 opportunity for the executive director to declare
2 a vacancy. I think under the circumstance,
3 what's my feeling, I don't want to say I think,
4 but I strongly feel that it's incumbent upon the
5 Board to make sure that when candidates appear to
6 become a candidate, whether it's an ANC seat, a
7 school board seat, a ward seat, that verification
8 needs to take place.

9 You know, I've been around awhile,
10 I've served 14 years and I can recall when I
11 would come down to get petitions I was asked for
12 my driver's or my voter registration card or
13 something. That didn't occur with this election
14 cycle. I don't know why.

15 I don't know if it's something you all
16 have sort of moved away from for whatever reason.
17 I think it would be a good idea to go back to
18 requiring that there is some proof of residency
19 asked for at the time that petitions are picked
20 up.

21 I, something occurred, I think was
22 that same day, registration, initial voting, we

1 happened onto a voting site there that they ask
2 you, I think, for ID. This year I went into vote
3 I wasn't asked for anything but my name.

4 And one of you ladies could have
5 appeared and said you were Robin Marlin and hence
6 voted for me.

7 I think I've covered most of the
8 topics that I wanted to cover so I will surmise
9 by saying, I'm here because I think that Mr.
10 Johnson, or anyone that has been asked to respond
11 to the Board as a result of challenge, should.

12 I'm here to ask what are the recourses
13 and what's the next step? How does this Board
14 ensure that laws are adhered to by making a
15 person respond?

16 I find it almost unbelievable that he
17 can receive something like that, my challenge
18 apparently was credible enough for a letter to go
19 out, but yet he has dismissed it. And nothing
20 has ensued since, actually, since I testified
21 before Chairman Allen. And now I appear before.

22 Now, I don't if Mr. McGhie has

1 additional information but I haven't received
2 anything to that affect.

3 CHAIR BENNETT: Mr. McGann, did you
4 want to comment or, comment?

5 MS. MARLIN: Good morning.

6 MR. MCGANN: And just to kind of
7 layout, make sure we get all the facts so we can
8 --

9 MS. MARLIN: Okay. That's fine.

10 MR. MCGANN: For the record, Rudolph
11 McGann, Staff Attorney with the Board of
12 Elections.

13 I think it would be edifying if I
14 actually read the response that Ms. Marlin
15 referred to peripherally in her comments. With
16 respect to everything that transpired at the
17 time. So, if I may.

18 CHAIR BENNETT: This is a response to
19 what?

20 MR. MCGANN: To Ms. Marlin, letting
21 her know the findings of the registrar and the
22 next steps in the procedure.

1 CHAIR BENNETT: Okay, I got it.

2 MR. MCGANN: Good morning. Or excuse
3 me, good afternoon, Ms. Marlin. Mr. McGhie ask
4 that I respond to your concerns and I will try my
5 best to answer your questions based upon the
6 evidence you provided and the record as it
7 exists.

8 Ms. Brooks, the registrar of voters,
9 had no option other than to treat your complaint
10 as a residency challenge because the challenge
11 period for candidate eligibility had already
12 lapsed at the time of your submission.

13 That process is governed by the
14 challenge period when candidates submit
15 challenges that you participated in and decided
16 to withdraw your challenge based upon the
17 mistaken assumption that the registrar's
18 preliminary determination was a final
19 adjudication by the Board.

20 That process was faulted, and you
21 submitted a challenge to Mr. Johnson's
22 qualifications after the election was held. And

1 you lost the election of ANC Single Member
2 District 7D05 of to Mr. Johnson.

3 Please forgive the confusing the
4 nomenclature, but the registrar can only make a
5 determination through the process utilized to
6 ascertain whether Mr. Johnson lived at the
7 address listed for the applicable period for the
8 60 days immediately preceding the day on which he
9 files the nominating petitions as the candidate,
10 as much a member. Pursuant to D.C. Code Section
11 1-309.05(a)(1)(B).

12 Now, I'm going to digress a second.
13 Ms. Marlin's taking issue about this day and has
14 constantly raised it as an incorrect date and
15 something that I pulled out of thin air but,
16 however, it is by statute, in the code, that this
17 statute provision that I mentioned.

18 I don't know if she overlooked this,
19 but I did bold it in my response to her to,
20 again, and understand that the actual governing
21 60 day period commences 60 days prior to when the
22 candidate submits their nominating petitions, not

1 when they pick it up two months prior.

2 So, Ms. Marlin was under this mistaken
3 assumption for quite some time. And I don't know
4 if she's been disabused of that, but that the
5 period starts when they pick up the petitions,
6 which would have been sometime in April that he
7 had to have been a resident for 60 days, but
8 actually it's June.

9 Then he picked up the --

10 MS. MARLIN: It's in July.

11 MR. MCGANN: He picked up his
12 petitions in July so prior --

13 MS. MARLIN: July 9th.

14 MR. MCGANN: -- April would have been,
15 it would have been sometime in May. But the
16 actual vesting point would have been when he
17 submitted his nominating petitions, which was
18 August 8th. So that's where that date of June
19 9th comes from.

20 So, I'll get back. Mr. Johnson
21 submitted his nominating petition on August 8th,
22 2018. Accordingly, he had to reside in the SMD

1 on June 9th, 2018 to qualify as an ANC candidate.

2 While you did raise a discrepancy with
3 respect, and again, I address again, we never
4 said that she proved that he didn't live there,
5 we said that she submitted information stating
6 that he didn't live, but there was no documented
7 proof that he didn't live there on June.

8 And she, again, she was under the
9 mistaken impression that he had to be there in
10 May. But we didn't have anything that
11 necessarily said he didn't live there on the
12 vesting day, which was June 9th. Okay.

13 Mr. Johnson did not respond to queries
14 regarding the discrepancy. The reason why Mr.
15 Johnson did not respond is because we sent it by
16 email, and he didn't receive the email.

17 He was only made aware of it by an
18 advisory neighborhood commission meeting last
19 month. And he came into our office and explained
20 that.

21 Although he didn't have, at least at
22 the time of June 1st, he was living where he

1 resides now in May, and had a cancelled check to
2 show when this matter was to be put forth in
3 front of the advisory neighborhood commission
4 this month. So, I don't know if they had --

5 CHAIR BENNETT: But he did respond,
6 and did he respond in writing or he --

7 MR. MCGANN: He responded in person.
8 And for assurance at that meeting that was going
9 to happen, this is now March, in February, that
10 he would submit the information.

11 And then that meeting was a day, to be
12 held a day or two after he came into us. So, we
13 assume that he was going to have his hearing
14 because Ms. Brooks had already sent over the
15 information as Ms. Marlin confirmed and stated
16 earlier.

17 And so, we thought he was going to be
18 given that information to Ms. Marlin in a
19 meeting. Apparently his --

20 CHAIR BENNETT: So we, so the
21 expectation was that he was going to have a
22 hearing, as the law requires, with the ANC --

1 MR. MCGANN: Correct.

2 CHAIR BENNETT: -- and make a
3 determination as to his properly --

4 MR. MCGANN: Correct.

5 CHAIR BENNETT: -- holding that seat.

6 MR. MCGANN: Correct. Apparently,
7 that did not happen last month, it was supposed
8 to happen, I guess, this month in terms of March.

9 There was another ancillary issue with
10 another ANC in that same jurisdiction. I think
11 that took up their time to --

12 MS. MARLIN: Can I interject, just for
13 clarification?

14 MR. MCGANN: Sure.

15 MS. MARLIN: Just quick clarification.
16 So, Mr. McGann, and thank you for sharing that.

17 I'm puzzled, since you and I have had
18 continuous conversations via email, and I do
19 appreciate that, you respond very timely. This
20 is the first time hearing about a check, this is
21 the first time hearing that Mr. Johnson did
22 receive the challenge.

1 Because the executive meeting that I
2 attended, he knew of it. He knew of it in
3 January. He was supposed to respond back to the
4 Board of Elections.

5 So, absent of him being here, or me
6 seeing the check, I don't know really know how
7 that interplays. I would have thought that he
8 would submit something to the Board. There would
9 be a file or record since the challenge is
10 brought forward.

11 This is a process that I'm just
12 thinking is kind of legally normal but correct me
13 if I'm wrong. He's saying things that aren't
14 really documented.

15 And then he said that I didn't provide
16 any evidence. Well, I provided something from
17 the landlord. Unless he comes in with a lease
18 that says different, I don't see what bearing
19 that has.

20 And then further, I was not, I just
21 want to put on the record, I was not disenchanted
22 or confused about the date. I mean asked about

1 the date.

2 And even with that date, the landlord
3 attests to when Mr. Johnson, his letter was
4 notarized document to me, Mr. Johnson was not
5 there. So I just wanted --

6 CHAIR BENNETT: Well, until the ANC,
7 and correct me if I'm wrong, until the ANC had
8 their hearing and --

9 MR. MCGANN: They're not going to have
10 a hearing.

11 CHAIR BENNETT: Well, until they do
12 what they have to do relative to address it,
13 that's how the process works, then we would get
14 the matter to address that as an appeal.

15 MS. MARLIN: Okay. And my
16 understanding is that there are two ways of
17 addressing that. This body can address it, if
18 you determine that, by the evidence that he
19 didn't, and I have that filed with the executive
20 director, can do that if evidence is presented
21 where a person is not eligible or qualified.

22 The ANC, I'm going to go out on a limb

1 in saying it because I've been the chair of that
2 very ANC for four years, and vice chair and
3 secretary. They're not really equipped, I think,
4 to be able to determine residency or
5 qualifications.

6 We all run on our merit. We get out
7 and our voters decide if we're qualified to serve
8 them.

9 So, the law that Mr. McGann has used,
10 I see it as a law that's a good fit if someone
11 resigns or someone doesn't resign but leaves the
12 commission and you can't find them, like what was
13 already said.

14 So I can see the ANC goes, well, we
15 really need to fill this seat. And I know that
16 because as chair, we had a vacancy for two years.
17 And I've worked with Ms. Brooks on that issue.
18 And I went out doing foot work and I found
19 someone to fill that vacancy.

20 This particular issue doesn't apply to
21 an ANC filling in vacancy, this issue applies to
22 a Board of Election ensuring that the person

1 lives where they say they should live. When they
2 walk in the door, they should be able, I can
3 prove where I've lived for the last 20 years. I
4 can give it to you today.

5 But a person that cannot do that, that
6 shouldn't be a commissions responsibility. I
7 think you're using your responsibility by
8 throwing it on the ANC. Because that law does
9 not speak to that, it speaks to --

10 CHAIR BENNETT: Let me --

11 MS. MARLIN: -- where vacancy occurs.

12 MR. MCGANN: Can I finish?

13 CHAIR BENNETT: Let me go back to what
14 Mr. McGann said though, is that the challenge is,
15 it sounds like what you're talking about is
16 challenging his candidacy.

17 MS. MARLIN: No.

18 CHAIR BENNETT: Well, that time period
19 is over.

20 MS. MARLIN: No, I was not. I was
21 challenging, that's another issue. I thought, I
22 wrote it so quickly, and I had someone else help

1 me write it.

2 It's very clear, some challenged his
3 residency. Wasn't there, people told me he
4 wasn't there. Comes to the community every time
5 it's time to run for something. So we know he
6 wasn't there.

7 That was my challenge. I don't care
8 where you vote or where he was the year before,
9 that was my challenge. That no one checked, like
10 they didn't check my residency when I came down
11 here to pick up petitions, no one checked.

12 And what --

13 CHAIR BENNETT: Well, unless that
14 challenge comes within the first 60 days, I mean,
15 during that time period, then the ANC has the
16 responsibility to address that residency, and
17 then it comes to us if indeed there is a need for
18 an appeal.

19 Let Mr. McGann complete what he was
20 saying.

21 MR. MCGANN: Sure. Thank you. While
22 you did raise a discrepancy with respect to Mr.

1 Johnson signing a lease in June for a residence,
2 he claims he lived in since May, his former
3 residence was also located in the same single
4 member district.

5 Mr. Johnson did not respond to queries
6 regarding his discrepancy, as I explained, where
7 he didn't get the emails from yes.

8 And, however, no evidence has been
9 submitted by you to address the time between his
10 former residence and his current one. The
11 evidence you presented, claimed Mr. Johnson
12 signed a lease in June. Accordingly, the
13 registrar forwarded your concerns to the ANC to
14 proceed with presenting the evidence to the body,
15 to initiate removal proceedings pursuant to D.C.
16 Code 1-309.11(e)(2). Not the vacancy
17 proceedings, the removal proceedings that are
18 within the providence of the ANC.

19 And that Ms. Marlin keeps responding,
20 bringing up the vacancy aspect of it, but the ANC
21 has the responsibility, per statute, to determine
22 whether or not this member of their body should

1 be removed. Not the Board.

2 CHAIR BENNETT: Yes, so, we're not
3 trying to abdicate our responsibilities here, we
4 just, and nor making a determination as to
5 whether or not he should properly be holding that
6 seat. We have to take what we make a decision on
7 from the ANC.

8 And that's, it's just really quite
9 that simple.

10 MS. MARLIN: Okay.

11 CHAIR BENNETT: So there's --

12 MS. MARLIN: I'm sorry. Understand.

13 CHAIR BENNETT: Okay.

14 MR. MCGANN: To answer your individual
15 question, I believe it is useful to address each
16 one individually. The Board does not have a
17 mechanism to remove an elected advisory
18 neighborhood commissioner.

19 As I have mentioned, the removal
20 process is governed by D.C. Code Section 1-
21 309.11(e)(2). Ms. Brooks has transmitted the
22 evidence you submitted in the form of an

1 affidavit from Mr. Johnson's landlord purporting
2 to sign a lease with him in June.

3 Notwithstanding your claims that the
4 lease was not valid until July, Mr. Mudd, who was
5 the landlord, made no mention of that arrangement
6 in his notarized statement. The registrar cannot
7 make a determination on the basis of hearsay
8 evidence.

9 And Mr. Mudd's affidavit does not
10 support your retelling of the conversation, with
11 respect to him moving in at the end of the month.
12 This is the end of June, into July.

13 When the registrar inquired about the
14 discrepancy between Mr. Johnson's declaration of
15 candidacy and notarized statement from Mr. Mudd,
16 Mr. Johnson did not provide an explanation.
17 Which lead to her inconclusive determination,
18 with respect to his residency.

19 The second question calls for a legal
20 conclusion that cannot be assumed based upon the
21 evidence you submitted to substantiate your
22 assertion. While your evidence provides a

1 conflict in the declaration statement, you do not
2 provide evidence that his former address was
3 outside of the single member district.

4 The registrar could not make a
5 definitive finding because Mr. Johnson did not
6 respond. However, Mr. Johnson's former address
7 of record is 2814 Erie Street Northeast, which is
8 still within the boundaries of single member
9 district 7D05.

10 Even if he did not reside at his
11 current address, his former address was within
12 the SMD. Again, the process for removal is
13 codified at D.C. Code Section 1-309.11(e)(2).
14 And this process is not done by court order or
15 Board fiat.

16 The advisory neighborhood commission
17 will proceed de novo. Meaning that you and Mr.
18 Johnson are able to submit evidence in support of
19 your positions. That process is governed by the
20 bylaws of the ANC.

21 You will be able to substantiate your
22 claim and Mr. Johnson will be able to address

1 your concerns, with respect to the discrepancy in
2 his declaration of candidacy.

3 If the ANC did not provide the parties
4 the ability to submit new evidence, then Mr.
5 Johnson could rely solely upon his former and
6 current address, to serve that he lived in the
7 SMD for the requisite 60 days prior to submitting
8 his nominating petition. Not 60 days from his
9 declaration of candidacy.

10 Both parties are afforded the full
11 monopoly of rights to present evidence in this
12 administrative process conducted by the ANC7D.

13 I think that pretty much sums up
14 everything in terms of my response. And this was
15 my last response to Ms. Marlin.

16 CHAIR BENNETT: Okay. Ms. Marlin, I'm
17 sorry, we --

18 MS. MARLIN: Yes. So my response to
19 that. I'd like to respond to him. And I'll just
20 read it again.

21 I said, it's not incumbent for me to
22 have to prove that prior to where he was, in

1 regards to Mr. Johnson. I think that that should
2 be on the Board when he appears.

3 So just me just end by saying this.
4 Again, I think maybe my appearance has been
5 misconstrued. Maybe I'm not being clear to the
6 Board or to this Agency.

7 There should be a process in place
8 when anyone walks into your door to pick up
9 petitions for any seat, not just an ANC seat.
10 And this is very passionate to me because I was
11 born and raised in the city. I'm a Ward 7
12 resident, raised. And I have my home there, my
13 parents live there.

14 And I care if people live where they
15 say they should live. I don't want someone from
16 Maryland representing me because the Board
17 decides, well, we're not going to ask him for any
18 proof of ID when they show up.

19 So, I want to conclude by saying,
20 504.7 says what a valid proof of residents is.
21 These are official documents in your regulations.

22 I didn't write them. They're in Title

1 3, which is the Board of Election and Ethics.
2 And I underline ethics. Because I just don't see
3 it here. I really just don't.

4 There are A through H, items that
5 could be asked when a person appears to pick up
6 petitions for any seat. And the fact that the
7 office that we appear at to do that is going to
8 try to circumvent something that you have here
9 very handy and throw it back on a challenger or
10 throw it back on a commission whose totally
11 confused by a letter they got from this office to
12 try to make a decision, is not acceptable to you
13 all being attorneys.

14 I'm not being rude, I'm just very
15 concerned that, you know, I'm just very concerned
16 that this residency issue is not taken seriously.
17 And frankly, I don't know what else to do about
18 it.

19 I'm here to ask for a hearing so that
20 he respects you all. He comes in, he shows the
21 proof. If he shows the proof, that's fine, poof,
22 I'm gone.

1 But what I'm asking is why this body
2 cannot compel him to prove he came down and
3 signed the declaration as if he lived these
4 places. I've shown one piece of evidence
5 contrary to what Mr. McGann has said. I showed
6 what I was asked.

7 And then when that, I guess he said,
8 well, we're going to ask her to do something
9 else, and I refused to do that because I think
10 that there should be some responsibility to live
11 in the city, if you're going to work in the city
12 and you're going to represent residents in the
13 city.

14 There should be some compassion. Ms.
15 Lewis spoke about that. If you're compassionate.
16 It's not about winning or losing.

17 I've been a commissioner 14 years.
18 Frankly, I was a little tired. And yes, I lost
19 by minor votes, 19. And could have challenged
20 that, I did.

21 But when I learned, from my previous
22 constituents that he didn't live there, he came

1 into the community and ran for a seat and won,
2 Mr. McGann pointed that out, which he didn't have
3 to, I knew that I had lost, but the fact that the
4 Board doesn't care if he lives there, and no one
5 asked him when he came in, he even didn't put the
6 right zip code for the previous address, which
7 lets you know he doesn't know the address.

8 And so, my final request would be to
9 have a hearing, not to remove him, you don't have
10 to remove him, but that he answers your letter to
11 my complaint saying, Mr. Johnson, we got this,
12 and we need you to show us that you actually live
13 there. Bring the proof. Bring this proof that's
14 in our Title 3, 504, that you, when you picked
15 the petitions you were being honest.

16 That's all I'm asking, that you were
17 being honest. And the fact that he didn't bring
18 it to the commission, I was sitting there.

19 The other young lady, that's going to
20 be discussed, she was going to fight me. Got up
21 and approached me to physically fight me because
22 I said, these two individuals do not live in our

1 commission.

2 And I just cannot believe that this
3 Board is going to advocate that responsibility.
4 Anybody coming in, they're updating, to Karen's
5 point, she was updating, he was updating,
6 changing, why don't you ask for ID. Why don't
7 you ask where these people are living.

8 And that's my conclusion. But I would
9 like to know if I'm entitled to a hearing, to
10 make him come in with some evidence that he lives
11 in these places.

12 CHAIR BENNETT: Let me go to the short
13 answer. And I think the short answer is, I don't
14 think we have the authority to do so.

15 MS. MARLIN: All right.

16 CHAIR BENNETT: But also, my point,
17 that we will reconsider and take a look, but my
18 point is, while we do functions ethically, we
19 are, now this is the Board of Elections, there is
20 a Board of Ethics.

21 But more importantly --

22 MS. MARLIN: Then delete that from

1 this form.

2 CHAIR BENNETT: Well, we don't do it,
3 but it is. But I hear your frustration, and I'm
4 not, I think Mr. McGann and Ms. Brooks explained
5 it pretty clearly, but we will commit, and I will
6 commit for the Board to consider your request.

7 MS. MARLIN: May I ask you this, since
8 you said they explained. Can Ms. Brooks, and
9 Karen, I've known you for years now, can someone
10 tell me why you all don't ask for ID when we come
11 in to pick up petitions?

12 CHAIR BENNETT: Well actually we
13 don't.

14 MS. MILLER: We don't.

15 MS. MARLIN: If you don't --

16 (Simultaneously speaking.)

17 MS. MARLIN: -- two hours and nobody
18 gave any ID.

19 MS. MILLER: We're not a voter ID
20 state. There is no requirement in the law that
21 we request ID.

22 There's a checklist that voters are

1 asked to go through and say if they're a U.S.
2 citizen, dada-dada, and they sign that. There's
3 no requirement to provide ID.

4 Just as when you go to vote, you do
5 not have to show ID because D.C. is not a voter
6 ID state.

7 MS. MARLIN: And that's new.

8 MS. MILLER: That's not new.

9 MS. MARLIN: It is new.

10 MS. MILLER: No, it's not new.

11 MS. MARLIN: The reason why I say
12 that, because I have a voter card and ever since
13 I've been voting, now, I live in the City --

14 MS. MILLER: They should not have
15 asked you for it --

16 MS. MARLIN: Well, maybe --

17 MS. MILLER: -- I can say that.

18 MS. MARLIN: Okay, that's an operative
19 word. One of the commissioners said they should
20 not ask --

21 MS. MILLER: They shouldn't.

22 MS. MARLIN: -- but I think it's a

1 responsibility to ask. You can have anybody
2 going and voting.

3 And if that's, Mr. Bennett, if that's
4 true, then perhaps that's something we need to, I
5 need to talk to the Chair of the Council. You
6 talked about the Council and all these kinds of
7 things.

8 Because I saw on the website, this
9 billing cycle says you do not have to show ID. I
10 have never seen that before.

11 So, as a person born and raised in the
12 city, live in the city, I work in this city.
13 Like I said, I have always, until this last
14 election, and I even asked the person, why aren't
15 you asking who I am, because I could be anyone
16 saying Robin Marlin and voting. That needs to
17 change.

18 CHAIR BENNETT: Well, that is a matter
19 for the Council.

20 MS. MARLIN: I agree. I agree with
21 that. But to your responsibility, not yours
22 personally, but to this body, this Karen's job,

1 when people come in, they need to ask them
2 something. I mean, people shouldn't just show
3 up.

4 I mean, I could have shown up as
5 Valerio, I mean, and signed petitions and walk
6 out the door. There should be some way that you
7 attest to a person living where they say they're
8 living. Then why have a law that says, with a
9 viable proof of residency.

10 I mean, why we still have that law if
11 you're not going to use it?

12 MR. MCGANN: If I may?

13 MS. MARLIN: No, I would like the
14 Chairman to answer, if you could.

15 CHAIR BENNETT: I don't have an answer
16 for you.

17 MS. MARLIN: No, okay.

18 CHAIR BENNETT: Maybe Mr. McGann can
19 --

20 MS. MARLIN: No, that's okay. That's
21 fine.

22 CHAIR BENNETT: But I don't have an

1 answer for you.

2 MS. MARLIN: That's fine if you don't
3 have an answer. I was making my statement,
4 that's fine. But thank you, Mr. McGann and thank
5 you for responding.

6 MR. MCGANN: You're welcome, Ms.
7 Marlin.

8 MS. MARLIN: Thank you.

9 CHAIR BENNETT: Thank you. Any other
10 matters? Any other public matters for today?

11 MR. SINDRAM: Yes, Mr. Chair.

12 CHAIR BENNETT: Mr. Sindram, I'm going
13 to ask you to be brief and succinct, sir. Mr.
14 Sindram? You're not there, maybe you're on mute.

15 MR. SINDRAM: Can you hear me now?

16 CHAIR BENNETT: Yes, we can hear.

17 MR. SINDRAM: Okay, great. The
18 proposed rights, would you do the kindness to
19 send them to me? I have to be certain that they
20 be challenged so I'd like to peruse them and
21 receive a hard copy.

22 CHAIR BENNETT: Is -- is she in the

1 room? Is Cecily in the room?

2 MR. MCGANN: We'll relay it to her.

3 CHAIR BENNETT: Okay, we'll relay that
4 to her.

5 MR. SINDRAM: Perfect. Not to belabor
6 the point, term limits, res judicata collateral
7 estoppel decided 1994 et al. That should be the
8 end of it. But, me that as it may, you can res
9 judicata collateral estoppel, very weighty legal
10 issues.

11 Frazier O'Leary, and Ms. Montgomery
12 was brought up, on an audit. What's that about?

13 CHAIR BENNETT: Ms. Montgomery?

14 MR. SINDRAM: Representative for the
15 D.C. State Board of Education, Frazier O'Leary.
16 Hello?

17 CHAIR BENNETT: We're here, I'm not
18 sure we recall it, Mr. Sindram. What was the
19 point that was made?

20 MR. SINDRAM: When Ms. Montgomery went
21 through the litany of audits his name was brought
22 up and I failed to, missed exactly what the point

1 was, or the issue.

2 CHAIR BENNETT: That's not right here
3 at hand. Mr. Sindram, can we get back to you on
4 that, or Ms. Montgomery?

5 MS. COLLIER-MONTGOMERY: Is Mr.
6 Sindram asking about the audits that I --

7 MEMBER LEWIS: She needs her mic on.

8 MS. COLLIER-MONTGOMERY: -- that are
9 in the office, that are ongoing?

10 CHAIR BENNETT: I assume so.

11 MS. COLLIER-MONTGOMERY: Okay.

12 Basically, I was reporting on the activity of the
13 audit branch. And I reported on the audits that
14 are actually active in the office, as well as the
15 audits which were completed.

16 And with the audits that were
17 completed, those audits are available for review
18 at our website.

19 CHAIR BENNETT: Thank you, Ms.
20 Montgomery. Mister --

21 MR. SINDRAM: Well, again, I assert
22 that they be challenge. You make mention of an

1 audit, Frazier O'Leary. So what I'm asking you,
2 if you can't answer it now sometime in the very
3 near future, what that audit is about. Frazier
4 O'Leary, for representative.

5 CHAIR BENNETT: Okay, Mr. Sanford has
6 an answer for that. Hold on, Mr. Sindram. Mr.
7 Sanford.

8 MR. SANFORD: Mr. Sindram?

9 MR. SINDRAM: Yes.

10 MR. SANFORD: Okay. The director had
11 reported the fulfilled audits of newly elected
12 officials to the D.C. District of Columbia State
13 Board of Education.

14 They included Frazier O'Leary, Zachary
15 Parker, Jessica Sutter and Emily for Education.

16 CHAIR BENNETT: Okay. All right, any
17 other matter, Mr. Sindram?

18 MR. SINDRAM: Yes. Last, but not
19 least, in light of Black History month, Rosa
20 Parks is the face of the Montgomery County,
21 excuse me, the Montgomery, Alabama Bus Boycott.
22 Who was the initial selectee and why was Rosa

1 Parks selected, any idea?

2 CHAIR BENNETT: I have no idea.

3 MR. SINDRAM: No?

4 CHAIR BENNETT: No idea.

5 MR. SINDRAM: Okay.

6 CHAIR BENNETT: Thank you.

7 MR. SINDRAM: It was a young lady
8 named Claudette Colvin who was initially
9 selected. However, she was found with child, and
10 back at that time that was a big no-no, so she
11 was dropped like a hot potato.

12 So Rosa Parks, who was very well
13 connected in the NAACP and very light complexion,
14 was then named as a face of the Bus Boycott.
15 Good to know our Black History, you know.

16 CHAIR BENNETT: Thank you. All right,
17 I think we have one other person. Mr. Hammond,
18 thank you.

19 MR. HAMMOND: Yes. Good afternoon,
20 Chairman, Members of the Board of Elections.

21 My name is Phillip Hammond. I am a
22 former ANC commissioner for ANC 7D04, and I too

1 have submitted a challenge about residency.
2 About Nicole Smith-McDermott.

3 Before I go forward, I want to, I
4 guess react, to something I think you said
5 earlier. In regards to the commission not acting
6 on the vacancy requirement for the ANC.

7 We know, Ms. Marlin and myself know,
8 that the ANC has a refused to take a position.
9 They sent a letter back to the Board. Back to
10 Mr. Brooks I believe, or the Board. If you have
11 not got that, I think you will be getting that.

12 So, based on that, based on the fact
13 that they did not take a position on the vacancy
14 requirement, I think you said something about, if
15 they don't act, there is the opportunity for an
16 appeal. Apparently by the Board of Elections.

17 That's something that I heard, was
18 that correct?

19 CHAIR BENNETT: No. I said that they
20 could, one could appeal their decision to the
21 Board, but the ANC has to, the initial matter
22 associated with, at least in this case,

1 residency, which is outside the period where the
2 candidacy is challenged, then once the ANC acts
3 or takes the position, then that decision can be
4 appealed to the Board.

5 MR. HAMMOND: Well, I think it's
6 obvious the ANC is not going to take a position.
7 I mean, I think that's what has been said in this
8 meeting, that they're not going to take a
9 position.

10 So I guess I'm asking you, knowing
11 that, well in advance, so what would your
12 position be knowing that they're not going to
13 take a position on residency? What should be
14 next?

15 CHAIR BENNETT: Well --

16 (Off microphone comment.)

17 CHAIR BENNETT: Yes, well, we don't
18 know. But if you take no position, I mean, no
19 decision is a decision at some level, you know.

20 So I think at least we have to take a
21 look at it. But I think we need to have it
22 treated like no decision was a decision to take

1 no action.

2 MR. HAMMOND: I think that comment, no
3 decision is a decision, certainly is a challenge
4 in itself. And I say that because, if we, and I
5 have a package here that I submitted to the ANC
6 in regards to what Ms. Brooks said to the
7 chairperson asking them to take an action on the
8 vacancy position, and if you don't mind, I'd just
9 like to read the letter I sent to the
10 chairperson, then I'll go forward.

11 CHAIR BENNETT: Okay.

12 MR. HAMMOND: On January the 14th,
13 that's the date of this letter, I sent it to D.
14 Lynnell Humphrey, chairman of the ANC 7D
15 neighborhood commission. And the subject was
16 residency challenge of the AND 7D04 seat.

17 Dear Chairman Humphrey. In support of
18 my challenge and subsequent letter from the Board
19 of Elections, dated January 18th, 2019, I am
20 enclosing some of the documents that I will be
21 forwarding to the Office of the Attorney General
22 Karl Racine.

1 One document in particular, shows that
2 Ms. McDermott is a current resident of single
3 member district 7F01. Not a resident of single
4 member district 7D04.

5 The second document is the affidavit,
6 as she submitted it to the Board of Elections on
7 January the 5th, whereon Ms. McDermott, by her
8 signature, willfully committed perjury.

9 Further, the current Board of
10 Elections voter really will show that Mr. Lester
11 Cameron is the current resident of 3525 Highwood
12 Drive, which is where Ms. McDermott claims she
13 resides.

14 Shannon Humphrey, in keeping with your
15 desire to end this matter, I strongly recommend
16 that you urge Ms. McDermott to submit a letter to
17 the ANC 7D commission of her resignation of the
18 office, to the Office of ANC 7D04 effectively
19 immediately.

20 However, if Ms. McDermott refuses to
21 resign, then a resolution should be adopted by
22 the Commission to vacate the ANC 7D04C before

1 others are implicated in this very serious
2 matter. Which basically is saying that commission
3 should take some position, which they are not
4 taking. They're not going to take a position.

5 So, I don't want to continue the
6 discussion about residency when obviously the
7 Board has a problem with verifying a person's
8 residency. I think it's very clear.

9 And I think probably, or I know, I
10 wouldn't be here today and Ms. Marlin wouldn't be
11 here today, if the Office of the Registrar, when
12 somebody comes in to pick up information on
13 ballots and stuff like that, that there is a
14 simply requirement that they have to submit some
15 kind of, I guess some kind of lease, some kind of
16 bill, a water bill or some kind of bill like
17 that, utility bill, indicating where they live.

18 It's obvious to me and many others,
19 that people who come in and get this information
20 do not honor or do not have any respect for so
21 called honor system.

22 So basically, I'm calling, I think

1 there should be some reform actually in the Board
2 of Elections process, regards to residency.
3 Because it's certainly not working.

4 And I think what happens in a lot of
5 these cases, some people don't pursue it. People
6 come in, they pick up this information and they
7 run. Basically, they're carpetbaggers. They
8 come in and run and they win. And some people
9 don't pursue this problem.

10 And I'm basically here today pursuing
11 the problem because I know she does not live
12 where she claims to live. And some of the
13 information that I have, some additional
14 information that I picked up in regards to where
15 she actually live, is the Homestead Act.

16 The Homestead Act, she claims the
17 Homestead Act. And she actually lives on 4011
18 Clay Place Northeast. She does not live on
19 Highwood Drive. But she is claiming the Homestead
20 Act.

21 So, I'm saying to you, and you can
22 tell me what the next step should be in regards

1 to continuing this challenge, in regards to
2 getting her out of this seat, because she does
3 not live where she proposes to live.

4 So basically, I'm asking you, what's
5 my next, what should I do next if you guys are
6 not going to take the position on the residency?

7 As it stands today, you're not going
8 to take a position on it, what should be the next
9 thing that I should do in regards to this?

10 CHAIR BENNETT: What's your last name
11 again?

12 MR. HAMMOND: My last name?

13 CHAIR BENNETT: Mr. Hammond? Yes.

14 MR. HAMMOND: Hammond.

15 CHAIR BENNETT: I wanted to call you
16 by name if that's okay. I'm really, it looks
17 like my colleague is going to make a point.

18 MEMBER LEWIS: Well, I guess my
19 thought is this. Everything requires
20 administrative procedure, right, at an
21 administrative agency level.

22 And so, here today we don't have

1 anything formal from either commission indicating
2 that they're not going to hold a hearing, which
3 is what the expectation and the requirement for
4 them to do is when these type of matters arise.

5 We are, in the case of these type of
6 challenges, an appeal board. Just like you have
7 to go through the proper requirements of going to
8 the D.C. Superior Court before you go to the D.C.
9 Court of Appeals. Very similar, I guess,
10 parallels here.

11 And so, I think from my hearing, it's
12 not a situation where we can definitely
13 definitively say that the commission in either
14 jurisdiction, or SMD, is not going to move
15 forward with this because we have not yet
16 received, to my knowledge, anything formal from
17 either commission regarding these matters that
18 you're both raising.

19 And so I think, and I would defer to
20 our general counsel on this, but I think that
21 there is certain procedural steps in place that
22 have to be taken, right, and there needs to be

1 something formalized, as I would imagine it, from
2 the commission. Just like there would need to be
3 some starting statuses from the D.C. Superior
4 Court before it goes to the D.C. Court of
5 Appeals, before we can actually take a position.

6 So I don't want the characterization
7 on record to be that we are not or we are
8 choosing not to make a decision on this, because
9 that's not actually what's happening. We just
10 don't have the lower level procedural things that
11 need to be done, I'll say --

12 (Off microphone comment.)

13 MEMBER LEWIS: -- determination, thank
14 you for that correct word.

15 We just don't have the lower level
16 determination yet to even move on that at this
17 point. So, I just wanted to ask our general
18 counsel if he can just provide some clarity on
19 that for the record.

20 MR. MCGHIE: Yes, so, based on the
21 law, we would need a resolution from the
22 commission either one stating, a resolution

1 stating that the commissioner resides in the
2 single member district or the commissioner does
3 not reside in the single member district, and
4 then either party can appeal it to the Board.

5 So the Board needs a resolution one
6 way or the other, and then the affected, with the
7 affected party appealing the resolution of the
8 commission.

9 CHAIR BENNETT: You know I, for Mr.
10 Hammond and Ms. Marlin, I know we're not
11 discussing your matter at this point but they're
12 pretty much the same matter. Type of matter.
13 And I feel your frustration.

14 And I'm sitting here trying to think
15 of what we can do to help at least get a decision
16 that we can get something from the commission
17 that we can actually make a decision on. And I
18 have to talk with counsel afterwards.

19 And maybe we could make a request that
20 you guys brought it here and asked the ANCs to
21 make a determination one way or the other, to
22 give us something to address. But, Ms. Lewis is

1 correct and so is Mr. McGhie.

2 But it isn't because we don't care,
3 and I will commit to try and at least get with
4 our general counsel office to try and think
5 through, the only thing I can suggest right now
6 is that we request the commission, the ANCs, to
7 actually make decisions on these matters.

8 And we have something to address. But
9 while it is definitely appreciated and I feel
10 your frustration that you guys have come here,
11 because you got issues that you feel very
12 strongly about, and from a personal perspective I
13 understand and certainly think that you should
14 feel strongly about it.

15 You've got somebody that's
16 representing your ANC and you don't believe
17 they're a resident, then obviously that would be
18 a concern. But as both Ms. Lewis and Mr. McGhie
19 have stated, we have to have something to rule
20 upon from the ANC.

21 So the only thing I think that we can
22 commit to at this point, and I'm not sure it's

1 worth a lot more conversation in this meeting or
2 hearing, meeting, is I'll get with Mr. McGhie and
3 Mr. McGann and our general counsel office and see
4 if we can encourage, if nothing else, the ANC
5 that has the responsibility to make that
6 determination, if they can make that
7 determination, post haste, to give us something
8 to address. And then you guys can properly appear
9 to either challenge or support their decision.

10 MR. HAMMOND: Well, let me just say
11 this, because I don't want to burden you guys
12 with this problem. It certainly is not something
13 that the, I think the ANC commission, unless,
14 until something changes in regards to probably
15 policy guidelines, I think when you put the
16 burden on the ANC and make a decision like this,
17 and the ANC, we already know, the ANC has already
18 decided they're not going to take the position,
19 and send this back to you.

20 I guess what I'm asking you to do is
21 to give me some idea, in terms of turn around,
22 once you get, once someone gets this letter from

1 the ANC indicating they're not taking the
2 position, what would be the timeline, I guess in
3 regards to getting something from you guys, of
4 the next step?

5 Certainly, I'm prepared to go as far
6 as I can with this because I know, I know the
7 young lady, I don't know what her intent is or
8 was, she does not live there, her mother does not
9 live there, the person who I think might have
10 been her father died in 1997, he's not there.
11 There is a gentleman that lives there named Mr.
12 Lester Cameron, he lives there alone.

13 And as I stated before, she lives in
14 7F01, which is on the other side, almost the
15 other side of the ward in regards to proximity of
16 where the single member district 7D04 is. So she
17 doesn't live there.

18 So, the point, my point, which I'd
19 like you to address, if you can, once you get the
20 letter from the ANC indicating they're not taking
21 the position, what will you guys do?

22 I'm just telling you guys this because

1 that's what's going to happen. Knowing that,
2 what will be a possible timeline on the next
3 action that you take in regards to what Ms.
4 Marlin, and I'm asking you?

5 I don't think, first of all there is,
6 as far as I know, there is no statute of
7 challenging a person's residency in regards to
8 when you challenge it. Because as long as they
9 are an elected official, they can be challenged
10 at any time.

11 And knowing that, knowing basically
12 what we know now about my particular situation,
13 the lady, the young lady is claiming a Homestead
14 Act and she lives in another house. She doesn't
15 belong where she claims to live.

16 CHAIR BENNETT: Mr. Hammond --

17 MR. HAMMOND: I'll just leave it at
18 that. And I just wanted to give you a timeline.

19 CHAIR BENNETT: Yes, I can't --

20 MR. HAMMOND: Because you keep saying
21 you can't do anything until you get something
22 from the ANC, and I'm just saying to you, you're

1 going to get a letter from the ANC of them not
2 taking any position on it.

3 CHAIR BENNETT: Well, first, let me
4 say this. Whenever we're able to address a
5 matter, I can't give you a timeline, but I will
6 tell you we'll do it as soon as possible.

7 I don't know what our respective
8 schedule will be in other demands. But we'll
9 certainly do that as soon as possible.

10 And this is not the first time we've
11 heard from Ms. Marlin. It is the first time I've
12 heard from you. But obviously this has been
13 going on for some period time.

14 MR. HAMMOND: Yes.

15 CHAIR BENNETT: But I'll commit to try
16 and get that done as soon as possible.

17 But with regard to your other
18 statement you made, with regard to challenging
19 somebody's residency at any time, you can, it's
20 just you got to challenge that to the ANC. And
21 if they refuse to address it --

22 MR. HAMMOND: Then it puts it back

1 into your hands.

2 CHAIR BENNETT: Well, the law, no, no,
3 it doesn't. The law doesn't give it back to us
4 if they refuse to address it. They have to
5 address it one way or the other.

6 We have to have something that we are
7 able to adjudicate. It's just --

8 MR. HAMMOND: Well, I understand.
9 You've made that very clear.

10 CHAIR BENNETT: Yes. From the ANC.
11 So, I don't want you to characterize this, even
12 though you may not have been trying to do so,
13 that you can't challenge residency at any time,
14 it's just that we don't have the authority at the
15 Board to be the initial place of the challenge.
16 That's all.

17 MR. HAMMOND: I said something earlier
18 about reform in the Board of Elections. I hope
19 you guys will consider some reform in regards to,
20 and know Ms. Brooks has a challenging job, but I
21 probably wouldn't be here. And maybe in the
22 future other people wouldn't be here if once a

1 person comes in, say they want to run, they want
2 this, they want that.

3 I mean, you can write it down on a
4 piece of paper and say here, you got to provide
5 this before you get anything out of this office
6 in regards to residency. And I hope you guys
7 think about that reform if you don't think about
8 anything else.

9 CHAIR BENNETT: We appreciate that.
10 Thank you.

11 MS. MARLIN: Can I, just one last
12 other thing?

13 CHAIR BENNETT: Yes, Ms. Marlin.

14 MS. MARLIN: So, in terms of that, I
15 wanted to state again, my concern is about
16 residency here, not the seat. I just think that
17 I want someone to represent me that lives where
18 they say they live and that they actually care
19 about the community.

20 Because I have served yearly. And
21 actually, when I started this fight my
22 constituents came to me with the concern, I

1 didn't even know.

2 CHAIR BENNETT: Yes.

3 MS. MARLIN: So in terms of
4 challenging, and I know Mr. McGann had pointed
5 out to me that while the challenge, I mean, you
6 challenging a residency was passed. And I agree
7 with Commissioner Hammond that there should not
8 be a deadline on that.

9 I could find out a year later that
10 somebody moved and nobody is there or that they
11 didn't live there. And we should feel that we
12 can challenge that.

13 But my closing statement would be to
14 Ms. Brooks. She took the time to send a letter
15 out and asked him to respond.

16 If nothing else, it's disrespectful
17 for him, at least Nicole Smith-McDermott did
18 provide something. But for him to ignore her
19 correspondence and just, really just kick the
20 Board of Election aside, it's just inconceivably
21 to me that this body can't do something to
22 require him to respond.

1 Even respond and says, forget you all.
2 Something. But for him to ignore an agency and
3 to basically ignore her, and I can feel her
4 response to him saying, you didn't respond, I'm
5 going to send it to the ANC and you need to
6 resign.

7 I just couldn't believe what I,
8 because I know the person, he feels he can do
9 that. And I'm asking this Board to show him, no,
10 you cannot disrespect this agency.

11 CHAIR BENNETT: We hear you, Ms.
12 Marlin.

13 MS. MARLIN: And Ms. Brooks.

14 CHAIR BENNETT: Thank you.

15 MS. BROOKS: Thank you.

16 MS. MARLIN: You're welcome.

17 CHAIR BENNETT: Any other public
18 matters? Hearing and seeing none, the meeting is
19 adjourned. Thank you.

20 (Whereupon, the above-entitled matter
21 went off the record at 12:55 p.m.)

22

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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Board Meeting

Before: DC BOE

Date: 03-06-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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