

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

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WEDNESDAY,

NOVEMBER 4TH, 2015

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

BOARD OF ELECTIONS MEMBERS PRESENT:

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

BOARD OF ELECTIONS STAFF PRESENT:

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

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1 P-R-O-C-E-E-D-I-N-G-S 10:30 a.m.

2 CHAIRMAN NICHOLS: Good morning. Welcome to
3 the what -- November, 2015 regular meeting of the Board
4 of Elections. It is Wednesday, November 4th, 2015.
5 The time is 10:39 a.m. We are meeting in Room 280
6 North of 1 Judiciary Square.

7 I am Deborah K. Nichols, Chairman of the
8 Board of Elections. Present with me this morning, is
9 Board Member Stephen Danzansky.

10 MEMBER DANZANSKY: Good morning.

11 CHAIRMAN NICHOLS: Also present this morning,
12 Mr. Clifford Tatum, our Executive Director, Ms. Cecily
13 Collier-Montgomery, the Board's Director of Campaign
14 Finance --

15 DIRECTOR COLLIER-MONTGOMERY: Good morning.

16 CHAIRMAN NICHOLS: -- and Mr. Kenneth McGhie,
17 the Board's General Counsel. Without objection, the
18 agenda for this morning's meeting is adopted.

19 Also, unless there are corrections, the
20 minutes of the regular Board meetings of August 5th,
21 September 2nd, and October 7th are adopted with
22 technical amendments possible.

1 MEMBER DANZANSKY: No objection.

2 CHAIRMAN NICHOLS: All right. Are there any
3 matters that the Board Member wishes to address in this
4 meeting?

5 MEMBER DANZANSKY: Not here, Madam Chair.

6 CHAIRMAN NICHOLS: All right. With that we
7 will move to the report of the Executive Director, Mr.
8 Clifford Tatum.

9 DIRECTOR TATUM: Good morning, Madam Chair.

10 The report from the Executive Director
11 includes two items, the Canvas Card update as well as
12 an update on Recall Petitions that were submitted to
13 our office to recall two ANC commissioners.

14 As an update for the record, the Board --
15 after the November, 2014 general election -- sent out
16 canvas cards to 280,000 registered voters who did not
17 participate in the November, 2014 election and of those
18 canvas cards sent out, we received a total of 46,899
19 back to our office, 40,293 were undeliverable, 1,901
20 were voters who'd moved within the District of
21 Columbia, 2,327 were voters who moved outside of the
22 District of Columbia, 269 were returned as being

1 deceased voters, 21 returned with name changes, 875
2 returned with no changes and we had miscellaneous cards
3 that came back for various reasons.

4 So canvas is continuing. There's always
5 cards that are coming in on a monthly basis and even up
6 to a year after we (indiscernible) so that's not
7 unusual for us.

8 The second item, which is the Recall
9 Petitions. There was a Recall Petition submitted for
10 -- to recall ANC Commissioner Christy Davis in 5E02.
11 That petition initially was submitted with 136
12 signatures and what a number of signatures needed to
13 qualify the recall for an election was 136, and the
14 total number of signatures that were submitted as valid
15 was 91, so that Recall Petition failed.

16 The second Petition was the -- of recall of
17 ANC Commissioner Adam Roberts of 5D03. The number of
18 signatures that were submitted from the very beginning
19 to -- for us to consider was 33. It did not meet the
20 prima facie area to have the petition supported, so it
21 was rejected out of hand.

22 So, those were the two Recall Petitions that

1 were submitted and that had failed.

2 That concludes my report as it relates to the
3 Executive Director.

4 CHAIRMAN NICHOLS: All right. Are there any
5 questions of Mr. Tatum?

6 I have one which I'd like to ask the General
7 Counsel too. I don't need to know the answer now, but
8 to let me know how long an individual has to wait if
9 they wanted to go back out and do this Recall Petition
10 again?

11 DIRECTOR TATUM: Okay.

12 CHAIRMAN NICHOLS: Okay? Thank you. All
13 right.

14 With that said we will now conduct a Proper
15 Subject Matter hearing for the Initiative entitled
16 Public Accountability Safety Standards Act of 2016 for
17 the District of Columbia to determine whether the
18 proposed Initiative measure presents a proper subject
19 for Initiative in the District of Columbia.

20 Mr. McGhie will present the requirements
21 under law that must be met. Okay?

22 MR. MCGHIE: Basically in order to bring

1 forth a Initiative in the District of Columbia to
2 determine whether it's a proper subject, it cannot fall
3 under one of the exceptions to bring an Initiative in
4 the District of Columbia which would be that it could
5 not violate the Home Rule Act, it cannot violate the
6 Constitution, it cannot negate or limit a budget act,
7 it cannot initiate an appropriation, and then the
8 administrative things that deal with it being in the
9 proper legal form and with the summary statement not
10 being more than 100 words, and that the correction also
11 properly filed with the Office of Campaign Finance a
12 statement of organization.

13 That would be the legal criteria for bringing
14 -- not accepting an Initiative in the District of
15 Columbia.

16 CHAIRMAN NICHOLS: All right. Mr. General
17 Counsel, has the proponent of the proposed measure met
18 all the statutory administrative requirements?

19 MR. MCGHIE: Yes, they did. They properly
20 filed at the Office of Campaign Finance.

21 CHAIRMAN NICHOLS: All right. Are there any
22 opponents to the measure in the audience who would like

1 to provide any comments?

2 MR. MCGHIE: Okay. With respect to the
3 opponents, the only person who -- that filed any
4 objections to the Initiative was the Office of the
5 Attorney General --

6 CHAIRMAN NICHOLS: Okay.

7 MR. MCGHIE: -- and I would just briefly
8 summarize what the Office of the Attorney General
9 filed. They filed that on September 30th, 2015.

10 Basically they said that the measure which
11 would require the random and scheduled drug and alcohol
12 testing of candidates and government officials, and the
13 drug testing to be administered by federal agencies
14 including the Defense Intelligence Agency and the
15 National Security Agency would not be a proper subject
16 for an Initiative because it violates the U.S.
17 Constitution and the Home Rule Act.

18 With respect to the U.S. Constitution, they
19 said that it violated the Fourth Amendment
20 "Unreasonable Search and Seizure" that drug testing of
21 government employees is a search which would be subject
22 to the Fourth Amendment reasonableness requirement and

1 it would not be reasonable, it would be a warrant-less
2 search as per se, and that's unreasonable.

3 It also would violate the Fifth Amendment for
4 being void for vagueness. The Initiative does not give
5 any fair notice of what that involved and it would
6 violate the Fifth Amendment right to due process in
7 that some of the employees are union employees and
8 they're subject to a collective bargaining agreement
9 and the collective bargaining agreement would be
10 violated if the measure was to go forward.

11 It also would violate the contract clause,
12 again, for the collective bargaining purpose and it
13 would also violate the Home Rule Act in that the
14 measure outlines a method of filling a vacancy which is
15 contrary to the vacancy filling of positions in the
16 Home Rule Act, and those are just some of the -- I
17 guess -- the major highlights of their argument that --
18 why the Initiative should not be held as
19 (indiscernible).

20 CHAIRMAN NICHOLS: That's it?

21 MR. MCGHIE: I also have an opinion from my
22 office which Rudy McGann will give.

1 CHAIRMAN NICHOLS: Mr. McGann, will you
2 please come forward and put on the record the results
3 of the Board's Office of the General Counsel's review
4 of the measure.

5 MR. MCGANN: My name is Rudolph McGann. I'm a
6 staff attorney here with the Board of Elections.

7 After reviewing the language of the Public
8 Accountability Safety Standards Act of 2016 in the
9 District of Columbia, I find it is not a permissible
10 subject for an Initiative by the D.C. Code et seq.

11 While the Attorney General (indiscernible)
12 noted the PASS Act's unconstitutionality and conflicts
13 with the HRA, the measure also appropriates funds in
14 several respects that bear noting.

15 In summary, the PASS Act requires random and
16 scheduled drug and alcohol testing of virtually all of
17 District government officials, certain District
18 government employees, private individuals classified as
19 independent consultants, and even proposers and
20 challengers of Initiatives and referendums are covered
21 with the embedded (phonetic) measure.

22 By requiring drug testing for District

1 government employees, elected officials, and private
2 citizens seeking to participate in the electoral
3 process by initiative or referendum, the PASS Act is
4 establishing a new programs that requires the
5 allocation of revenues to a specific purpose.

6 Leaving aside for a moment the dubious
7 Constitutionality of suspicion-less drug testing which
8 is a violation of the protection against unreasonable
9 government searches, it costs significant amounts of
10 money to administer these tests.

11 Moreover, the uncertainty -- the uncertainty
12 of the subjects of the testing due to the fact that all
13 proposers and challengers to initiatives or referendums
14 are covered, and at no time can anyone know who wants
15 to propose an initiative or referendum, there's no
16 accounting for who would subjected to the drug testing
17 among the untold number of private contractors working
18 with the District government or citizens wishing to
19 participate in the electoral process. This would leave
20 the Council in a fiscal quandary and have a loss to
21 budget properly for such unanticipated contingencies.

22 The PASS Act also provides for administrative

1 medical leave for elected officials and selected agency
2 officials who fail a drug or alcohol test and the
3 measure is not clear on who is to bear the burden of
4 the cost of such a program.

5 This is similar to the Initiative Measure
6 Campaign Treatment which was trying to initiate drug
7 testing instead of incarceration for certain offenders
8 and the court reasoned that the mandatory language of
9 such a program giving the -- bestowing a right on
10 someone -- would have to necessarily be paid for and if
11 the Council did not pay for that, then the purpose of
12 the program would be frustrated and that was found to
13 be an improper appropriation.

14 Not only does the PASS Act seek to amend the
15 vacancy filling procedures, as the Attorney General
16 noted, but the measure proposes to usurp the
17 qualifications for office which even the Council cannot
18 without initiating a Charter Amendment as it did most
19 recently with the Charter Amendments 5 through 7 on the
20 2012 general election ballot. With respect to those
21 particular measures, they expelled -- they were giving
22 Council the ability to expel members of the D.C.

1 Council for gross misconduct and disqualify members and
2 the mayor for felony convictions.

3 Those qualifications for those particular
4 offices could not be put in place without effecting a
5 Charter Amendment to change the charter which
6 specifically designates how -- the qualifications for
7 those offices -- for those particular offices.

8 So in conclusion the PASS Act presents an
9 improper subject for an initiative because it violates
10 the U.S. Constitution in the ways raised earlier by the
11 General Counsel that were raised by the Attorney
12 General and the Home Rule Act, and improperly
13 appropriates funds by establishing an unfunded program
14 that cannot function as intended without forcing the
15 Council to appropriate for an unknown expense.

16 For these reasons, the Board should
17 accordingly refuse to accept the PASS Act which the
18 Public Accountability and Safety Standards Act as a
19 proper subject.

20 Thank you.

21 CHAIRMAN NICHOLS: Thank you, Mr. McGann. Are
22 there any questions for Mr. McGann?

1 MEMBER DANZANSKY: So just to summarize,
2 counsel. It's a pretty long list. So we have
3 between the Attorney General and your own research we
4 have a Fourth Amendment violation --

5 MEMBER MCGANN: That's correct.

6 MEMBER DANZANSKY: -- on privacy --

7 MR. MCGANN: Correct.

8 MEMBER DANZANSKY: -- and illegal searches
9 and seizures.

10 MR. MCGANN: That's correct.

11 MEMBER DANZANSKY: I'm just listing these
12 because I'd like our respondents, if they're here, to
13 address those as the Board has to make a decision.

14 We have the Fifth Amendment of vagueness and
15 due process (indiscernible).

16 MR. MCGANN: That's correct.

17 MEMBER DANZANSKY: We have the Home Rule Act
18 on succession, is that correct --

19 MR. MCGANN: That's correct.

20 MEMBER DANZANSKY: -- as qualification for
21 office on all those counts?

22 MR. MCGANN: Correct.

1 MEMBER DANZANSKY: And we also have mandatory
2 expenditures. Does that about summarize the --

3 MR. MCGANN: That does summarize

4 MEMBER DANZANSKY: Thank you.

5 MR. MCGANN: That does summarize.

6 CHAIRMAN NICHOLS: All right. Is that all
7 the (indiscernible) has? Mr. McGann, don't leave.
8 Pull up another, if you will, just pull up another
9 chair.

10 All right. Are there any other opponents who
11 wish to make a comment? All right. We will have the
12 proponents come forth and to make any comments they
13 would like to make to the table.

14 Sir, are you going -- are you Mr. Cheeks's
15 counsel?

16 UNIDENTIFIED SPEAKER: I'm not -- no, I'm
17 not.

18 CHAIRMAN NICHOLS: You're not? Okay. All
19 right. All right. Mr. Cheeks, please identify
20 yourself for the record.

21 MR. CHEEKS: Good morning. My name is John
22 Cheeks. I'm the proposer of this initiative, PASS

1 Public Accountability Safety Standards Act for the
2 District of Columbia government.

3 My speech is very simple and to the point.
4 We have a drug epidemic inside of our government that
5 has to be fixed and correct. This does not violate the
6 Home Rule Act. It does not violate any of your
7 Constitutional rights.

8 I believe the District government Attorney
9 General probably meant to say your civil liberties, not
10 Constitutional rights because I don't know any of you
11 in this room who would allow a mayor, a chairman, a
12 council member to be under the influence of drugs and
13 alcohol while serving your best interests to stay in
14 office. I just don't -- I can't find a person.

15 This is designed to prevent the use of. It
16 doesn't aim the spotlight on anyone. It does not go
17 into the budget and ask for a billion or a million
18 dollars from the District. The federal government will
19 pick this tab up, the Defense Intelligence Agency or
20 the National Security Agency, depending on your role
21 into the District government. We're not asking you to
22 pay anything. This is purely for public safety. That's

1 all it is.

2 It keeps our government clean. It keeps any
3 suspicion of any safety sensitive personnel who is
4 currently holding office or is a chair of a major
5 department. It keeps everyone clean. That's all it's
6 designed for. And for the most part, PASS should be
7 initiated immediately. It's vital that we have this
8 law voted on in the District of Columbia with
9 legalization of marijuana in full force, and that's my
10 statement.

11 CHAIRMAN NICHOLS: All right. Thank you, Mr.
12 Cheeks. Are there any questions for Mr. Cheeks? All
13 right, hearing none, thank you so much. The Board will
14 take this matter under advisement and issue an order as
15 soon as we can.

16 MR. CHEEKS: As far as the legal questions
17 are, is there any type of continuance that I could get
18 to answer all of your questions since the Attorney
19 General did send the September 30th letter by email to
20 your Counsel here, but I didn't receive it until
21 October 15th via email. So I -- if there is a
22 continuance --

1 CHAIRMAN NICHOLS: But you had sufficient
2 time to review it?

3 MR. CHEEKS: Yes. We reviewed it and we
4 --

5 CHAIRMAN NICHOLS: I don't -- I think we will
6 make a decision --

7 MR. CHEEKS: Okay.

8 CHAIRMAN NICHOLS: -- based on what is before
9 us on the record. If you do not agree with that
10 decision, you're more than welcome to appeal it to the
11 Superior Court of the District of Columbia.

12 MR. CHEEKS: And how soon will your decision
13 be?

14 CHAIRMAN NICHOLS: I -- as soon as we can get
15 it out.

16 MR. CHEEKS: Okay.

17 CHAIRMAN NICHOLS: I think -- is there a time
18 limit on -- there is no time limit. As soon as we can,
19 we will get to it and we will issue an order which you
20 will receive as soon as it is issued.

21 MR. CHEEKS: Very well.

22 CHAIRMAN NICHOLS: Thank you, Mr. Cheeks.

1 Yes, sir. Hold on a second.

2 (Chairman confers with Mr. McGhie.)

3 CHAIRMAN NICHOLS: So, Mr. Cheeks, if -- you
4 can have until the end of the week to submit any
5 additional responses or information based on what
6 you've heard this morning, and the Attorney General's
7 opinion as well as our General Counsel's opinion before
8 we close the record.

9 MR. CHEEKS: I will. But for the record
10 we're not drug testing and alcohol testing all District
11 government employees, right? It's only a specified
12 groups who are considered safety sensitive, such as
13 your police force, such as your school board, such as
14 mayor, such as chairman, such as council members who
15 are currently sitting --

16 CHAIRMAN NICHOLS: Okay.

17 MR. CHEEKS: -- and I know that you all would
18 probably welcome that idea, and I know Congress would.
19 You know, our budget is relying on us to stay healthy
20 in order for us to get to our budget autonomy and our
21 voting --

22 MEMBER DANZANSKY: Mr. Cheeks, if you will,

1 in submitting your brief because we will hold off a
2 decision until the end of the week. Would you take a
3 look at the Supreme Court case in Vilsack (phonetic)
4 and let us know why this isn't -- doesn't fall under
5 that mandate, okay?

6 MR. CHEEKS: I promise you, and by the way
7 we're not suing the city. We're -- according to the
8 D.C. A.G. he's citing that the Georgia statute holds
9 precedence here. It does not. This is a new
10 initiative for the people.

11 MR. MCGHIE: Very good.

12 MR. CHEEKS: It's not for any particular
13 party or -- or race or religious order.

14 MR. MCGHIE: All right.

15 MR. CHEEKS: Okay?

16 CHAIRMAN NICHOLS: All right.

17 MR. CHEEKS: Thank you.

18 CHAIRMAN NICHOLS: Thank you, sir. All
19 right. With that we will receive the report of our
20 General Counsel, Mr. McGhie.

21 MR. MCGHIE: Okay. The next item on my
22 agenda is a final ruling to amend Chapters 1 through 3,

1 5 through 11, and 14 through 17. The proposed
2 amendments would bring the rules into conformity with
3 the Voter Registration Access and Modernization
4 Amendment of 2014 which became effective on February
5 26, 2015 and the Primary Date Alteration Amendment Act
6 of 2014 which became effective on May 2nd, 2014 --
7 2015.

8 Now, I know that the regulations seem like
9 it's a lot, but it's just really us plugging in the new
10 dates for the Primary Date Alteration Amendment Act and
11 then to establish a online voter registration process
12 for the Board.

13 The present digital primary which is now the
14 first Tuesday of April, it's going to be moved to the
15 second Tuesday in June and the -- for the local
16 elections it's the first in April also to the second
17 Tuesday in June and after 2016, everything will be the
18 first Tuesday in September. And we published these
19 proposed rules in the D.C. Register. No comments were
20 received, so now I'm asking the Board to entertain a
21 motion to adopt this as final ruling.

22 CHAIRMAN NICHOLS: All right. Thank you, Mr.

1 McGhie. All right, the motion to adopt as final rules
2 amendments to Chapter 1 through 3, 5 through 11, and 14
3 through 17 are before us. All in favor?

4 ALL: Aye.

5 CHAIRMAN NICHOLS: All opposed? The ayes
6 have it.

7 MR. MCGHIE: Okay. The last matter on my
8 agenda is a litigation status update. The only thing
9 that the Board has pending is a case by -- brought by
10 Harry Wingo against the Board of Elections. That
11 concerned a challenge to the Board's Short Title and
12 Summary Statement for Initiative No. 76.

13 The Board filed a motion for summary judgment
14 and the -- Mr. Wingo had an opportunity to respond. We
15 are now at the stage where the Board and the
16 interveners, not to mention that the proposer of the
17 Initiative also intervened, are scheduled to file
18 oppositions to the claimant's motion for summary
19 judgment on November 9th, and then after we file our --
20 everybody files their responses on November 9th,
21 claimants will reply on November 23rd --

22 CHAIRMAN NICHOLS: Okay.

1 MR. MCGHIE: -- and then oral argument will
2 be left up to the judge.

3 MEMBER DANZANSKY: When is oral argument?

4 MR. MCGHIE: Left up to the judge on when

5 --

6 MEMBER DANZANSKY: Oh.

7 MR. MCGHIE: He may -- he might rule on the
8 papers, or he might schedule oral argument.

9 MEMBER DANZANSKY: Okay. Very good. That's
10 just the summary -- on summary judgment?

11 MR. MCGHIE: Yes.

12 MEMBER DANZANSKY: Okay.

13 MR. MCGHIE: That will conclude my litigation
14 status update.

15 CHAIRMAN NICHOLS: All right. Are there any
16 other questions for Mr. McGhie? All right, hearing
17 none, we will receive the report of the Board's
18 Director of Campaign Finance, Cecily Collier-
19 Montgomery.

20 DIRECTOR COLLIER-MONTGOMERY: Yes, good
21 morning. The stats for the Office of Campaign

22 Finance for the month of October, 2015 are as

1 follows:

2 October the 1st, 2015 was the filing deadline
3 for the filing of the Report of Receipts and
4 Expenditures by our Constituent Services Program. We
5 have 13 required filers and all of our programs timely
6 filed and also electronically filed their reports.

7 October the 1st, 2015 was also the filing
8 deadline for the filing of the Report of Receipts and
9 Expenditures by our Statehood Fund Programs. We have
10 three required filers. All three of our filers timely
11 filed and they also electronically filed their reports.

12 October the 10th was the filing of the Report
13 of Receipts and Expenditures by our Political Action
14 Committees as well as our Principal Campaign
15 Committees, who participated in the 2015 election
16 cycle.

17 There were 67 required filers. Fifty-six of
18 the required filers timely filed their reports. We had
19 11 failures to file and those 11 committees were
20 referred to the Office of the General Counsel for
21 enforcement action. The 56 filers who timely filed
22 also electronically filed.

1 The Principal Campaign Committees who were
2 referred to the Office of the General Counsel for the
3 failure to file include Bell for Ward 8, Milton Bell,
4 Treasurer; Whitaker for Ward 4, Robert Whitaker,
5 Treasurer; Barry for Council, Marion Barry, Treasurer;
6 Toliver for Ward 4, Emily Gumpert, Treasurer; Abraham
7 for Ward 8, Nicole Spriggs, Treasurer; Anderson for
8 Ward 4 Council, Aquanetta Anderson, Treasurer; Trayon
9 White for Ward 8 2015, Trayon White, Treasurer.

10 The Political Action Committees are as
11 follows:

12 Gertrude Stein, Democratic Political Acct.,
13 Jessica Pierce, Treasurer; Youth Action PAC, Gabrielle
14 Moise, Treasurer; D.C. Republican Committee, Roderick
15 Johnson, Treasurer; D.C. Chamber of Commerce, Andrew
16 Kline, Treasurer.

17 The new candidates and political committees
18 that registered during the month of

19 October, 2015 are as follows:

20 Ed Potillo/Potillo for Council 2016 Campaign
21 Committee (Ward 7, City Council), registered on October
22 the 8th; Residents for Robert White At-Large

1 Exploratory Committee, registered on October the 19th,
2 2015.

3 We held three Entrance Conferences during the
4 month of October. On October the 8th, 2015 there were
5 five participants. On October the 14th, 2015 there
6 were seven participants, and on October the 29th, 2015
7 there was one participant, and the names of the
8 participants will be posted at the OCF website with our
9 stats for the month of October.

10 During the month of October in our Audit

11 Division, the Audit Division conducted 117
12 debts reviews of reports which were filed with us, and
13 also we have ongoing audits and they include the
14 following:

15 With respect to the Full Field Audits we have
16 one investigative audit, Gray for Mayor. With our
17 inaugural committees for 2015 D.C. Proud Inaugural
18 Committee. The Full Field Audits of our newly elected
19 officials for 2014 and 2015 include LaRuby May, 2015;
20 Brandon Todd for Ward 4; Brianne for D.C.; and Charles
21 Allen for Ward 6.

22 The following Periodic Random Audits are

1 ongoing of candidates registered for the 2015 election
2 Barry for Council.

3 With respect to the report that was received
4 January 31st, 2015 for the following that was due on
5 that date: Morgan versus D.C.

6 With respect to our July 31st, 2015 filings,
7 the reports of the following PAC and continuing
8 committees are currently the subject of

9 Random Audits:

10 Eric Jones, 2014; Fresh PAC; Libertarian
11 Party of D.C.

12 We did not issue any audits during the month
13 of October. And I would ask the General Counsel to
14 approach and to provide the Board with the Report of
15 the Office of the General Counsel.

16 MR. SANFORD: Good morning, Madam Chairman
17 and distinguished Board Member Danzansky.

18 My name is William Sanford, General Counsel
19 for the Office of Campaign Finance. During the month
20 of October, 2015 the Office of the General Counsel
21 received 11 referrals from the Public Information and
22 Records Management Division.

1 Two informal hearings were conducted and 11
2 orders were issued which include the following:

3 One order for failure to timely file and
4 which a fine of \$1,500 was imposed. Seven orders for
5 failure to timely file in which no fines were imposed.
6 One order regarding a request for additional
7 information in which no fine was imposed, and two
8 orders affirming prior orders pursuant to motions for
9 reconsideration.

10 The Office of the General Counsel imposed a
11 fine of \$1,500 against the Barry for Council Committee
12 which was a committee established for the Ward 8
13 special election in 2015.

14 The Office of the General Counsel collected
15 fines in the amount of \$325. The fines were paid by
16 the following respondents:

17 Committee to Re-Elect Mark Jones paid a \$200
18 fine, and Ward 6 Democrats paid a fine of
19 \$125.

20 During the month of October, the Office of
21 the General Counsel maintained a total of seven open
22 investigations, and no new investigations were opened.

1 During the month of October, 2015, there were
2 no requests for interpretative opinions and no show
3 cause proceedings were conducted, and that should
4 conclude my report.

5 CHAIRMAN NICHOLS: Thank you, Mr. Sanford.
6 Do any of these -- wait, before you go -- do any of
7 these cases relate to the Trayon White Committee?

8 MR. SANFORD: No.

9 CHAIRMAN NICHOLS: The Committee to Elect
10 Trayon White?

11 MR. SANFORD: No.

12 CHAIRMAN NICHOLS: We just wanted to put on
13 the record that Mr. White did pay all of his fees that
14 he incurred for the recount that we conducted on his
15 behalf.

16 Any questions for Mr. Sanford?

17 MR. SANFORD: The only order regarding where
18 they counted was the Barry for Council.

19 CHAIRMAN NICHOLS: Barry for Council order,
20 okay.

21 MR. SANFORD: Imposing a fine of \$1,500.

22 CHAIRMAN NICHOLS: All right. Okay. Thank

1 you.

2 All right. Are there any public matters to
3 be brought before the Board this morning? Come
4 forward, Ms. Brizill, and identify yourself for the
5 record, please.

6 MS. BRIZILL: Good morning. My name is
7 Dorothy Brizill B-R-I-Z-I-L-L. I'm a resident and
8 voter in the District of Columbia.

9 I have five different issues I'd like to
10 raise with the Board. Would you like me to do them
11 individually or would you like me to just detail what
12 the five are? What's the easiest way because

13 --

14 CHAIRMAN NICHOLS: Well --

15 MS. BRIZILL: -- four of them, at least three
16 of them I'd like a response. I think it would be a
17 quick response from the Board in terms of --

18 CHAIRMAN NICHOLS: And for the last two, what
19 would you need?

20 MS. BRIZILL: The last two don't require a
21 response, just to inform the Board of something.

22 CHAIRMAN NICHOLS: Okay, well let's hear the

1 last two --

2 MS. BRIZILL: Okay.

3 CHAIRMAN NICHOLS: -- first and then we'll do
4 the other three.

5 MS. BRIZILL: I respect -- I don't know right
6 now who is responsible for maintaining the Board's
7 website, but I ask the Board to designate some staff
8 person to periodically review it. It is neither
9 substantive in terms of information, nor is the
10 information currently up to date.

11 For example, I have been calling for several
12 weeks Denise Tolliver, assuming she was still your
13 press and public information officer, only to find out
14 when you issued a press release this week regarding Mr.
15 Tatum that there was a new press person on it.

16 The page on your website that lists Board
17 management even has Darlene Horton as the Data Systems
18 Manager. She's been gone more than a year from down
19 here. So that, and the fact that this meeting today of
20 the Board was not put up on your website until day
21 before yesterday, and I don't understand it since
22 you've already set out a sequence of meeting dates.

1 I just would ask that you designate someone
2 to at least keep the website current, up to date, and
3 the information accurate. So that is a matter that I'd
4 just like to bring to your attention.

5 The second matter I'd like to bring to your
6 attention is, there is no indication on your website of
7 the Board's response to the Auditor's Report that was
8 issued earlier this year. Before I leave today I'd
9 like to secure a hard copy of it as well as I think
10 that the public would like to see a response to the
11 Auditor's Report.

12 CHAIRMAN NICHOLS: Let me ask you a little
13 more about that. We're in -- we're not allowed an
14 opportunity to review the Auditor's Report before it
15 was issued in -- issued publicly.

16 MS. BRIZILL: I'm talking about the Auditor's
17 Report that was issued earlier this year.

18 CHAIRMAN NICHOLS: This one --

19 MS. BRIZILL: Okay.

20 CHAIRMAN NICHOLS: -- the one on what
21 subject?

22 MS. BRIZILL: Her review of the conduct of

1 the general election --

2 CHAIRMAN NICHOLS: In November?

3 MS. BRIZILL: -- in November of last year.

4 CHAIRMAN NICHOLS: Right. We didn't get an
5 opportunity to review that, but we are preparing a
6 response to recommendation follow-up questions and for
7 Councilmember McDuffie which, when it is available,
8 we'll certainly provide you with a copy of that.

9 MS. BRIZILL: Okay. I -- let me make sure I
10 understand what you said because I haven't had my
11 morning coffee. The D.C. Auditor, Kathy Patterson,
12 issued a report -- I believe it was March or something
13 -- about her findings regarding issues that were
14 raised, at least observed, by her auditors at the
15 November general election in 2014.

16 At that hearing, you were getting -- you were
17 two weeks out from the April special election and you
18 asked for time to prepare a written response, and so
19 that written response has not been prepared yet?

20 CHAIRMAN NICHOLS: No, it's not.

21 MS. BRIZILL: Do you have an idea when it
22 will be prepared?

1 CHAIRMAN NICHOLS: It will be prepared within
2 the next 30 days. It will be completed within the next
3 30 days.

4 MS. BRIZILL: And --

5 CHAIRMAN NICHOLS: Let's talk about briefly
6 the process before a report is generally issued, an
7 agency is given an opportunity to review and comment.

8 MS. BRIZILL: That was my understanding that
9 a copy of their initial findings are usually sent to an
10 agency.

11 CHAIRMAN NICHOLS: But we did not get that
12 opportunity.

13 MS. BRIZILL: I wasn't aware of that.

14 CHAIRMAN NICHOLS: Yeah, we did not get that
15 opportunity. So as soon as we complete a response, and
16 we've been working on a response, we've just had some
17 other matters that are before us that we would like to
18 get completed.

19 MS. BRIZILL: Okay.

20 CHAIRMAN NICHOLS: We'll do that.

21 MS. BRIZILL: Okay. My next three matters
22 which I would like responded upon --

1 CHAIRMAN NICHOLS: Uh-huh.

2 MS. BRIZILL: -- was this week it was
3 announced that Mr. Tatum is leaving as the Executive
4 Director --

5 CHAIRMAN NICHOLS: Uh-huh.

6 MS. BRIZILL: -- of the Board and the press
7 release indicated that the matter would be raised or
8 discussed or a light shone on it at today's meeting.
9 There was no discussion.

10 CHAIRMAN NICHOLS: No, and there will be no -
11 - that's a personnel matter.

12 MS. BRIZILL: Okay. Can you at least tell
13 the public what your process will be for selecting a
14 new Executive Director?

15 CHAIRMAN NICHOLS: Not at this time.

16 MS. BRIZILL: When is Mr. Tatum's last day?

17 CHAIRMAN NICHOLS: Mr. Tatum has not
18 submitted a letter of resignation.

19 MS. BRIZILL: But he is leaving?

20 CHAIRMAN NICHOLS: I have no resignation
21 letter, Ms. Brizill. I know what the announcement has
22 said and all that. We have no letter of resignation.

1 We have not received a date for his departure.

2 MS. BRIZILL: So in a press release dated
3 November 2nd the Board announces the departure of Mr.
4 Tatum as Executive Director, but you're saying you have
5 not received a letter of resignation?

6 CHAIRMAN NICHOLS: That's what I'm saying.

7 MS. BRIZILL: Okay. My next item is is that
8 at some point at a -- perhaps not at this meeting or
9 what have you -- could there be a discussion for the
10 public to know what the preparations are for the
11 elections in 2015, the 2015 election cycle and where we
12 stand in terms of the acquisition of machines, adequate
13 funding for the conduct of the election and for
14 staffing?

15 CHAIRMAN NICHOLS: For the public, I'm sure
16 that there will be several opportunities for that.

17 MS. BRIZILL: Can I make a request that such
18 a report be given at the next public meeting of the
19 Board?

20 CHAIRMAN NICHOLS: We probably won't have
21 that ready until the first of January.

22 MS. BRIZILL: Well, can I ask a factual

1 question then. Have you been given by -- through the
2 Council the funds for the acquisition of new voting
3 machines?

4 CHAIRMAN NICHOLS: No, we have not.

5 MS. BRIZILL: Do you have an idea how much
6 that cost is?

7 CHAIRMAN NICHOLS: Do you --

8 MR. TATUM: No. We are reviewing systems
9 from all vendors that are certified with the EAC and
10 anticipate having that information toward the end of
11 the year.

12 CHAIRMAN NICHOLS: We are working on
13 acquiring new EPO books. We -- solicitation has gone
14 out for that.

15 MS. BRIZILL: I guess, and not to belabor the
16 point, is the fact that we're already into November,
17 we're getting ready to go into the holidays. If the
18 Council and the Mayor have not appropriated the funds
19 necessary to acquire new machines to be used in the
20 June primary, we have a new director at the Office of
21 Contracting and Procurement who is still finding his
22 way.

1 Can you understand why the public could be
2 concerned, given past issues that have occurred in
3 (indiscernible)?

4 CHAIRMAN NICHOLS: Yeah, I could, yeah. We
5 made our request to the Council, they made their
6 decision. We are moving forward.

7 MS. BRIZILL: You made a formal request to
8 the Council for money --

9 CHAIRMAN NICHOLS: Yes, we did.

10 MS. BRIZILL: -- for money?

11 CHAIRMAN NICHOLS: Yes, we did and I -- FY15
12 supplemental budget requests. Yes, we did and nothing
13 was done with that, so we are moving forward just as we
14 have in the past.

15 MS. BRIZILL: Okay. My first question is
16 more directed to Mr. McGhie. Mr. McGhie, it's been
17 pretty regular that you and your office have proposed
18 amendments to the DCBOE and OC of regulations and
19 procedures just as you did today.

20 I would only ask you to put on your plate one
21 request that I would ask for a change in the
22 regulations and procedures, and that has to do with the

1 handling of complaints and the requests by individuals
2 that the BOEE or the OCF conduct and investigation or
3 inquiry.

4 As one who has filed several complaints over
5 the years, it is upsetting to me when I am not kept
6 informed and, indeed, I get a very cold shoulder as
7 regard to what the status is of an investigation or an
8 inquiry, and let me give you two examples.

9 As you know, I was involved in the Slots
10 Initiative and both of the initiatives that weren't
11 filed. And as a result of one of the Slots
12 Initiatives, the Board imposed a fine of over \$600,000
13 for wrongdoing. The individual refused to pay it. It
14 was taken -- the case went to the Superior Court, and
15 after that there was no effort to keep me informed or
16 indeed I ceased to be a party anymore, and indeed it
17 turns out that this Board reached a settlement with the
18 Slots people of
19 \$75,000 --

20 CHAIRMAN NICHOLS: Ms. Brizill, the Board at
21 the time -- this Board didn't.

22 MS. BRIZILL: No, but --

1 CHAIRMAN NICHOLS: No, this --

2 MS. BRIZILL: -- the entity --

3 CHAIRMAN NICHOLS: -- the Board at the time.

4 MS. BRIZILL: -- the entity --

5 CHAIRMAN NICHOLS: Yes.

6 MS. BRIZILL: -- the Board did this and so
7 the fine of \$622,000 came down to \$75,000 and the Board
8 and the Slots promoter were allowed to designate who
9 that money would be paid to. The money didn't even
10 come back to the Board or the City as a fine.

11 And then more recently the Mayor has
12 nominated an individual, Joshua Lopez, to be a member
13 of the Water and Sewer Authority, and I had filed a
14 complaint against him in 2010 regarding the fact that
15 he had appropriated Adrian Fenty's campaign literature
16 and campaign posters and had started a writing campaign
17 and plastered, for example, 16th Street with write-in
18 Fenty posters.

19 The Office of Campaign Finance issued a cease
20 and desist order, and then after that I never even got
21 a copy of the order. I subsequently found out that
22 there was a series of negotiations between the Board,

1 OCF and the Committee Save D.C. that resulted in them -
2 - assessed a fine, and to this date I don't even know
3 if they paid the fine.

4 The point I'm trying to make is, is that I
5 think that OCF and BOEE are dependent in large measure
6 upon their auditors and their staff identifying
7 problems in filings or in violations of election law,
8 but also upon citizens who file complaints.

9 Once a citizen files a complaint, this Board
10 needs to know that you're hard pressed to even find out
11 what has happened to it and especially if it gets into
12 a series of meetings with the parties or a negotiated
13 settlement.

14 I think that that needs to change. At the
15 very least I think that regulations need to be
16 developed that keeps a complaining party informed and
17 that they have a right to be notified of any hearings
18 or proceedings in the matter. They have a right if
19 they choose to be a party in any ongoing proceedings as
20 opposed to saying you have to sit outside the door and
21 you can't attend.

22 I think it's reasonable to ask that if

1 someone has gone to the trouble, and you know the
2 extremely difficulty we had in reviewing all the
3 signatures on the Slots Initiative petitions, and to
4 file a complaint and then just be left in the dark.

5 So I would ask the General Counsel's Office
6 to consider amending or adding something to your
7 regulations that give people who file formal complaints
8 with OCF, the Board or the Office of General Counsel
9 some standing and some ability to at least be informed
10 of what's going on and an ability to appear as a party,
11 either in the proceedings here or proceedings in the
12 D.C. Superior Court or the Court of Appeals.

13 And those are my five items.

14 CHAIRMAN NICHOLS: Thank you very much. Are
15 there any questions for Ms. Brizill? All right,
16 hearing none --

17 MS. BRIZILL: Thank you.

18 CHAIRMAN NICHOLS: -- thank you, Ms. Brizill.
19 Well, there being no further business before the Board,
20 this meeting is adjourned. The time is 11:25 a.m. It
21 is still Wednesday, November 4th, 2015.

22 (Whereupon, the above-entitled matter went

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off the record at 11:25 a.m.)

CERTIFICATE

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This is to certify the foregoing transcript

In the Matter of: Regular Board Meeting

Before: D.C. Board of Elections

Date: 11-04-2015

Place: Washington, D.C.

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



Walter Murphy

<p><u> </u> \$ <u> </u> \$1,500 29:4,11 30:21 \$125 29:19 \$200 29:17 \$325 29:15 \$600,000 40:12 \$622,000 41:7 \$75,000 40:19 41:7 <u> </u> + <u> </u> + 1:4,6,8,11 <u> </u> 1 <u> </u> 1 2:20,22 4:6 21:22 23:2 1,901 5:19 10:30 1:14 4:1 10:39 4:5 100 8:10 10th 25:12 11 2:15,20 22:1 23:2 25:19 28:21 29:1 11:25 43:20 44:1 11-04-2015 45:8 117 27:11 13 25:5 1-3 2:19 136 6:11,13 14 2:21 22:1 23:2 14-17 2:19 14th 27:5</p>	<p>15th 18:21 16th 41:17 17 2:17,21 22:1 23:3 19th 27:1 1st 25:2,7 <u> </u> 2 <u> </u> 2,327 5:21 20001 1:13 2010 41:14 2012 13:20 2014 5:15,17 22:4,6 27:19 28:10 34:15 2015 1:10 2:17 4:3,4 9:9 22:5,7 24:22 25:2,7,15 26:9,19 27:2,4,5,6 ,17,19 28:1,4,6,2 0 29:13 30:1 37:11 43:21 2016 2:13 7:16 11:8 22:17 26:20 21 6:1 22 2:19 23rd 23:21 24 2:21 3:1 25 3:3 26 22:5 269 5:22 280 1:13 4:5 280,000 5:16 29 3:5</p>	<p>29th 27:6 2nd 4:21 22:6 37:3 <u> </u> 3 <u> </u> 3 2:20 21:22 23:2 30 35:2,3 30th 9:9 18:19 31st 28:4,6 32 3:6 33 6:19 3rd 2:6 <u> </u> 4 <u> </u> 4 2:3,4 26:4,6,8 27:20 40,293 5:19 441 1:13 45 3:8 46,899 5:18 4th 1:10,13 4:4 43:21 <u> </u> 5 <u> </u> 5 2:7,10,20 13:19 22:1 23:2 5-11 2:19 56 25:21 5D03 6:17 5E02 6:10 5th 4:20 <u> </u> 6 <u> </u> 6 2:11 27:21 29:18 67 25:17 <u> </u> 7 <u> </u> 7 2:14 13:19</p>	<p>26:21 76 23:12 7th 2:7 4:21 <u> </u> 8 <u> </u> 8 26:3,7,9 29:12 875 6:1 8th 26:22 27:4 <u> </u> 9 <u> </u> 91 6:15 9th 23:19,20 <u> </u> A <u> </u> A.G 21:8 a.m 1:14 4:1,5 43:20 44:1 ability 13:22 43:9,10 above- entitled 43:22 Abraham 26:6 accept 14:17 accepting 8:14 Access 22:3 according 21:7 accordingly 14:17 Accountabili ty 2:13,16 7:16 11:8 14:18 17:1 accounting 12:16 Acct 26:12 accurate 33:3 45:13</p>	<p>accurately 45:11 acquire 38:19 acquiring 38:13 acquisition 37:12 38:2 act 2:13,17 7:16 8:5,6 9:17 10:13,16 11:8,15 12:3,22 13:14 14:8,12,17 ,18 15:17 17:1,6 22:5,10 action 25:13,21 26:10,13 Act's 11:12 Adam 6:17 adding 43:6 additional 20:5 29:6 address 5:3 15:13 adequate 37:12 Adjourn 3:7 adjourned 43:20 administer 12:10 administered 9:13 administrati ve 8:8,18 12:22 adopt 2:20 22:21 23:1 adopted 2:21 4:18,21</p>
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GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

+ + + + +

REGULAR BOARD MEETING

+ + + + +

WEDNESDAY,

NOVEMBER 4TH, 2015

+ + + + +

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

BOARD OF ELECTIONS MEMBERS PRESENT:

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

BOARD OF ELECTIONS STAFF PRESENT:

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

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

2 AGENDA ITEMS PAGE

3 Meeting Called to Order.4

4 Adoption of Agenda. 4

5 Adoption of Minutes:

6 Regular Board Meeting, Wednesday

7 Regular Board Meeting, Wednesday,

8 September 3rd

9 Regular Board Meeting, Wednesday,

10 October 7th. 5

11

12 Board Matters:

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14 Executive Director's Report - Clifford Tatum:

15 A. Canvas Card Update. 5

16 B. Recall Petitions Update. 6

17 General Counsel's Report - Kenneth J. McGhie:

18 A. Proper Subject Matter Hearing for An

19 Initiative -- "Public Accountability

20 Safety Standards Act of 2016 for the

21 District of Columbia. 7

22 General Counsel's Office Opinion -

1 Rudolph McGann. 11

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3 Proposer of "Public Accountability

4 Safety Standards Act of 2015" -

5 John Cheeks.17

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7 B. Final Rulemaking to Amend Chapters

8 1-3, 5-11, and 14-17.22

9 Motion to adopt as Final Rules

10 Amendments to Chapters 1 - 3, 5 - 11,

11 and 14 - 17 adopted.24

12 C. Litigation Status

13 1. Harry Wingo v. D.C. Board

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3 Director of Campaign Finance Report -

4 Cecily Collier-Montgomery.25

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6 General Counsel's Office Report -

7 William Sanford.29

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9 Public Matters - Dorothy Brizill 32

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11 Adjourn:

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13 Deborah Nichols, Chairman. 45

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1 P-R-O-C-E-E-D-I-N-G-S 10:30 a.m.

2 CHAIRMAN NICHOLS: Good morning. Welcome to

3 the what -- November, 2015 regular meeting of the Board

4 of Elections. It is Wednesday, November 4th, 2015.

5 The time is 10:39 a.m. We are meeting in Room 280

6 North of 1 Judiciary Square.

7 I am Deborah K. Nichols, Chairman of the

8 Board of Elections. Present with me this morning, is

9 Board Member Stephen Danzansky.

10 MEMBER DANZANSKY: Good morning.

11 CHAIRMAN NICHOLS: Also present this morning,

12 Mr. Clifford Tatum, our Executive Director, Ms. Cecily

13 Collier-Montgomery, the Board's Director of Campaign

14 Finance --

15 DIRECTOR COLLIER-MONTGOMERY: Good

16 morning.

17 CHAIRMAN NICHOLS: -- and Mr. Kenneth McGhie,

18 the Board's General Counsel. Without objection, the

19 agenda for this morning's meeting is adopted.

20 Also, unless there are corrections, the

21 minutes of the regular Board meetings of August 5th,

22 September 2nd, and October 7th are adopted with

technical amendments possible.

1 MEMBER DANZANSKY: No objection.

2 CHAIRMAN NICHOLS: All right. Are there any

3 matters that the Board Member wishes to address in this

4 meeting?

5 MEMBER DANZANSKY: Not here, Madam Chair.

6 CHAIRMAN NICHOLS: All right. With that we

7 will move to the report of the Executive Director, Mr.

8 Clifford Tatum.

9 DIRECTOR TATUM: Good morning, Madam Chair.

10 The report from the Executive Director

11 includes two items, the Canvas Card update as well as

12 an update on Recall Petitions that were submitted to

13 our office to recall two ANC commissioners.

14 As an update for the record, the Board --

15 after the November, 2014 general election -- sent out

16 canvas cards to 280,000 registered voters who did not

17 participate in the November, 2014 election and of those

18 canvas cards sent out, we received a total of 46,899

19 back to our office, 40,293 were undeliverable, 1,901

20 were voters who'd moved within the District of

21 Columbia, 2,327 were voters who moved outside of the

22 District of Columbia, 269 were returned as being

1 deceased voters, 21 returned with name changes, 875
 2 returned with no changes and we had miscellaneous cards
 3 that came back for various reasons.

4 So canvas is continuing. There's always
 5 cards that are coming in on a monthly basis and even up
 6 to a year after we (indiscernible) so that's not
 7 unusual for us.

8 The second item, which is the Recall
 9 Petitions. There was a Recall Petition submitted for
 10 -- to recall ANC Commissioner Christy Davis in 5E02.
 11 That petition initially was submitted with 136
 12 signatures and what a number of signatures needed to
 13 qualify the recall for an election was 136, and the
 14 total number of signatures that were submitted as valid
 15 was 91, so that Recall Petition failed.

16 The second Petition was the -- of recall of
 17 ANC Commissioner Adam Roberts of 5D03. The number of
 18 signatures that were submitted from the very beginning
 19 to -- for us to consider was 33. It did not meet the
 20 prima facie area to have the petition supported, so it
 21 was rejected out of hand.

22 So, those were the two Recall Petitions that

1 were submitted and that had failed.

2 That concludes my report as it relates to the
 3 Executive Director.

4 CHAIRMAN NICHOLS: All right. Are there any
 5 questions of Mr. Tatum?

6 I have one which I'd like to ask the General
 7 Counsel too. I don't need to know the answer now, but
 8 to let me know how long an individual has to wait if
 9 they wanted to go back out and do this Recall Petition
 10 again?

11 DIRECTOR TATUM: Okay.

12 CHAIRMAN NICHOLS: Okay? Thank you. All
 13 right.

14 With that said we will now conduct a Proper
 15 Subject Matter hearing for the Initiative entitled
 16 Public Accountability Safety Standards Act of 2016 for
 17 the District of Columbia to determine whether the
 18 proposed Initiative measure presents a proper subject
 19 for Initiative in the District of Columbia.

20 Mr. McGhie will present the requirements
 21 under law that must be met. Okay?

22 MR. MCGHIE: Basically in order to bring

1 forth a Initiative in the District of Columbia to
 2 determine whether it's a proper subject, it cannot fall
 3 under one of the exceptions to bring an Initiative in
 4 the District of Columbia which would be that it could
 5 not violate the Home Rule Act, it cannot violate the
 6 Constitution, it cannot negate or limit a budget act,
 7 it cannot initiate an appropriation, and then the
 8 administrative things that deal with it being in the
 9 proper legal form and with the summary statement not
 10 being more than 100 words, and that the correction also
 11 properly filed with the Office of Campaign Finance a
 12 statement of organization.

13 That would be the legal criteria for bringing
 14 -- not accepting an Initiative in the District of
 15 Columbia.

16 CHAIRMAN NICHOLS: All right. Mr. General
 17 Counsel, has the proponent of the proposed measure met
 18 all the statutory administrative requirements?

19 MR. MCGHIE: Yes, they did. They properly
 20 filed at the Office of Campaign Finance.

21 CHAIRMAN NICHOLS: All right. Are there any
 22 opponents to the measure in the audience who would like

1 to provide any comments?

2 MR. MCGHIE: Okay. With respect to the
 3 opponents, the only person who -- that filed any
 4 objections to the Initiative was the Office of the
 5 Attorney General --

6 CHAIRMAN NICHOLS: Okay.

7 MR. MCGHIE: -- and I would just briefly
 8 summarize what the Office of the Attorney General
 9 filed. They filed that on September 30th, 2015.

10 Basically they said that the measure which
 11 would require the random and scheduled drug and alcohol
 12 testing of candidates and government officials, and the
 13 drug testing to be administered by federal agencies
 14 including the Defense Intelligence Agency and the
 15 National Security Agency would not be a proper subject
 16 for an Initiative because it violates the U.S.
 17 Constitution and the Home Rule Act.

18 With respect to the U.S. Constitution, they
 19 said that it violated the Fourth Amendment
 20 "Unreasonable Search and Seizure" that drug testing of
 21 government employees is a search which would be subject
 22 to the Fourth Amendment reasonableness requirement and

1 it would not be reasonable, it would be a warrant-less
 2 search as per se, and that's unreasonable.
 3 It also would violate the Fifth Amendment for
 4 being void for vagueness. The Initiative does not give
 5 any fair notice of what that involved and it would
 6 violate the Fifth Amendment right to due process in
 7 that some of the employees are union employees and
 8 they're subject to a collective bargaining agreement
 9 and the collective bargaining agreement would be
 10 violated if the measure was to go forward.
 11 It also would violate the contract clause,
 12 again, for the collective bargaining purpose and it
 13 would also violate the Home Rule Act in that the
 14 measure outlines a method of filling a vacancy which is
 15 contrary to the vacancy filling of positions in the
 16 Home Rule Act, and those are just some of the -- I
 17 guess -- the major highlights of their argument that --
 18 why the Initiative should not be held as
 19 (indiscernible).
 20 CHAIRMAN NICHOLS: That's it?
 21 MR. MCGHIE: I also have an opinion from my
 22 office which Rudy McGann will give.

1 CHAIRMAN NICHOLS: Mr. McGann, will you
 2 please come forward and put on the record the results
 3 of the Board's Office of the General Counsel's review
 4 of the measure.
 5 MR. MCGANN: My name is Rudolph McGann. I'm a
 6 staff attorney here with the Board of Elections.
 7 After reviewing the language of the Public
 8 Accountability Safety Standards Act of 2016 in the
 9 District of Columbia, I find it is not a permissible
 10 subject for an Initiative by the D.C. Code et seq.
 11 While the Attorney General (indiscernible)
 12 noted the PASS Act's unconstitutionality and conflicts
 13 with the HRA, the measure also appropriates funds in
 14 several respects that bear noting.
 15 In summary, the PASS Act requires random and
 16 scheduled drug and alcohol testing of virtually all of
 17 District government officials, certain District
 18 government employees, private individuals classified as
 19 independent consultants, and even proposers and
 20 challengers of Initiatives and referendums are covered
 21 with the embedded (phonetic) measure.
 22 By requiring drug testing for District

1 government employees, elected officials, and private
 2 citizens seeking to participate in the electoral
 3 process by initiative or referendum, the PASS Act is
 4 establishing a new programs that requires the
 5 allocation of revenues to a specific purpose.
 6 Leaving aside for a moment the dubious
 7 Constitutionality of suspicion-less drug testing which
 8 is a violation of the protection against unreasonable
 9 government searches, it costs significant amounts of
 10 money to administer these tests.
 11 Moreover, the uncertainty -- the uncertainty
 12 of the subjects of the testing due to the fact that all
 13 proposers and challengers to initiatives or referendums
 14 are covered, and at no time can anyone know who wants
 15 to propose an initiative or referendum, there's no
 16 accounting for who would be subjected to the drug testing
 17 among the untold number of private contractors working
 18 with the District government or citizens wishing to
 19 participate in the electoral process. This would leave
 20 the Council in a fiscal quandary and have a loss to
 21 budget properly for such unanticipated contingencies.
 22 The PASS Act also provides for administrative

1 medical leave for elected officials and selected agency
 2 officials who fail a drug or alcohol test and the
 3 measure is not clear on who is to bear the burden of
 4 the cost of such a program.
 5 This is similar to the Initiative Measure
 6 Campaign Treatment which was trying to initiate drug
 7 testing instead of incarceration for certain offenders
 8 and the court reasoned that the mandatory language of
 9 such a program giving the -- bestowing a right on
 10 someone -- would have to necessarily be paid for and if
 11 the Council did not pay for that, then the purpose of
 12 the program would be frustrated and that was found to
 13 be an improper appropriation.
 14 Not only does the PASS Act seek to amend the
 15 vacancy filling procedures, as the Attorney General
 16 noted, but the measure proposes to usurp the
 17 qualifications for office which even the Council cannot
 18 without initiating a Charter Amendment as it did most
 19 recently with the Charter Amendments 5 through 7 on the
 20 2012 general election ballot. With respect to those
 21 particular measures, they expelled -- they were giving
 22 Council the ability to expel members of the D.C.

1 Council for gross misconduct and disqualify members and
 2 the mayor for felony convictions.
 3 Those qualifications for those particular
 4 offices could not be put in place without effecting a
 5 Charter Amendment to change the charter which
 6 specifically designates how -- the qualifications for
 7 those offices -- for those particular offices.
 8 So in conclusion the PASS Act presents an
 9 improper subject for an initiative because it violates
 10 the U.S. Constitution in the ways raised earlier by the
 11 General Counsel that were raised by the Attorney
 12 General and the Home Rule Act, and improperly
 13 appropriates funds by establishing an unfunded program
 14 that cannot function as intended without forcing the
 15 Council to appropriate for an unknown expense.
 16 For these reasons, the Board should
 17 accordingly refuse to accept the PASS Act which the
 18 Public Accountability and Safety Standards Act as a
 19 proper subject.
 20 Thank you.
 21 CHAIRMAN NICHOLS: Thank you, Mr. McGann. Are
 22 there any questions for Mr. McGann?

1 MEMBER DANZANSKY: So just to summarize,
 2 counsel. It's a pretty long list. So we have
 3 between the Attorney General and your own research we
 4 have a Fourth Amendment violation --
 5 MEMBER MCGANN: That's correct.
 6 MEMBER DANZANSKY: -- on privacy --
 7 MR. MCGANN: Correct.
 8 MEMBER DANZANSKY: -- and illegal searches
 9 and seizures.
 10 MR. MCGANN: That's correct.
 11 MEMBER DANZANSKY: I'm just listing these
 12 because I'd like our respondents, if they're here, to
 13 address those as the Board has to make a decision.
 14 We have the Fifth Amendment of vagueness and
 15 due process (indiscernible).
 16 MR. MCGANN: That's correct.
 17 MEMBER DANZANSKY: We have the Home Rule Act
 18 on succession, is that correct --
 19 MR. MCGANN: That's correct.
 20 MEMBER DANZANSKY: -- as qualification for
 21 office on all those counts?
 22 MR. MCGANN: Correct.

1 MEMBER DANZANSKY: And we also have mandatory
 2 expenditures. Does that about summarize the --
 3 MR. MCGANN: That does summarize
 4 MEMBER DANZANSKY: Thank you.
 5 MR. MCGANN: That does summarize.
 6 CHAIRMAN NICHOLS: All right. Is that all
 7 the (indiscernible) has? Mr. McGann, don't leave.
 8 Pull up another, if you will, just pull up another
 9 chair.
 10 All right. Are there any other opponents who
 11 wish to make a comment? All right. We will have the
 12 proponents come forth and to make any comments they
 13 would like to make to the table.
 14 Sir, are you going -- are you Mr. Cheeks's
 15 counsel?
 16 UNIDENTIFIED SPEAKER: I'm not -- no, I'm
 17 not.
 18 CHAIRMAN NICHOLS: You're not? Okay. All
 19 right. All right. Mr. Cheeks, please identify
 20 yourself for the record.
 21 MR. CHEEKS: Good morning. My name is John
 22 Cheeks. I'm the proposer of this initiative, PASS

1 Public Accountability Safety Standards Act for the
 2 District of Columbia government.
 3 My speech is very simple and to the point.
 4 We have a drug epidemic inside of our government that
 5 has to be fixed and correct. This does not violate the
 6 Home Rule Act. It does not violate any of your
 7 Constitutional rights.
 8 I believe the District government Attorney
 9 General probably meant to say your civil liberties, not
 10 Constitutional rights because I don't know any of you
 11 in this room who would allow a mayor, a chairman, a
 12 council member to be under the influence of drugs and
 13 alcohol while serving your best interests to stay in
 14 office. I just don't -- I can't find a person.
 15 This is designed to prevent the use of. It
 16 doesn't aim the spotlight on anyone. It does not go
 17 into the budget and ask for a billion or a million
 18 dollars from the District. The federal government will
 19 pick this tab up, the Defense Intelligence Agency or
 20 the National Security Agency, depending on your role
 21 into the District government. We're not asking you to
 22 pay anything. This is purely for public safety. That's

18

1 all it is.

2 It keeps our government clean. It keeps any
3 suspicion of any safety sensitive personnel who is
4 currently holding office or is a chair of a major
5 department. It keeps everyone clean. That's all it's
6 designed for. And for the most part, PASS should be
7 initiated immediately. It's vital that we have this
8 law voted on in the District of Columbia with
9 legalization of marijuana in full force, and that's my
10 statement.

11 CHAIRMAN NICHOLS: All right. Thank you, Mr.
12 Cheeks. Are there any questions for Mr. Cheeks? All
13 right, hearing none, thank you so much. The Board will
14 take this matter under advisement and issue an order as
15 soon as we can.

16 MR. CHEEKS: As far as the legal questions
17 are, is there any type of continuance that I could get
18 to answer all of your questions since the Attorney
19 General did send the September 30th letter by email to
20 your Counsel here, but I didn't receive it until
21 October 15th via email. So I -- if there is a
22 continuance --

19

1 CHAIRMAN NICHOLS: But you had sufficient
2 time to review it?

3 MR. CHEEKS: Yes. We reviewed it and we
4 --

5 CHAIRMAN NICHOLS: I don't -- I think we will
6 make a decision --

7 MR. CHEEKS: Okay.

8 CHAIRMAN NICHOLS: -- based on what is before
9 us on the record. If you do not agree with that
10 decision, you're more than welcome to appeal it to the
11 Superior Court of the District of Columbia.

12 MR. CHEEKS: And how soon will your decision
13 be?

14 CHAIRMAN NICHOLS: I -- as soon as we can get
15 it out.

16 MR. CHEEKS: Okay.

17 CHAIRMAN NICHOLS: I think -- is there a time
18 limit on -- there is no time limit. As soon as we can,
19 we will get to it and we will issue an order which you
20 will receive as soon as it is issued.

21 MR. CHEEKS: Very well.

22 CHAIRMAN NICHOLS: Thank you, Mr. Cheeks.

20

1 Yes, sir. Hold on a second.

2 (Chairman confers with Mr. McGhie.)

3 CHAIRMAN NICHOLS: So, Mr. Cheeks, if -- you
4 can have until the end of the week to submit any
5 additional responses or information based on what
6 you've heard this morning, and the Attorney General's
7 opinion as well as our General Counsel's opinion before
8 we close the record.

9 MR. CHEEKS: I will. But for the record
10 we're not drug testing and alcohol testing all District
11 government employees, right? It's only a specified
12 groups who are considered safety sensitive, such as
13 your police force, such as your school board, such as
14 mayor, such as chairman, such as council members who
15 are currently sitting --

16 CHAIRMAN NICHOLS: Okay.

17 MR. CHEEKS: -- and I know that you all would
18 probably welcome that idea, and I know Congress would.
19 You know, our budget is relying on us to stay healthy
20 in order for us to get to our budget autonomy and our
21 voting --

22 MEMBER DANZANSKY: Mr. Cheeks, if you will,

21

1 in submitting your brief because we will hold off a
2 decision until the end of the week. Would you take a
3 look at the Supreme Court case in Vilsack (phonetic)
4 and let us know why this isn't -- doesn't fall under
5 that mandate, okay?

6 MR. CHEEKS: I promise you, and by the way
7 we're not suing the city. We're -- according to the
8 D.C. A.G. he's citing that the Georgia statute holds
9 precedence here. It does not. This is a new
10 initiative for the people.

11 MR. MCGHIE: Very good.

12 MR. CHEEKS: It's not for any particular
13 party or -- or race or religious order.

14 MR. MCGHIE: All right.

15 MR. CHEEKS: Okay?

16 CHAIRMAN NICHOLS: All right.

17 MR. CHEEKS: Thank you.

18 CHAIRMAN NICHOLS: Thank you, sir. All
19 right. With that we will receive the report of our
20 General Counsel, Mr. McGhie.

21 MR. MCGHIE: Okay. The next item on my

22 agenda is a final ruling to amend Chapters 1 through 3,

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1 5 through 11, and 14 through 17. The proposed
 2 amendments would bring the rules into conformity with
 3 the Voter Registration Access and Modernization
 4 Amendment of 2014 which became effective on February
 5 26, 2015 and the Primary Date Alteration Amendment Act
 6 of 2014 which became effective on May 2nd, 2014 --
 7 2015.

8 Now, I know that the regulations seem like
 9 it's a lot, but it's just really us plugging in the new
 10 dates for the Primary Date Alteration Amendment Act and
 11 then to establish a online voter registration process
 12 for the Board.

13 The present digital primary which is now the
 14 first Tuesday of April, it's going to be moved to the
 15 second Tuesday in June and the -- for the local
 16 elections it's the first in April also to the second
 17 Tuesday in June and after 2016, everything will be the
 18 first Tuesday in September. And we published these
 19 proposed rules in the D.C. Register. No comments were
 20 received, so now I'm asking the Board to entertain a
 21 motion to adopt this as final ruling.

22 CHAIRMAN NICHOLS: All right. Thank you, Mr.

1 McGhie. All right, the motion to adopt as final rules
 2 amendments to Chapter 1 through 3, 5 through 11, and 14
 3 through 17 are before us. All in favor?

4 ALL: Aye.

5 CHAIRMAN NICHOLS: All opposed? The ayes
 6 have it.

7 MR. MCGHIE: Okay. The last matter on my
 8 agenda is a litigation status update. The only thing
 9 that the Board has pending is a case by -- brought by
 10 Harry Wingo against the Board of Elections. That
 11 concerned a challenge to the Board's Short Title and
 12 Summary Statement for Initiative No. 76.

13 The Board filed a motion for summary judgment
 14 and the -- Mr. Wingo had an opportunity to respond. We
 15 are now at the stage where the Board and the
 16 interveners, not to mention that the proposer of the
 17 Initiative also intervened, are scheduled to file
 18 oppositions to the claimant's motion for summary
 19 judgment on November 9th, and then after we file our --
 20 everybody files their responses on November 9th,
 21 claimants will reply on November 23rd --

22 CHAIRMAN NICHOLS: Okay.

1 MR. MCGHIE: -- and then oral argument will
 2 be left up to the judge.

3 MEMBER DANZANSKY: When is oral argument?

4 MR. MCGHIE: Left up to the judge on when

5 --

6 MEMBER DANZANSKY: Oh.

7 MR. MCGHIE: He may -- he might rule on the
 8 papers, or he might schedule oral argument.

9 MEMBER DANZANSKY: Okay. Very good. That's
 10 just the summary -- on summary judgment?

11 MR. MCGHIE: Yes.

12 MEMBER DANZANSKY: Okay.

13 MR. MCGHIE: That will conclude my litigation
 14 status update.

15 CHAIRMAN NICHOLS: All right. Are there any
 16 other questions for Mr. McGhie? All right, hearing
 17 none, we will receive the report of the Board's
 18 Director of Campaign Finance, Cecily Collier-
 19 Montgomery.

20 DIRECTOR COLLIER-MONTGOMERY: Yes, good
 21 morning. The stats for the Office of Campaign
 22 Finance for the month of October, 2015 are as

1 follows:

2 October the 1st, 2015 was the filing deadline
 3 for the filing of the Report of Receipts and
 4 Expenditures by our Constituent Services Program. We
 5 have 13 required filers and all of our programs timely
 6 filed and also electronically filed their reports.

7 October the 1st, 2015 was also the filing
 8 deadline for the filing of the Report of Receipts and
 9 Expenditures by our Statehood Fund Programs. We have
 10 three required filers. All three of our filers timely
 11 filed and they also electronically filed their reports.

12 October the 10th was the filing of the Report
 13 of Receipts and Expenditures by our Political Action
 14 Committees as well as our Principal Campaign
 15 Committees, who participated in the 2015 election
 16 cycle.

17 There were 67 required filers. Fifty-six of
 18 the required filers timely filed their reports. We had
 19 11 failures to file and those 11 committees were
 20 referred to the Office of the General Counsel for
 21 enforcement action. The 56 filers who timely filed
 22 also electronically filed.

1 The Principal Campaign Committees who were
 2 referred to the Office of the General Counsel for the
 3 failure to file include Bell for Ward 8, Milton Bell,
 4 Treasurer; Whitaker for Ward 4, Robert Whitaker,
 5 Treasurer; Barry for Council, Marion Barry, Treasurer;
 6 Toliver for Ward 4, Emily Gumpert, Treasurer; Abraham
 7 for Ward 8, Nicole Spriggs, Treasurer; Anderson for
 8 Ward 4 Council, Aquanetta Anderson, Treasurer; Trayon
 9 White for Ward 8 2015, Trayon White, Treasurer.
 10 The Political Action Committees are as
 11 follows:
 12 Gertrude Stein, Democratic Political Acct.,
 13 Jessica Pierce, Treasurer; Youth Action PAC, Gabrielle
 14 Moise, Treasurer; D.C. Republican Committee, Roderick
 15 Johnson, Treasurer; D.C. Chamber of Commerce, Andrew
 16 Kline, Treasurer.
 17 The new candidates and political committees
 18 that registered during the month of
 19 October, 2015 are as follows:
 20 Ed Potillo/Potillo for Council 2016 Campaign
 21 Committee (Ward 7, City Council), registered on October
 22 the 8th; Residents for Robert White At-Large

1 Exploratory Committee, registered on October the 19th,
 2 2015.
 3 We held three Entrance Conferences during the
 4 month of October. On October the 8th, 2015 there were
 5 five participants. On October the 14th, 2015 there
 6 were seven participants, and on October the 29th, 2015
 7 there was one participant, and the names of the
 8 participants will be posted at the OCF website with our
 9 stats for the month of October.
 10 During the month of October in our Audit
 11 Division, the Audit Division conducted 117
 12 debts reviews of reports which were filed with us, and
 13 also we have ongoing audits and they include the
 14 following:
 15 With respect to the Full Field Audits we have
 16 one investigative audit, Gray for Mayor. With our
 17 inaugural committees for 2015 D.C. Proud Inaugural
 18 Committee. The Full Field Audits of our newly elected
 19 officials for 2014 and 2015 include LaRuby May, 2015;
 20 Brandon Todd for Ward 4; Brianne for D.C.; and Charles
 21 Allen for Ward 6.
 22 The following Periodic Random Audits are

1 ongoing of candidates registered for the 2015 election
 2 Barry for Council.
 3 With respect to the report that was received
 4 January 31st, 2015 for the following that was due on
 5 that date: Morgan versus D.C.
 6 With respect to our July 31st, 2015 filings,
 7 the reports of the following PAC and continuing
 8 committees are currently the subject of
 9 Random Audits:
 10 Eric Jones, 2014; Fresh PAC; Libertarian
 11 Party of D.C.
 12 We did not issue any audits during the month
 13 of October. And I would ask the General Counsel to
 14 approach and to provide the Board with the Report of
 15 the Office of the General Counsel.
 16 MR. SANFORD: Good morning, Madam Chairman
 17 and distinguished Board Member Danzansky.
 18 My name is William Sanford, General Counsel
 19 for the Office of Campaign Finance. During the month
 20 of October, 2015 the Office of the General Counsel
 21 received 11 referrals from the Public Information and
 22 Records Management Division.

1 Two informal hearings were conducted and 11
 2 orders were issued which include the following:
 3 One order for failure to timely file and
 4 which a fine of \$1,500 was imposed. Seven orders for
 5 failure to timely file in which no fines were imposed.
 6 One order regarding a request for additional
 7 information in which no fine was imposed, and two
 8 orders affirming prior orders pursuant to motions for
 9 reconsideration.
 10 The Office of the General Counsel imposed a
 11 fine of \$1,500 against the Barry for Council Committee
 12 which was a committee established for the Ward 8
 13 special election in 2015.
 14 The Office of the General Counsel collected
 15 fines in the amount of \$325. The fines were paid by
 16 the following respondents:
 17 Committee to Re-Elect Mark Jones paid a \$200
 18 fine, and Ward 6 Democrats paid a fine of
 19 \$125.
 20 During the month of October, the Office of
 21 the General Counsel maintained a total of seven open
 22 investigations, and no new investigations were opened.

1 During the month of October, 2015, there were
 2 no requests for interpretative opinions and no show
 3 cause proceedings were conducted, and that should
 4 conclude my report.
 5 CHAIRMAN NICHOLS: Thank you, Mr. Sanford.
 6 Do any of these -- wait, before you go -- do any of
 7 these cases relate to the Trayon White Committee?
 8 MR. SANFORD: No.
 9 CHAIRMAN NICHOLS: The Committee to Elect
 10 Trayon White?
 11 MR. SANFORD: No.
 12 CHAIRMAN NICHOLS: We just wanted to put on
 13 the record that Mr. White did pay all of his fees that
 14 he incurred for the recount that we conducted on his
 15 behalf.
 16 Any questions for Mr. Sanford?
 17 MR. SANFORD: The only order regarding where
 18 they counted was the Barry for Council.
 19 CHAIRMAN NICHOLS: Barry for Council order,
 20 okay.
 21 MR. SANFORD: Imposing a fine of \$1,500.
 22 CHAIRMAN NICHOLS: All right. Okay. Thank

1 you.
 2 All right. Are there any public matters to
 3 be brought before the Board this morning? Come
 4 forward, Ms. Brizill, and identify yourself for the
 5 record, please.
 6 MS. BRIZILL: Good morning. My name is
 7 Dorothy Brizill B-R-I-Z-I-L-L. I'm a resident and
 8 voter in the District of Columbia.
 9 I have five different issues I'd like to
 10 raise with the Board. Would you like me to do them
 11 individually or would you like me to just detail what
 12 the five are? What's the easiest way because
 13 --
 14 CHAIRMAN NICHOLS: Well --
 15 MS. BRIZILL: -- four of them, at least three
 16 of them I'd like a response. I think it would be a
 17 quick response from the Board in terms of --
 18 CHAIRMAN NICHOLS: And for the last two, what
 19 would you need?
 20 MS. BRIZILL: The last two don't require a
 21 response, just to inform the Board of something.
 22 CHAIRMAN NICHOLS: Okay, well let's hear the

1 last two --
 2 MS. BRIZILL: Okay.
 3 CHAIRMAN NICHOLS: -- first and then we'll do
 4 the other three.
 5 MS. BRIZILL: I respect -- I don't know right
 6 now who is responsible for maintaining the Board's
 7 website, but I ask the Board to designate some staff
 8 person to periodically review it. It is neither
 9 substantive in terms of information, nor is the
 10 information currently up to date.
 11 For example, I have been calling for several
 12 weeks Denise Tolliver, assuming she was still your
 13 press and public information officer, only to find out
 14 when you issued a press release this week regarding Mr.
 15 Tatum that there was a new press person on it.
 16 The page on your website that lists Board
 17 management even has Darlene Horton as the Data Systems
 18 Manager. She's been gone more than a year from down
 19 here. So that, and the fact that this meeting today of
 20 the Board was not put up on your website until day
 21 before yesterday, and I don't understand it since
 22 you've already set out a sequence of meeting dates.

1 I just would ask that you designate someone
 2 to at least keep the website current, up to date, and
 3 the information accurate. So that is a matter that I'd
 4 just like to bring to your attention.
 5 The second matter I'd like to bring to your
 6 attention is, there is no indication on your website of
 7 the Board's response to the Auditor's Report that was
 8 issued earlier this year. Before I leave today I'd
 9 like to secure a hard copy of it as well as I think
 10 that the public would like to see a response to the
 11 Auditor's Report.
 12 CHAIRMAN NICHOLS: Let me ask you a little
 13 more about that. We're in -- we're not allowed an
 14 opportunity to review the Auditor's Report before it
 15 was issued in -- issued publicly.
 16 MS. BRIZILL: I'm talking about the Auditor's
 17 Report that was issued earlier this year.
 18 CHAIRMAN NICHOLS: This one --
 19 MS. BRIZILL: Okay.
 20 CHAIRMAN NICHOLS: -- the one on what
 21 subject?
 22 MS. BRIZILL: Her review of the conduct of

1 the general election --
 2 CHAIRMAN NICHOLS: In November?
 3 MS. BRIZILL: -- in November of last year.
 4 CHAIRMAN NICHOLS: Right. We didn't get an
 5 opportunity to review that, but we are preparing a
 6 response to recommendation follow-up questions and for
 7 Councilmember McDuffie which, when it is available,
 8 we'll certainly provide you with a copy of that.
 9 MS. BRIZILL: Okay. I -- let me make sure I
 10 understand what you said because I haven't had my
 11 morning coffee. The D.C. Auditor, Kathy Patterson,
 12 issued a report -- I believe it was March or something
 13 -- about her findings regarding issues that were
 14 raised, at least observed, by her auditors at the
 15 November general election in 2014.
 16 At that hearing, you were getting -- you were
 17 two weeks out from the April special election and you
 18 asked for time to prepare a written response, and so
 19 that written response has not been prepared yet?
 20 CHAIRMAN NICHOLS: No, it's not.
 21 MS. BRIZILL: Do you have an idea when it
 22 will be prepared?

1 CHAIRMAN NICHOLS: It will be prepared within
 2 the next 30 days. It will be completed within the next
 3 30 days.
 4 MS. BRIZILL: And --
 5 CHAIRMAN NICHOLS: Let's talk about briefly
 6 the process before a report is generally issued, an
 7 agency is given an opportunity to review and comment.
 8 MS. BRIZILL: That was my understanding that
 9 a copy of their initial findings are usually sent to an
 10 agency.
 11 CHAIRMAN NICHOLS: But we did not get that
 12 opportunity.
 13 MS. BRIZILL: I wasn't aware of that.
 14 CHAIRMAN NICHOLS: Yeah, we did not get that
 15 opportunity. So as soon as we complete a response, and
 16 we've been working on a response, we've just had some
 17 other matters that are before us that we would like to
 18 get completed.
 19 MS. BRIZILL: Okay.
 20 CHAIRMAN NICHOLS: We'll do that.
 21 MS. BRIZILL: Okay. My next three matters
 22 which I would like responded upon --

1 CHAIRMAN NICHOLS: Uh-huh.
 2 MS. BRIZILL: -- was this week it was
 3 announced that Mr. Tatum is leaving as the Executive
 4 Director --
 5 CHAIRMAN NICHOLS: Uh-huh.
 6 MS. BRIZILL: -- of the Board and the press
 7 release indicated that the matter would be raised or
 8 discussed or a light shone on it at today's meeting.
 9 There was no discussion.
 10 CHAIRMAN NICHOLS: No, and there will be no -
 11 - that's a personnel matter.
 12 MS. BRIZILL: Okay. Can you at least tell
 13 the public what your process will be for selecting a
 14 new Executive Director?
 15 CHAIRMAN NICHOLS: Not at this time.
 16 MS. BRIZILL: When is Mr. Tatum's last day?
 17 CHAIRMAN NICHOLS: Mr. Tatum has not
 18 submitted a letter of resignation.
 19 MS. BRIZILL: But he is leaving?
 20 CHAIRMAN NICHOLS: I have no resignation
 21 letter, Ms. Brizill. I know what the announcement has
 22 said and all that. We have no letter of resignation.

1 We have not received a date for his departure.
 2 MS. BRIZILL: So in a press release dated
 3 November 2nd the Board announces the departure of Mr.
 4 Tatum as Executive Director, but you're saying you have
 5 not received a letter of resignation?
 6 CHAIRMAN NICHOLS: That's what I'm saying.
 7 MS. BRIZILL: Okay. My next item is is that
 8 at some point at a -- perhaps not at this meeting or
 9 what have you -- could there be a discussion for the
 10 public to know what the preparations are for the
 11 elections in 2015, the 2015 election cycle and where we
 12 stand in terms of the acquisition of machines, adequate
 13 funding for the conduct of the election and for
 14 staffing?
 15 CHAIRMAN NICHOLS: For the public, I'm sure
 16 that there will be several opportunities for that.
 17 MS. BRIZILL: Can I make a request that such
 18 a report be given at the next public meeting of the
 19 Board?
 20 CHAIRMAN NICHOLS: We probably won't have
 21 that ready until the first of January.
 22 MS. BRIZILL: Well, can I ask a factual

1 question then. Have you been given by -- through the
2 Council the funds for the acquisition of new voting
3 machines?

4 CHAIRMAN NICHOLS: No, we have not.

5 MS. BRIZILL: Do you have an idea how much
6 that cost is?

7 CHAIRMAN NICHOLS: Do you --

8 MR. TATUM: No. We are reviewing systems
9 from all vendors that are certified with the EAC and
10 anticipate having that information toward the end of
11 the year.

12 CHAIRMAN NICHOLS: We are working on
13 acquiring new EPO books. We -- solicitation has gone
14 out for that.

15 MS. BRIZILL: I guess, and not to belabor the
16 point, is the fact that we're already into November,
17 we're getting ready to go into the holidays. If the
18 Council and the Mayor have not appropriated the funds
19 necessary to acquire new machines to be used in the
20 June primary, we have a new director at the Office of
21 Contracting and Procurement who is still finding his
22 way.

1 handling of complaints and the requests by individuals
2 that the BOEE or the OCF conduct and investigation or
3 inquiry.

4 As one who has filed several complaints over
5 the years, it is upsetting to me when I am not kept
6 informed and, indeed, I get a very cold shoulder as
7 regard to what the status is of an investigation or an
8 inquiry, and let me give you two examples.

9 As you know, I was involved in the Slots
10 Initiative and both of the initiatives that weren't
11 filed. And as a result of one of the Slots
12 Initiatives, the Board imposed a fine of over \$600,000
13 for wrongdoing. The individual refused to pay it. It
14 was taken -- the case went to the Superior Court, and
15 after that there was no effort to keep me informed or
16 indeed I ceased to be a party anymore, and indeed it
17 turns out that this Board reached a settlement with the
18 Slots people of
19 \$75,000 --

20 CHAIRMAN NICHOLS: Ms. Brizill, the Board at
21 the time -- this Board didn't.

22 MS. BRIZILL: No, but --

1 Can you understand why the public could be
2 concerned, given past issues that have occurred in
3 (indiscernible)?

4 CHAIRMAN NICHOLS: Yeah, I could, yeah. We
5 made our request to the Council, they made their
6 decision. We are moving forward.

7 MS. BRIZILL: You made a formal request to
8 the Council for money --

9 CHAIRMAN NICHOLS: Yes, we did.

10 MS. BRIZILL: -- for money?

11 CHAIRMAN NICHOLS: Yes, we did and I -- FY15
12 supplemental budget requests. Yes, we did and nothing
13 was done with that, so we are moving forward just as we
14 have in the past.

15 MS. BRIZILL: Okay. My first question is
16 more directed to Mr. McGhie. Mr. McGhie, it's been
17 pretty regular that you and your office have proposed
18 amendments to the DCBOE and OC of regulations and
19 procedures just as you did today.

20 I would only ask you to put on your plate one
21 request that I would ask for a change in the
22 regulations and procedures, and that has to do with the

1 CHAIRMAN NICHOLS: No, this --

2 MS. BRIZILL: -- the entity --

3 CHAIRMAN NICHOLS: -- the Board at the time.

4 MS. BRIZILL: -- the entity --

5 CHAIRMAN NICHOLS: Yes.

6 MS. BRIZILL: -- the Board did this and so
7 the fine of \$622,000 came down to \$75,000 and the Board
8 and the Slots promoter were allowed to designate who
9 that money would be paid to. The money didn't even
10 come back to the Board or the City as a fine.

11 And then more recently the Mayor has
12 nominated an individual, Joshua Lopez, to be a member
13 of the Water and Sewer Authority, and I had filed a
14 complaint against him in 2010 regarding the fact that
15 he had appropriated Adrian Fenty's campaign literature
16 and campaign posters and had started a writing campaign
17 and plastered, for example, 16th Street with write-in
18 Fenty posters.

19 The Office of Campaign Finance issued a cease
20 and desist order, and then after that I never even got
21 a copy of the order. I subsequently found out that
22 there was a series of negotiations between the Board,

1 OCF and the Committee Save D.C. that resulted in them -
2 - assessed a fine, and to this date I don't even know
3 if they paid the fine.

4 The point I'm trying to make is, is that I
5 think that OCF and BOEE are dependent in large measure
6 upon their auditors and their staff identifying
7 problems in filings or in violations of election law,
8 but also upon citizens who file complaints.

9 Once a citizen files a complaint, this Board
10 needs to know that you're hard pressed to even find out
11 what has happened to it and especially if it gets into
12 a series of meetings with the parties or a negotiated
13 settlement.

14 I think that that needs to change. At the
15 very least I think that regulations need to be
16 developed that keeps a complaining party informed and
17 that they have a right to be notified of any hearings
18 or proceedings in the matter. They have a right if
19 they choose to be a party in any ongoing proceedings as
20 opposed to saying you have to sit outside the door and
21 you can't attend.

22 I think it's reasonable to ask that if

1 off the record at 11:25 a.m.)
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1 someone has gone to the trouble, and you know the
2 extremely difficulty we had in reviewing all the
3 signatures on the Slots Initiative petitions, and to
4 file a complaint and then just be left in the dark.

5 So I would ask the General Counsel's Office
6 to consider amending or adding something to your
7 regulations that give people who file formal complaints
8 with OCF, the Board or the Office of General Counsel
9 some standing and some ability to at least be informed
10 of what's going on and an ability to appear as a party,
11 either in the proceedings here or proceedings in the
12 D.C. Superior Court or the Court of Appeals.

13 And those are my five items.

14 CHAIRMAN NICHOLS: Thank you very much. Are
15 there any questions for Ms. Brizill? All right,
16 hearing none --

17 MS. BRIZILL: Thank you.

18 CHAIRMAN NICHOLS: -- thank you, Ms. Brizill.
19 Well, there being no further business before the Board,
20 this meeting is adjourned. The time is 11:25 a.m. It
21 is still Wednesday, November 4th, 2015.

22 (Whereupon, the above-entitled matter went

1 CERTIFICATE
2
3

4 This is to certify the foregoing transcript
5 In the Matter of: Regular Board Meeting
6
7 Before: D.C. Board of Elections
8 Date: 11-04-2015
9 Place: Washington, D.C.
10
11 was duly recorded and accurately transcribed under my
12 direction; further, that said transcript is a true and
13 accurate record of the proceedings.

14
15
16
17 _____
18 Walter Murphy
19
20
21
22