GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

BOARD OF ELECTIONS

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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(10:19 a.m.)

CHAIR BENNETT: Okay, good morning. We are -- I'm going to call the meeting to order. My clock's not on.

MEMBER GILL: I have 10:19.

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

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

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

Hopefully, we'll have Ms. Dionna Lewis, Board Member, here as we proceed. We decided to start the meeting a little bit early because we have a hard stop certainly by noon.
Anyway, so we apologize for being just a little
bit late to our early start.

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

MEMBER GILL: Motion to adopt the
minutes.

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

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

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

CHAIR BENNETT: Okay.

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

CHAIR BENNETT: Oh, okay.

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

CHAIR BENNETT: All right. That's
seconded, and the agenda is adopted. And so we
-- and that's unanimous. We're moving fast here.

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

MEMBER GILL: No, I don't.

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

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

CHAIR BENNETT: Okay. And Mr. Sindram?

MR. SINDRAM: Morning, Mr. Chair.

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

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

MS. COLLIER-MONTGOMERY: Yes, good morning. First I would like to report that on February the 19th, 2019, that the Office appeared
before the Council's Committee on the Judiciary
and Public Safety to present the Fiscal Year 18
performance report for the Agency as well as the
Fiscal Year 19 performance plan.

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

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

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

And during public comment period, we
did receive comments from several members of the
public concerning their recommendations as to the proposal. And we did consider those recommendations, and for the most part, they were included in the draft regulation.

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

The next thing is that on, I believe it was February the 27th, 2019, we had a meeting with Gottlieb Simon who was the Executive Director of the Office of the Advisory Neighborhood Commission. And the purpose of that meeting basically was to confirm the public outreach that the Agency has proposed in terms of meeting with the ANC commissions from April of 2019 through October 2019, basically for at least twice weekly to present to the members of the community who are present at the meetings, what the purpose of the Fair Elections Program is.
And to basically give an overview to let the
community know that the Fair Elections Program is
available and what it will mean to prospective
candidates, as well as to members of the
community who may wish to contribute to the
candidates who are seeking to participate in the
program or who are, in fact, participating in the
program.

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

Also, I would like to report that we
are in the process of developing a temporary site
for the e-filing system basically to provide for
the e-filing of financial reports from
prospective candidates in the program as well as
for candidates who are actually participating in
the Fair Elections Program.

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

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

Other than that, we are working on brochures which we hope to be able to disseminate at the ANC meetings. And we also are working on a fact sheet that we hope to make available which
will provide information pertinent to qualifying for the program during the 2020 election cycle.

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

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

The reports were due on February the 19th, 2019. There were 401 required filers, 370 of the candidates timely filed their reports. There were 31 who failed to file, and those candidates have been referred to the Office of the General Counsel for the initiation of the
enforcement process. And all 370 of the
candidates who timely filed, electronically filed
their reports with us.

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

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

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

CHAIR BENNETT: Okay. Sorry, Ms.

Miller. Continue.

MS. COLLIER-MONTGOMERY: -- entrance
conferences during the month of February. They conducted an entrance conference on February the 28th, 2019. There were two participants Corina Hernandez, the Treasurer of the DC Young Democrats and Vanessa J. Robinson, the Treasurer of the DC Term Limits Campaign, again, an initiative committee.

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

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

We have also initiated four full-field audits of newly-elected officials to the School
Board as a result of the 2018 election. They are Frazier O'Leary from Ward 4, Committee to Elect Zachary Parker 2018, Jessica Sutter for School Board, and Emily for Education.

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

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

We also issued two audits during the month of February. The first was Anita Bonds 2018, which was issued on February the 28th, 2019, and Muriel Bowser's Constituent Service
Fund which was issued on February the 4th, 2019.

Our audits are available for public review at our website. And, again, the activity report for the Office will be published at the website before the close of business today for your review.

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

CHAIR BENNETT: Great, thanks.

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

Two orders were issued, a failure to respond to request for additional information,
which were dismissed. And seven orders were issued for failure to timely file reports in which a total $10,050 in fines were imposed.

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

During the month of February 2019, the office did not receive any payments of fines. During the month of February 2019, the Office of the General Counsel maintained a single open investigation. The investigation is investigation number OCF Full Investigation 2018-002. The complainant in this matter is Emily Naden. That was filed on December 4th,
2018. The respondent is Councilmember Brandon Todd. The alleged infraction is inappropriate use of government resources. That investigation has been completed, and the audit is pending.

During the month of February 2019, there were no requests for interpretive opinions and no show cause proceedings were conducted.

And that should conclude my report.

CHAIR BENNETT: Thank you, Mr. Sanford.

Ms. Montgomery, any other matters?

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

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

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

MS. MILLER: Thank you, Mr. Chairman.

I'm going to step a little bit out of the norm from how I normally do this and start with taking
a moment to recognize the Board's social media postings, just because we did it a little differently this past month and I want to give all the credit to the staff, primarily LaVonna McCann who is sitting out there and Rachel Coll.

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

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

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

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

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

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

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

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

MS. MILLER: Logging onto Twitter now.

CHAIR BENNETT: So, and that's great.

Great ideas. It's good stuff.

MS. MILLER: Thank you.

CHAIR BENNETT: It's always good to
connect with the voting public.
MS. MILLER: All right. Thank you.

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

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

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

We provided information on the total number of precincts, number of poll workers, the
age of poll workers, provisional ballots cast, counted, mail-in ballot information, same-day registration, voting equipment use, and other information related to the general election.

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

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

We've been working with the new VR system vendor, VRS, in scheduling our kickoff meetings. We're looking to schedule one of those meetings the middle of next month -- I think, actually, next week. The data conversion process has begun. They've received our voter registration data. And we'll be meeting with the
members of the staff who were involved in actually attaching the data so we can figure out what needs to be done, who has problems, who has issues, and how deployment can actually take place and be as seamless as possible.

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

CHAIR BENNETT: That's awesome.

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

And it's, you know, just a thank you from us to them. And they're very appreciative of it. We can't give everybody these. We give
certificates to our poll workers, and some other
folks get certificates as well.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR BENNETT: Okay, are there any
comments from the opponents of the measure?

Anyone here?

MR. MCGHIE: Is there anybody who

would like to be heard as an opponent of the

measure? Step forward and now take a seat.

Okay, would you please state your name

and address for the record, and if you're

representing an organization, please state your

organization.

MR. WALTER: Good morning, Mr.

Chairman, and members of the Board of Elections.

My name is Zach Walter, and I'm Assistant General

Counsel to the Council of the District of

Columbia. I'm here today on behalf of Phil

Mendelson, Chairman of the Council of the

District of Columbia to request that the Board

find that the District of Columbia Term Limits

Campaign initiative is not a proper subject

matter for initiative in the District of Columbia

because the proposed initiative is contrary to

the terms of Home Rule Act.

The proposed initiative would amend DC
Official Code 1-1001.08 to provide in part, that 
no person elected to the office of mayor, 
chairman of council, attorney general, member of 
the council, or State Board of Education shall 
serve for more than two full consecutive 
four-year terms.

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

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

The U.S. Supreme Court recognized this
principle in U.S. Term Limits versus Thornton,
where the Court invalidated an amendment to the
Arkansas Constitution, which among other things,
prevented any person elected to three or more
terms as a member of the U.S. House of
Representatives from placing their name on the
ballot for election to the U.S. House of
Representatives from Arkansas.
In declaring that statute
unconstitutional, the Supreme Court necessarily
recognized that the imposition of a term limit
was tantamount of the imposition of an
impermissible qualification beyond those
enumerated in the Constitution.
Similarly, in Gerberding versus
Monroe, the Washington Supreme Court struck down
Initiative 573 that prevented individuals who had
held state legislative seats or certain state
constitutional offices for a prescribed time
period from filing a Declaration of Candidacy and
appearing on the ballot for those offices.
In holding that statute
unconstitutional, the court found that one, term
limits added non-incumbency as a new
qualification which went beyond the
qualifications set forth in the state
constitution. Two, the exclusive list of
qualifications in the constitution could only be
altered by constitutional amendment. And three,
a statute, whether adopted by the legislature or
by the people could not add qualifications for
state constitutional officers where the state
constitution set those qualifications.

Like the rejected measures in U.S.

Term Limits and Gerberding, the proposed
initiative here at issue would impose a degree on
non-incumbency as a new qualification for certain
elected District officials. In so doing, it
would directly contravene the District Charter,
which is the sole and exclusive source of such
qualifications.

The charter contemplates a process by
which additional qualifications for office such
as term limits might be imposed. Namely, the
charter amending process set forth in Section 303
of the Home Rule Act. However, that process
requires both an act passed by the Council and
ratification by majority of the registered
qualified electors of the District.

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

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

MEMBER LEWIS: No, thank you.

CHAIR BENNETT: Mr. Gill?

MEMBER GILL: No.

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

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

MR. WALTER: That's right.

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

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

I would say that --

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

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

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

CHAIR BENNETT: Okay.

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

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

MEMBER GILL: No.

CHAIR BENNETT: Obviously no.

MEMBER GILL: No.

CHAIR BENNETT: We don't. Could you provide those to us as well?
MR. WALTER: I'd be happy to.

CHAIR BENNETT: That would be great.

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

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

CHAIR BENNETT: Thanks so much.

Thanks for appearing.

MR. MCGHIE: Okay, so as he mentioned --

MR. SINDRAM: Mr. Chair.

MR. MCGHIE: -- a letter from --

CHAIR BENNETT: Hold on, one second.

Yes, sir?

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

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

MR. SINDRAM: Yes, sir.

CHAIR BENNETT: All right, thank you.

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

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

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

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

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

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

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

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

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

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

In conclusion, DC TLC presents an improper subject for initiative, because it improperly attempts to amend the charter by
implementing an additional qualification that an
individual has not served two consecutive terms
immediately preceding the election. The Ward
cannot accept this attempt to change the charter,
and I would respectfully opine that the DC TLC is
not a proper subject and the Board should refuse
the measure.

CHAIR BENNETT: Thank you, Mr. McGann.

Any questions, Mr. Gill?

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

MR. MCGANN: Correct.

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

MR. MCGANN: Correct.

MEMBER GILL: Which is the point of
it, but -- all right, those are the two. Okay. Sometimes when proponents talk about this they want to sort of like -- all right, let's get at those two issues then.

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

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

MEMBER GILL: Thanks.

CHAIR BENNETT: Any questions Ms. Lewis?

MEMBER LEWIS: No, thank you. That was helpful.
CHAIR BENNETT: Okay, great. Mr. Sindram -- thank you, Mr. McGann.

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

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

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

MR. SINDRAM: Sure.

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

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

MR. BUTLER: Good morning everyone.

I'm James Butler, 1600 Maryland Avenue NE, Washington, DC 20002. Mr. Chairman and members
of the board --

MR. MCGHIE: No, no, let me stop you.

You're the proposer of the measure, so you'll have an opportunity to respond to everybody, the opponents and the proponents, so you'll go last.

MR. BUTLER: Okay.

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

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

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

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

MR. SINDRAM: Michael Sindram, disabled veteran, served our country more than most, Organization Justice -- I didn't say Just Ice -- for all DC/Disabled Veteran of which I happen to be one.
I'm confused because Mr. McGann used a resolution, initiative, referendum, saying something may or may not be viable.

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

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

PARTICIPANT: He hung up.

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

PARTICIPANT: Or maybe I cut him off.

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

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

MR. SINDRAM: Hello.

PARTICIPANT: Can you hear us?

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

MR. SINDRAM: Thank you.

CHAIR BENNETT: Okay. Yes, sir.

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

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

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

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

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

We're going to change some things
around here. People being in office forever, and
they feel comfortable. And when you feel
comfortable enough where you feel you don't represent me, Virgil Young, then there's a problem, because I've earned everything that I've done. I worked hard. I don't do any drugs. I do what I'm supposed to do. I've checked all of the boxes, and I'm still catching H-E-L-L.

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

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

You look like somebody that we're supposed to be, but your behavior is dysfunctional. And we are tired of the
dysfunctional behavior, okay? So sit back, I'll just be in control, and we're going to make a change. The Lord's going to see to it. Thank you.

CHAIR BENNETT: Thank you.

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

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

MEMBER LEWIS: Thank you, sir.

CHAIR BENNETT: Okay.

MS. DAVIS: Good morning --

CHAIR BENNETT: Good morning.

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

CHAIR BENNETT: Can you identify yourself and address?

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

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

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

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

It's time for all this legality that you all are talking about, those two guys -- no offense, I'm telling the truth. We don't need all that, because if they were going by all those laws, we wouldn't be where we are at now.
Like my partner said, low-income housing is being taken out of the city. Our large families don't have anywhere to go once they do. They let these contractors come in here, and they buy them out, and they kick us out. It doesn't matter what color we are. We have some poor Whites, Hispanics, whatever.

But do they care?

No.

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

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

So it's time for them to go. They
don't need to be there. And I don't care what
color you are, if you aren't working for the poor
and the needy -- you need to get up and go.

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

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

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

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

I've been out here, and I'm 73 years
old this May. And like my brother said, there
have been some changes, but there have not been
any changes for us or for the poor.
You all need to do your job and change that order, whatever they have in the law, and this, and that, and the other. We don't have -- don't look at us and look down on us like we don't have the education to know when it's time for you to move. Sometimes we have to clean our house. So it's time for that house to be cleaned, from the mayor on down to the school board.

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

Get them out and put somebody in there. Start checking backgrounds like you are supposed to check them. And make sure they are for the people and for families.
Because it's time. I'm sick and tired of being sick and tired. All that that the young man has brought up here about how this law is this, and you can't do this, come over here with some doggone plain English. They are not doing their job, and you know it.

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

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

Let them know that when you find out
that they're not doing their job and they've been there too long, get rid of them. It's time.

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

CHAIR BENNETT: We have three-year terms.

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

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

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

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

MS. DAVIS: Yeah, that's why the council said they'd confirm. All they do is confirm, and confirm, and confirm. But they don't get up from behind their desks and come in the neighborhoods and see what the people need.
They are not working for us. They are working for themselves. Money is coming in under the table. We know this.

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

CHAIR BENNETT: Thank you.

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

CHAIR BENNETT: Okay.

MR. BUTLER: -- if I may.

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

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

MR. BUTLER: Absolutely.

CHAIR BENNETT: And then I think we'll get to you unless there's another proponent.
MR. BUTLER: Again, there are a couple more proponents actually. I just didn't want that passion to come out in that manner where they're thinking that it is completely dead, but I think adding this insight they'll see that actually we can still arrive at the same destination through a different vehicle.

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

MR. BUTLER: Fair enough.

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

I think you must be on mute, sir.

MEMBER GILL: I think Michael's finally intimidated.

MR. SINDRAM: Can you hear me now?

CHAIR BENNETT: Yes.

MR. SINDRAM: Thank you, Mr. Chairman. Okay, Michael Sindram, disabled veteran, served our country more than most. I
I want to extend gratitude to the fellow serviceman who testified.

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

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

Amendment X, the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. In other words, we the people are the sovereign
body, all right?

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

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

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

   Behind this, no doubt, is Ward 2, Jack
Evans. He has been Councilman for life and currently under investigation. That should tell us already that there is something amiss, all right?

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

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

If you look at our neighbor in Montgomery County, Robin Ficker, had a ballot initiative, term limits, which was successful. There are a number of cases that are right on point to indicate term limits are very much an issue for us to be deliberated by we the people
in the District of Columbia. And that right
ought not be taken away, and it ought not be
usurped by Philip Heath Mendelson, or Jack Evans,
or anybody else.

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

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

And if you take this away from us,
what do we come down to? There's not much
difference between what we claim is a democracy,
the United States, and a Communist entity, sad
but true.
So, I implore you, Mr. Chair, and kudos to Mr. Butler. You keep fighting the good fight, and the good fight is the one you win. So I implore the Commissioner to please let this move forward. However you want to play it with the nomenclature, initiative, measure, ballot, resolution, whatever it is. But we have a right, a constitutionally guaranteed right to weigh in on this. And term limits are very much a viable topic, as seen in Montgomery County and elsewhere, notwithstanding the Supremacy Clause of the Constitution.

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

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

MS. ROBINSON: Good morning.

CHAIR BENNETT: Good morning.

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

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

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

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

She doesn't care.

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

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

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

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

The Mayor doesn't care because she feels comfortable. She feels comfortable because she doesn't have to go across the bridge to see what the people need. She's a servant of the people. That's all of Washington, DC, not just
the wards you choose to go to. Not just the wards you live in and say, listen, I need your vote. I want your vote. I'll serve you.

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

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

No, not two-bedroom apartments. Where are they supposed to stay? And it's definitely not affordable. So it's like a play on words. I heard them coming up talking about what the law says. Well, it's time to change the laws. And
we need to allow the people to be a part of the
change, by putting this on the ballot so the
people can vote and determine whether or not you
stay in your seat till death do us part,
especially when you're not serving the people.

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

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

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

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

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

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

So I'm glad that you gave us the opportunity today to speak about term limits
because term limits will help us limit the people
who are sitting in a position to make a
difference. We need that in the District of
Columbia. Thank you for your time.

CHAIR BENNETT: Thank you.

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

MR. CLARK: Good morning.

CHAIR BENNETT: Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

    I'm a third-generation Washingtonian. I'm an east-of-the-river native and current resident. And we hear you. I think we care very much on this Board about the issues that you have expressed. We care very much about seeing
fruitful changes in this city and making sure
that all of our constituents are represented.

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

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

This Board is a very compassionate
Board. We have all long-time DC residents here
on this Board, represented on this Board,
including the staff that works with the Board of
Elections. And so, with that in mind, I don't
want anyone to think that any of the comments
that have been expressed today are sitting on
deaf ears because they certainly aren't. I mean,
for those of you who live east of the river, I
live east of the river. I've been a homeowner
there for the last -- this would be seventh year.
My parents live in Kingman Park, and that's where
I'm from.

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

So that's just the final thing I
wanted to say before I think we hear from the
proponent. Thanks for your time today.

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

CHAIR BENNETT: Yes sir.

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

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

CHAIR BENNETT: Thank you Mr. Sindram.
Since you're such a loyal participant, I took a little bit of a privilege in giving you a second opportunity at that, so thank you.

We're now going to hear from the proponent.

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

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

But let me talk for a minute with regards to what's the opposition. The opposition was proffered by Carl Racine's office and a similar opposition proffered by Phil Mendelson's office.
And Ms. Lewis, you made a very good point, that you are -- as much as you feel emotional about some of these things that come before you, you're still bound by the law. And I respect that. I respect the position of the General Counsel's office too that came through Mr. McGann, that stated that they believe essentially the vehicle to get to -- this to voters is improper.

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

CHAIR BENNETT: Thank you.

MR. BUTLER: I was hesitant to make a friendly acquiescence or amendments to this because in 1994 we had a prior opinion of the General Counsel or the Corporate Counsel at that time that indicated opposition to term limits, yet in 1994, it made its way all the way through.
Now, the legislator history is more than scant. So we couldn't find why. And why the attorney generals or the General Counsel in 1988, that that opinion was not adhered to, and why it made its way to the ballot as a general initiative in 1994 and by about 62 percent it passed. That's a problem -- that's a problem in the system. We know that.

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

So that tells me that an argument could be made that we could take a straight-line-ballot initiative and vote that way for term limits with them. But for the ease of this office's work and for voters' understanding of this, what I do believe we should do is make
some acquiescence and amend to some extent -- I'd
like to read to you -- it won't be long from what
my friendly amendments will be.

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

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

This resolution would be advised --
would advise the DC City Council to amend the DC
Charter to establish term limits eliminating the amount of time that an elected official can hold the office of mayor, chairman of the council, members of the council, members of the State Board of Education, and the attorney general.

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

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

It's just this two-step process. It's just the same thing -- well, a different vehicle
and a little bit longer to get there. So if it is your opinion today, based on the General Counsel's opinion that was read through Mr. McGann, that we resubmit the initiative. We can do that, and we're okay with doing that.

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

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

Any questions?

CHAIR BENNETT: Well, what we currently have before us is what you had submitted earlier.
MR. BUTLER: Mr. Chairman, I aware of
--

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

MR. BUTLER: Oh, no, my apologies.

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

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

MR. BUTLER: Yeah, and we may move
prior to your decision. It just makes road a
little bit easier quite frankly. If you have
this opposition -- really, let me be clear. What
DC needs is a legal opinion on this.

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

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

So what we -- I think the real thing
is what we need is some stare decisis to guide
us. Because we don't have that right now, and
all of the oppositions from -- based on this
memoranda that have been authored, I think we're
going to preempt any decision that you make right now and just file a new ballot initiative containing the language that I just read to you. I think that's the smart way to do it. And quite frankly, based on the recitation of some that it requires an amendment of the Charter. I think we can advise -- the voters can advise DC Council to amend the charter.

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

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

CHAIR BENNETT: No, you didn't.

MR. BUTLER: -- because this has been the third or fourth time before the Board. And you all do wonderful work. I'm greatly, deeply
from my heart appreciative for all the work, for all the phone calls that you take that I call emergency calls when they're really not. And so I really do appreciate the work that you all do. I know it's not easy so -- from my heart thank you so much.

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

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

CHAIR BENNETT: Just kidding.

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

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

MR. MCGHIE: That can be appealed, yes.
MEMBER GILL: But the appeal is going to be on our decision which may not get to the merits of what you're trying to get to in terms of an actual -- something within the District that has a court --

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

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

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

MEMBER GILL: Right.

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

MEMBER GILL: So that gets to my -- I should have asked Rudy this, but I figured it would come up -- sorry. So what happened in '94? Walk us through the history of --
CHAIR BENNETT: Don't go far, sir.

MR. BUTLER: Okay.

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

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

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

(Laughter.)

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

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

MR. MCGANN: So I believe, I think, if I were to venture a guess, I believe there was just as much passionate discourse in favor of proposing the initiative that we saw today -- and I think the Board went with that sentiment and it was processed as an initiative that no one sued
because the public didn't want to sue. And I
don't believe anybody from the Council would want
to sue because it was a --

MEMBER GILL: Right, it's not a viable

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

MEMBER GILL: Okay. Thank you.

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

MEMBER GILL: Thanks, Rudy.

CHAIR BENNETT: Any other questions
for Mr. McGann?

MEMBER GILL: No.

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

(No audible response.)

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

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

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

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

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

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

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

CHAIR BENNETT: Good morning, Mr. Sanford.

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

And as a result of those comments, which have been incorporated into the former proposed regulations, we amended the regulations to -- the new newly proposed regulations to include those comments as well as some
significant recommendations that came from the
Office of the General Counsel for the Board of
Elections.

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

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

CHAIR BENNETT: Okay. Let me just, I
guess, address a couple of things. One is it is
-- I won't say unusual, but it is always the
desire of the Board when we have proposed regs
that are in the DC Register for 30 days, that the next action would be to vote on those regs as permanent.

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

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

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

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

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

We are running flat-out to make sure
that we have a successful rollout of the Fair
Elections Program. The regulations are a key
part of that, and we want to make sure that those
are right and we also need the support and the
help of the Council and the Mayor's office in
order to ensure that we have a statute that we
can implement appropriately.

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

MEMBER GILL: No.

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

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

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

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

MS. COLLIER-MONTGOMERY: The only
thing that I would add is I would like to thank the public, especially the members of the planning committee who submitted comments to our --

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

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

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

CHAIR BENNETT: Yeah, let me echo your thanks for that. We really do appreciate and need -- particularly in this case where we have a brand-new program. We really do need the public's help and support as well as the Council
and the administration. This is an incredibly important program -- public financing is brand new in the District. And this Fair Elections Program is in fact public financed in a number of jurisdictions around the country we've looked at -- that, in fact, does have public financing.

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

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

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

CHAIR BENNETT: I have a motion?

MEMBER LEWIS: So moved.

MEMBER GILL: Second.

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

(Chorus of aye.)

CHAIR BENNETT: And the ayes are unanimous.

The other thing I want to also make sure so that it will move to the DC Register as proposed remain. I also want to say as well that if for some reason or another there is a need for permanent regs that we have to do on an emergency basis I will call a special meeting of the Board to consider that. But if not, then we'll vote the 30-day period, continue to work for --
hopefully, get the items that we need from a statutory-amendment perspective and move forward accordingly.

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

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

On the other matter that remains, the Superior had dealt with Count 2 on whether or not it was a proper subject for an initiative. On February 25th, the parties filed a joint motion to extend the initial scheduling conference, which the clerk granted on February 27th. So the parties are currently scheduled to appear at the
conference on April 5th.

CHAIR BENNETT: Great, thank you.

Anything else, Mr. McGhie?

MR. MCGHIE: Nothing further.

CHAIR BENNETT: Any questions for Mr. McGhie, Ms. Lewis?

MEMBER LEWIS: No, thank you.

CHAIR BENNETT: Any questions, Mr. Gill?

MEMBER GILL: No.

CHAIR BENNETT: All right. We are now at the point of the Agenda of any Public Matters or the Board. And I think we've heard from quite a few members of the public, particularly on that -- specifically on the matter associated with the term limits. But if there is anything else, we'd like to entertain that at the moment. And I'd ask that we be specific and succinct in our comments.

Any other public matters?

MR. SINDRAM: Mr. Chair?

CHAIRMAN BENNETT: We have one coming
up in the parties Mr. Sindram, so thank you.

MS. MARLIN: Good afternoon.

CHAIRMAN BENNETT: Good afternoon.

Try the other one.

MS. MARLIN: Good afternoon.

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

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

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

MS. MARLIN: Good morning --

CHAIRMAN BENNETT: We have a few more minutes.

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

My name is Robin Marlin and I'm here to, actually, I'm going to present some findings, but at the conclusion of my findings I want to request that a hearing be held in the matter that
I'm going to discuss briefly with you.

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

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

MS. MARLIN: Okay.

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

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

CHAIRMAN BENNETT: No, no, your fine.

MS. MARLIN: Okay. Well, upon, being informed on November 25th at Villareal D. Johnson, which is a candidate in the general election 2018, did not reside at 2411 33rd Street within the 60 day period mandated for a person to reside in SMD 7D05. That would enable him to qualify for candidacy for the ANC seat.
As a direct result of learning this information from both his neighbors and confirmed by his landlord, which I have presented evidence to the Board to that effect, a challenge was filed against Mr. Johnson's residency.

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

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

I emphasize those two final statements in the letters because, what I've come to realize
through discussions with the Commission, the ANC Commission this has affected, is that those comments almost offer an option as opposed to a direction for Mr. Johnson to respond.

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

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

When Mr. Johnson didn't respond to that, I inquired as to what the next step would be. And Mr. McGann instructed me, in an email dated February 6, 2019, that the responsibility
was on me now, after I had proved, one, residency matter, that now I had to prove an additional residency matter stating that I would have to prove that he did not live on, live at 2814 Erie Street prior to June 9th.

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

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

And if they were, I think going forward, if a person is appearing to be a candidate, not a voter, if I'm coming in to pick up petitions to run for a seat and no one asks me
where I live, it should not then be on the
candidate or the ANC Commission to try to prove
residency.

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

CHAIRMAN BENNETT: Based on his
residency?

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

So, I will go back to the ANC, so then
the registrar sent a letter to the ANC telling
them, well, this, you're going to have clear this up, that we're not going to handle it. Because you have this person sitting in the seat you need to, to the registrar's point, she encouraged Mr. Johnson to resign, which he has not done and I don't think he's going to do it.

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

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

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

I did note that in the law there's an
opportunity for the executive director to declare a vacancy. I think under the circumstance, what's my feeling, I don't want to say I think, but I strongly feel that it's incumbent upon the Board to make sure that when candidates appear to become a candidate, whether it's an ANC seat, a school board seat, a ward seat, that verification needs to take place.

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

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

I, something occurred, I think was that same day, registration, initial voting, we
happened onto a voting site there that they ask you, I think, for ID. This year I went into vote I wasn't asked for anything but my name.

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

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

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

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

Now, I don't if Mr. McGhie has
additional information but I haven't received anything to that affect.

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

MS. MARLIN: Good morning.

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

MS. MARLIN: Okay. That's fine.

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

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

CHAIR BENNETT: This is a response to what?

MR. MCGANN: To Ms. Marlin, letting her know the findings of the registrar and the next steps in the procedure.
CHAIR BENNETT: Okay, I got it.

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

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

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

That process was faulted, and you submitted a challenge to Mr. Johnson's qualifications after the election was held. And
you lost the election of ANC Single Member District 7D05 of to Mr. Johnson.

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

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

I don't know if she overlooked this, but I did bold it in my response to her to, again, and understand that the actual governing 60 day period commences 60 days prior to when the candidate submits their nominating petitions, not
when they pick it up two months prior.

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

Then he picked up the --

MS. MARLIN: It's in July.

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

MS. MARLIN: July 9th.

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

    So, I'll get back. Mr. Johnson submitted his nominating petition on August 8th, 2018. Accordingly, he had to reside in the SMD
on June 9th, 2018 to qualify as an ANC candidate.

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

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

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

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

Although he didn't have, at least at the time of June 1st, he was living where he
resides now in May, and had a cancelled check to show when this matter was to be put forth in front of the advisory neighborhood commission this month. So, I don't know if they had --

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

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

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

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

CHAIR BENNETT: So we, so the expectation was that he was going to have a hearing, as the law requires, with the ANC --
MR. MCGANN: Correct.

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

MR. MCGANN: Correct.

CHAIR BENNETT: -- holding that seat.

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

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

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

MR. MCGANN: Sure.

MS. MARLIN: Just quick clarification. So, Mr. McGann, and thank you for sharing that. I'm puzzled, since you and I have had continuous conversations via email, and I do appreciate that, you respond very timely. This is the first time hearing about a check, this is the first time hearing that Mr. Johnson did receive the challenge.
Because the executive meeting that I attended, he knew of it. He knew of it in January. He was supposed to respond back to the Board of Elections.

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

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

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

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

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

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

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

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

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

The ANC, I'm going to go out on a limb
in saying it because I've been the chair of that
very ANC for four years, and vice chair and
secretary. They're not really equipped, I think,
to be able to determine residency or
qualifications.

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

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

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

This particular issue doesn't apply to
an ANC filling in vacancy, this issue applies to
a Board of Election ensuring that the person
lives where they say they should live. When they
walk in the door, they should be able, I can
prove where I've lived for the last 20 years. I
can give it to you today.

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

CHAIR BENNETT: Let me --

MS. MARLIN: -- where vacancy occurs.

MR. MCGANN: Can I finish?

CHAIR BENNETT: Let me go back to what

Mr. McGann said though, is that the challenge is,
it sounds like what you're talking about is
challenging his candidacy.

MS. MARLIN: No.

CHAIR BENNETT: Well, that time period
is over.

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

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

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

And what --

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

Let Mr. McGann complete what he was saying.

MR. MCGANN: Sure. Thank you. While you did raise a discrepancy with respect to Mr.
Johnson signing a lease in June for a residence, he claims he lived in since May, his former residence was also located in the same single member district.

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

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

And that Ms. Marlin keeps responding, bringing up the vacancy aspect of it, but the ANC has the responsibility, per statute, to determine whether or not this member of their body should
be removed. Not the Board.

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

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

MS. MARLIN: Okay.

CHAIR BENNETT: So there's --

MS. MARLIN: I'm sorry. Understand.

CHAIR BENNETT: Okay.

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

As I have mentioned, the removal process is governed by D.C. Code Section 1-309.11(e)(2). Ms. Brooks has transmitted the evidence you submitted in the form of an
affidavit from Mr. Johnson's landlord purporting
to sign a lease with him in June.

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

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

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

The second question calls for a legal
conclusion that cannot be assumed based upon the
evidence you submitted to substantiate your
assertion. While your evidence provides a
conflict in the declaration statement, you do not
provide evidence that his former address was
outside of the single member district.

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

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

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

You will be able to substantiate your
claim and Mr. Johnson will be able to address
your concerns, with respect to the discrepancy in his declaration of candidacy.

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

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

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

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

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

I said, it's not incumbent for me to have to prove that prior to where he was, in
regards to Mr. Johnson. I think that that should be on the Board when he appears.

So just me just end by saying this.

Again, I think maybe my appearance has been misconstrued. Maybe I'm not being clear to the Board or to this Agency.

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

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

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

I didn't write them. They're in Title
3, which is the Board of Election and Ethics.
And I underline ethics. Because I just don't see
it here. I really just don't.

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

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

I'm here to ask for a hearing so that
he respects you all. He comes in, he shows the
proof. If he shows the proof, that's fine, poof,
I'm gone.
But what I'm asking is why this body cannot compel him to prove he came down and signed the declaration as if he lived these places. I've shown one piece of evidence contrary to what Mr. McGann has said. I showed what I was asked.

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

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

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

But when I learned, from my previous constituents that he didn't live there, he came
into the community and ran for a seat and won,

Mr. McGann pointed that out, which he didn't have
to, I knew that I had lost, but the fact that the
Board doesn't care if he lives there, and no one
asked him when he came in, he even didn't put the
right zip code for the previous address, which
lets you know he doesn't know the address.

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

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

The other young lady, that's going to
be discussed, she was going to fight me. Got up
and approached me to physically fight me because
I said, these two individuals do not live in our
And I just cannot believe that this Board is going to advocate that responsibility. Anybody coming in, they're updating, to Karen's point, she was updating, he was updating, changing, why don't you ask for ID. Why don't you ask where these people are living.

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

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

MS. MARLIN: All right.

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

But more importantly --

MS. MARLIN: Then delete that from
this form.

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

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

CHAIR BENNETT: Well actually we don't.

MS. MILLER: We don't.

MS. MARLIN: If you don't --

(Simultaneously speaking.)

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

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

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

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

MS. MARLIN: And that's new.

MS. MILLER: That's not new.

MS. MARLIN: It is new.

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

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

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

MS. MARLIN: Well, maybe --

MS. MILLER: -- I can say that.

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

MS. MILLER: They shouldn't.

MS. MARLIN: -- but I think it's a
responsibility to ask. You can have anybody going and voting.

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

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

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

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

MS. MARLIN: I agree. I agree with that. But to your responsibility, not yours personally, but to this body, this Karen's job,
when people come in, they need to ask them something. I mean, people shouldn't just show up.

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

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

MR. MCGANN: If I may?

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

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

MS. MARLIN: No, okay.

CHAIR BENNETT: Maybe Mr. McGann can

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

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

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

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

MS. MARLIN: Thank you.

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

MR. SINDRAM: Yes, Mr. Chair.

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

MR. SINDRAM: Can you hear me now?

CHAIR BENNETT: Yes, we can hear.

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

CHAIR BENNETT: Is -- is she in the
room? Is Cecily in the room?

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

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

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

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

CHAIR BENNETT: Ms. Montgomery?

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

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

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

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

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

MEMBER LEWIS: She needs her mic on.

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

CHAIR BENNETT: I assume so.

MS. COLLIER-MONTGOMERY: Okay.

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

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

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

MR. SINDRAM: Well, again, I assert that they be challenge. You make mention of an
audit, Frazier O'Leary. So what I'm asking you, if you can't answer it now sometime in the very near future, what that audit is about. Frazier O'Leary, for representative.

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

MR. SANFORD: Mr. Sindram?

MR. SINDRAM: Yes.

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

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

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

MR. SINDRAM: Yes. Last, but not least, in light of Black History month, Rosa Parks is the face of the Montgomery County, excuse me, the Montgomery, Alabama Bus Boycott.

Who was the initial selectee and why was Rosa
Parks selected, any idea?

CHAIR BENNETT: I have no idea.

MR. SINDRAM: No?

CHAIR BENNETT: No idea.

MR. SINDRAM: Okay.

CHAIR BENNETT: Thank you.

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

So Rosa Parks, who was very well connected in the NAACP and very light complexion, was then named as a face of the Bus Boycott.

Good to know our Black History, you know.

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

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

My name is Phillip Hammond. I am a former ANC commissioner for ANC 7D04, and I too
I have submitted a challenge about residency. About Nicole Smith-McDermott.

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

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

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

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

CHAIR BENNETT: No. I said that they could, one could appeal their decision to the Board, but the ANC has to, the initial matter associated with, at least in this case,
residency, which is outside the period where the
candidacy is challenged, then once the ANC acts
or takes the position, then that decision can be
appealed to the Board.

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

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

CHAIR BENNETT: Well --

(Off microphone comment.)

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

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

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

CHAIR BENNETT: Okay.

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

Dear Chairman Humphrey. In support of my challenge and subsequent letter from the Board of Elections, dated January 18th, 2019, I am enclosing some of the documents that I will be forwarding to the Office of the Attorney General Karl Racine.
One document in particular, shows that Ms. McDermott is a current resident of single member district 7F01. Not a resident of single member district 7D04.

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

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

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

However, if Ms. McDermott refuses to resign, then a resolution should be adopted by the Commission to vacate the ANC 7D04C before
others are implicated in this very serious matter. Which basically is saying that commission should take some position, which they are not taking. They're not going to take a position.

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

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

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

So basically, I'm calling, I think
there should be some reform actually in the Board
of Elections process, regards to residency.
Because it's certainly not working.

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

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

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

So, I'm saying to you, and you can
tell me what the next step should be in regards
to continuing this challenge, in regards to getting her out of this seat, because she does not live where she proposes to live.

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

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

   CHAIR BENNETT: What's your last name again?

   MR. HAMMOND: My last name?

   CHAIR BENNETT: Mr. Hammond? Yes.

   MR. HAMMOND: Hammond.

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

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

   And so, here today we don't have
anything formal from either commission indicating they're not going to hold a hearing, which is what the expectation and the requirement for them to do is when these type of matters arise.

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

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

And so I think, and I would defer to our general counsel on this, but I think that there is certain procedural steps in place that have to be taken, right, and there needs to be
something formalized, as I would imagine it, from
the commission. Just like there would need to be
some starting statuses from the D.C. Superior
Court before it goes to the D.C. Court of
Appeals, before we can actually take a position.

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

(Off microphone comment.)

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

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

MR. MCGHIE: Yes, so, based on the
law, we would need a resolution from the
commission either one stating, a resolution
stating that the commissioner resides in the
single member district or the commissioner does
not reside in the single member district, and
then either party can appeal it to the Board.

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

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

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

And maybe we could make a request that
you guys brought it here and asked the ANCs to
make a determination one way or the other, to
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
worth a lot more conversation in this meeting or
hearing, meeting, is I'll get with Mr. McGhie and
Mr. McGann and our general counsel office and see
if we can encourage, if nothing else, the ANC
that has the responsibility to make that
determination, if they can make that
determination, post haste, to give us something
to address. And then you guys can properly appear
to either challenge or support their decision.

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

I guess what I'm asking you to do is
to give me some idea, in terms of turn around,
once you get, once someone gets this letter from
the ANC indicating they're not taking the
position, what would be the timeline, I guess in
regards to getting something from you guys, of
the next step?

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

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

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

I'm just telling you guys this because
that's what's going to happen. Knowing that, what will be a possible timeline on the next action that you take in regards to what Ms. Marlin, and I'm asking you?

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

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

CHAIR BENNETT: Mr. Hammond --

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

CHAIR BENNETT: Yes, I can't --

MR. HAMMOND: Because you keep saying you can't do anything until you get something from the ANC, and I'm just saying to you, you're
going to get a letter from the ANC of them not
taking any position on it.

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

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

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

MR. HAMMOND: Yes.

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

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

MR. HAMMOND: Then it puts it back
into your hands.

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

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

MR. HAMMOND: Well, I understand.

You've made that very clear.

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

MR. HAMMOND: I said something earlier about reform in the Board of Elections. I hope you guys will consider some reform in regards to, and know Ms. Brooks has a challenging job, but I probably wouldn't be here. And maybe in the future other people wouldn't be here if once a
person comes in, say they want to run, they want
this, they want that.

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

CHAIR BENNETT: We appreciate that.

Thank you.

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

CHAIR BENNETT: Yes, Ms. Marlin.

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

Because I have served yearly. And
actually, when I started this fight my
constituents came to me with the concern, I
didn't even know.

CHAIR BENNETT: Yes.

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

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

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

If nothing else, it's disrespectful for him, at least Nicole Smith-McDermott did provide something. But for him to ignore her correspondence and just, really just kick the Board of Election aside, it's just inconceivably to me that this body can't do something to require him to respond.
Even respond and says, forget you all. Something. But for him to ignore an agency and to basically ignore her, and I can feel her response to him saying, you didn't respond, I'm going to send it to the ANC and you need to resign.

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

CHAIR BENNETT: We hear you, Ms. Marlin.

MS. MARLIN: And Ms. Brooks.

CHAIR BENNETT: Thank you.

MS. BROOKS: Thank you.

MS. MARLIN: You're welcome.

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

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

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.

Neal R. Gross
Court Reporter