GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

+ + + + +

WEDNESDAY

February 6, 2019

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The District of Columbia Board of Elections convened a Regular Board Meeting in Suite 750, Room 7031, 1015 Half Street, S.E., Washington, D.C., 20003, pursuant to notice at 10:30 a.m., D. Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

D. MICHAEL BENNETT, Chair
MICHAEL D. GILL, Member
DIONNA MARIA LEWIS, Member

BOARD OF ELECTIONS STAFF PRESENT:

ALICE P. MILLER, Executive Director
KENNETH J. MCGHIE, General Counsel
CECILY COLLIER-MONTGOMERY, Office of Campaign Finance, Director
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MR. BENNETT: Good morning. I'd like to call the meeting to order. This is the February meeting of the -- Regular Meeting of the D.C. Board of Elections.

My name is Michael Bennett, chair. To my far right is Ms. Cecily Montgomery who is back from a broken arm so we're thankful that she's here. Director of the Office of Campaign Finance.

To her left is Mr. Michael Gill, board member. To his left, my right is Mr. Ken McGhie, general counsel, Board of Elections.

And to my far left is Ms. Alice Miller, executive director of the Board of Elections. And on her way in will be Board Member Dionna Lewis who will be sitting to my left.

I'd like to start out the meeting by adopting the agenda for today. Mr. Gill, can I get a motion?

MR. GILL: I move that we adopt the agenda.
MR. BENNETT: Seconded by me and unanimous. The agenda is hereby adopted.

The minutes of -- the adoption of the minutes of the last meeting January 9. Am I on?

Okay. Am I on now? You can hear me fine still?

Okay.

I'd like to adopt the minutes of the previous meeting from January 9. Mr. Gill, can I get a motion?

MR. GILL: I move to adopt the minutes.

MR. BENNETT: Second. It's unanimous. Any board matters, Mr. Gill?

MR. GILL: None.

MR. BENNETT: None for me. Ms. Miller, would you start out with the executive director's report?

MS. MILLER: Thank you, Mr. Chairman.

First thing I'd like to let the board be aware of is we will -- are in the middle of our canvass.

As I mentioned last month every January after the general election, every two years that is we are required to conduct a canvass of every
registered voter who did not confirm their address by voting in the November general election.

We mail a postcard to them requesting them to confirm and update their information. This year we are canvassing 216,000 voters who did not confirm their address in the November election.

The canvass process requires that postcard to be a non-forwardable postcard and it is returned to us. We then send a forwardable one to the registered and it comes back to us with updated information.

The process takes about six months to go through and we will be doing that from now until like the middle of the year until we get all the information updated. So that process is well underway until we get it completed and as I said that is a requirement that we go through every two years to keep the registry updated.

Also, we are or did submit the Election Administration Voting Survey e-survey to the U.S. Election Assistance Commission.

That survey was required to be
submitted by February 1. It is the initial survey.

The survey requests information of election data from nearly 6,500 local election jurisdictions across 50 states, the District of Columbia and U.S. territories.

It is a survey that asks for a wide variety of election administrative topics such as voter registration information, military and overseas voting, domestic and civilian voting, voting by mail, polling place operations, provisional ballots, voter participation and election technology.

The next update to the survey that we will also have to participate in after the commission reviews what we submitted comes back for questions. We do a Q&A process with them.

Then we will have to update it and do another -- submit another set of data by March 1. And the survey then is submitted to Congress by June 30. So that has also happened.

And then finally I want to report that we did place on our website as we are required to
do within 90 days following a general election the
after action report which is a report that contains
information from -- of data from the general
election.

So that report has things in it such
as the total number of ballots cast and counted
from the general election, the number of spoiled
ballots, number of persons that registered to vote
at the close of registration broken down by party,
ward and precinct, the number of persons who voted
early, the number of individuals who registered
at early voting, the number of polling place
officials, the number of captains and polling place
workers that we had by position and title,
performance measures of our polling place
operations, and descriptions of any irregularities
that occur on Election Day, and also
recommendations on efficiencies of the operation.

So I do want to point out a few things
with respect to our after action report. The
number of election workers that we had for the
general election was 1,694. That number is down.
We should have targeted and had about 2,000 which is what we were targeted to have in place. A number of workers did not show up.

So while we aimed to have about 2,000 workers I think it was actually 1,994. A number of workers who were trained did not show up for Election Day.

MR. BENNETT: We had 1,994 workers were trained and only 1,600 --

MS. MILLER: Sixteen ninety-four showed up.

MR. BENNETT: So we had almost 300 people didn’t show up.

MS. MILLER: That's correct.

MR. BENNETT: How does that -- I mean --

MS. MILLER: They don't show up.

MR. BENNETT: That's a lot. So obviously there's no answer to how does it happen.

MS. MILLER: It happens.

MR. GILL: So Alice, we pay them for training though, right?
MS. MILLER: No.

MR. GILL: Oh, we don't. Okay.

MR. BENNETT: But is that normal?

MS. MILLER: There's a falloff.

MR. BENNETT: I imagine there would be some falloff.

MS. MILLER: There's a falloff.

MR. BENNETT: Three hundred seems like a lot.

MS. MILLER: That's a lot. But yes. But we managed. That's all I can say. But that's a lot.

MR. BENNETT: So should we look at doing over training next time?

MS. MILLER: We need to look at having folks who are available to pull and to send them out to different precincts and have them available when others don't show up.

MR. BENNETT: So that means training about 2,400 people.

MS. MILLER: Yes, to do more than what we need to have some folks available.
MR. BENNETT: Are there some issues around -- I mean I've got --

MS. MILLER: There are issues around folks being able to get to places. Like we may have some folks needing to get further than where they want to go to.

MR. BENNETT: How many precincts do we have?

MS. MILLER: One hundred forty-three. And we're going to have to add to precincts right now because some of our precincts as you know, for example, Eastern Market, it's just too crowded. That precinct is going to have to be --

MR. BENNETT: Right. That's two precincts in one.

MS. MILLER: Yes. It's going to have to be split.

But the average age of our workers, we had 41. The age group of 41 to 60 was our highest age group of poll workers that we had.

Also for this election --

MR. BENNETT: Are we budgeted properly
for --

MS. MILLER: Well, that's another thing.

MR. BENNETT: -- training in terms of -- because if we have to train. If we have to train 2,500 people --

MS. MILLER: The training --

MR. BENNETT: -- sure we have enough.

MS. MILLER: The training isn't the issue as much as the money that poll workers want to be paid for working.

MR. BENNETT: Right. That was my second question. But the first question relative to training though is that it's actually going to cost us more. We'll end up having to have more sessions right if we have more people.

MS. MILLER: More sessions, more trainers. Yes.

MR. BENNETT: Okay. So there will be some budget impact there.

MS. MILLER: Right. But we have -- right. Yes. We have a budget for training. We
actually bring in trainers to do that so we'll need more trainers.

MR. BENNETT: Okay.

MS. MILLER: And so on that note also what I have in mind for this year, I found that some of the poll workers were a little inefficient in performing their duties on Election Day. I wasn't pleased with everything that occurred.

So I want to put in place and recommending training to start this year and to continue training with some of the positions that are a little bit more challenging such as our special ballot clerks and our captains.

And trying to get the staff now to do some determination on how we get that started, when we should start and identify funding. I think we have money available that we can use for that and just keep it going. What I'm calling continuing poll worker training for those two positions specifically.

MR. BENNETT: Captain and what was the other position?
MS. MILLER: The special ballot clerks for our provisional ballots. Those two positions are really the positions that are the most difficult in terms of the processing of voters.

Special ballots are hard and it requires a lot of attention. And I do think that the poll workers get confused with what they're doing and they process them inaccurate a lot of times and they put them through wrong and they get confused, they get frustrated. When the lines are backed up and it just gets --

MR. BENNETT: So do we have one or two special ballot --

MS. MILLER: Depends on the precinct. We normally have at least two and we may have as many as four. It just depends on the precinct -- how much the precinct is and what the operation looks like and things of that nature.

I'm thinking if we can start bringing them in at least twice this year and start putting them through the process in smaller groups this year and make them do it with our staff actually
doing the training as opposed to the trainers who
I think our staff would do a better job than
trainers.

During election year staff doesn't have
time to do it because of the multitude of other
things that they're doing. So I'm trying to get
that coordinated now and start that process.

MR. BENNETT: So we're going to
increase the number of people doing special
ballots. And the captains, we only have one
captain, right?

MS. MILLER: One captain per precinct.

One hundred forty-three captains. But also we
need to have 143 assistant captains.

MR. BENNETT: Right. We ought to have
at least somebody else who can --

MS. MILLER: We need to have a captain
and an assistant captain in each precinct.

MR. BENNETT: Because if the captain
gets sick we're in trouble.

MS. MILLER: Yes. Unless someone
wants to step up, and if someone steps up they may
not know all the operations in the precinct. So we need to have someone that is trained to do the job of the captain in the event the captain is not there.

MR. BENNETT: And what about the pay for the workers?

MS. MILLER: We have requested the council to increase the payment for all the poll workers. I've asked for $300.

MR. BENNETT: Is the poll worker pay set by statute or --

MS. MILLER: No. We pay them. So I've asked for an additional $50 for the -- I think $50 for the captains. Up to $300. They're at $250 now. Three hundred dollars for the captains and $200 for poll workers. They're at $180. Two fifty.

MR. BENNETT: Two fifty for poll workers and $300 for captains.

MS. MILLER: Two fifty for poll workers, $300 for captains.

MR. BENNETT: Okay. Are we going to
present that at the oversight hearing?

MS. MILLER: It's there, yes.

MR. BENNETT: Okay. All right.

Because we've really got to --

MS. MILLER: We have to pay them --

MR. BENNETT: -- going to be a real --

MS. MILLER: And I think you get more quality people when you pay them more money. And we need quality folks to do this.

This is not an easy job. It's become more and more difficult. In fact we had a former board member serving in the precinct for the general election and he called me and he said Alice, this was hard. That was Charles Lowery and he's an attorney. Graduated from Stanford Law School and he said I would be happy to give any testimony that you need to go through what my day was.

All day, that whole day, Election Day he did not get a break working. And he had gone through training, all of this. It is a very, very stressful day, very difficult day. It's not something that should be taken lightly and they
deserve to be paid for it.

MR. BENNETT: And we need to make the council aware of that in the oversight hearings. The one for the Board of Elections is the 19th. Same day?

MS. MILLER: 19th at 9:30.

MR. BENNETT: Okay. Mike, I think you had a question.

MR. GILL: No.

MR. BENNETT: You didn't. Okay.

(Simultaneous speaking)

MR. GILL: Alice answered it.

MS. MILLER: Just one other thing on our after action report and that is as it relates to early voting.

Our early voting stats showed that for -- like election the general election this time was the highest early voting turnout that we had with 46 percent of our voters voting early.

And one other thing. We did send out 12,400 absentee ballots and 9,000 of those were returned.
I want to also just internally look at adjusting the absentee ballot process. Some of that is going to have to be dealt with legislatively. And I've talked to council staff about that as well.

MR. BENNETT: What was the problem?

MS. MILLER: The problem is that a voter can request their absentee ballot to be sent up until seven days before the election. But it has to be back by Election Day. There's not enough turnaround time there.

MR. BENNETT: Right.

MS. MILLER: That is a process that has been in place from years ago, but years ago they had up until 10 days to get the ballot back as long as it was postmarked by Election Day. They never adjusted it on the other end so it still has to be back by Election Day.

We will on the seventh day get like requests in the hundreds. We can't turn that around that quickly. We don't have the staff or the mechanism to turn 300 ballots around to get
them out by the seventh day before the election. And they won't get them in time to get them back.

MR. BENNETT: If they mail them.

MS. MILLER: If they mail them. But they can be postmarked by Election Day. So that needs to be adjusted.

MR. BENNETT: Either they have to get them sooner or we have to have a longer time --

MS. MILLER: Exactly. One way or the other.

MR. BENNETT: I would go with they have to ask for them sooner.

MS. MILLER: Either the cutoff has to be sooner or there has to be a longer return date on the back end.

MR. BENNETT: But you've got a prolonged return date on the back end then that makes it longer before we can actually certify -- waiting for the ballot to get in makes it longer for us to certify.

MS. MILLER: Right, but we have to go
through our specials and absentees.

MR. BENNETT: Anyway. Okay. All right. Any questions, Mike?

MR. GILL: None from me.

MR. BENNETT: Dionna?

MS. LEWIS: No. Thank you.

MR. BENNETT: Ms. Montgomery, Office of Campaign Finance.

MS. COLLIER-MONTGOMERY: Yes, good morning. The first thing I would like to report is that the Office of Campaign Finance by statute is required to prepare a biennial report every other year which basically reports the contributions and the expenditures of the principal campaign committees, the political action committees, the independent expenditure committees and any other of our committees for the prior two-year period.

And so our biennial report was published on January 31, 2019 and again it summarizes the contributions and the expenditures of candidates for public office and the political committees for the prior two-year period.
The documents in the report contain details for the coverage period, the dollar amounts and the percentages associated with the receipts by donor type and amount, and the expenditures by various categories.

So the report was disseminated on the 31st and the council members as well as the Mayor were notified by email of the dissemination of the biennial report.

There were several report dates during the month of January. The first report date was the January 1 report which was due by our citizen service programs.

And it actually was due on Wednesday, January 2, 2019 because the first was a holiday. We had nine required filers all timely filed and they all electronically filed their reports.

The next due date was with respect to the Senator and Representative Statehood Funds report. That was due on January 1. Again because of the holiday it was actually submitted to the office on January 2. We had three required filers.
All three timely filed and also electronically filed their reports.

January 31, 2019 was the due date for the report of the receipts and expenditures by our principal campaign committees and PACs as well as our independent expenditure committees, our inaugural committee and also initiative referendum committees.

With respect to the principal campaign committees and the PACs there were 144 required filers, 103 timely filed and they electronically filed their reports. We had 41 failures to file and with respect to those failures to file is to be determined when they will be referred to the Office of the General Counsel's office. That has not happened as of this date.

We also with the independent expenditure committees there were four required filers. All timely filed and all four also electronically filed their report.

With the inaugural committees there was one required filer. That filer timely filed and
electronically filed the report.

With our initiative referendum committees the report was due on January 31 again.

There were seven required filers. Three timely filed. Four failed to file and those four again it's to be determined when they will be referred to the Office of the General Counsel. And with the filers all three electronically filed.

Also during the month of January, January 15, 2019 was the due date for the filing of the financial summary statement by the candidates for the Office of Advisory Neighborhood Commission member.

The report for the Advisory Neighborhood Commission candidates always occurs after the election. And it occurs after the certification by the board of the election results and the due date is 60 days after that date.

There were 401 required filers. Three hundred and nine timely filed and in terms of the failures to file there were 92 and we have not -- these have not been referred to the general counsel
as of this date.

With new candidates and committees who registered during the month of January we had one, the Urban Red Political Action Committee and they registered on January 24, 2019.

In the audit branch, the audit branch conducted 128 desk reviews of the reports of receipts and expenditures filed by our political action committees, our Constituent Service Fund, and our U.S. Senator and Representative Statehood Fund as well as our principal campaign committees.

And with respect to ongoing audits there is one full field audit which is ongoing that is Sheika Reid 4 Ward 1 and that particular audit was initiated August 29, 2018.

With our periodic random audits we have two that are ongoing. The first one is on a continuing committee who participated in the 2018 election.

The audit is being conducted of the June 10, 2018 report. It is the Anita Bonds 2018 Principal Campaign Committee and the audit was
initiated on September 11, 2018.

We have one periodic random audit ongoing of our constituent service programs. It is with respect to the October 1, 2018 filing. It is of the Mayor Bowser's Constituent Service Fund.

And we do not have at the present time during this month we did not issue any audits.

I would ask the general counsel, Bill Sanford, William Sanford to present the report for the Office of the General Counsel.

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 January 2019 the Office of the General Counsel received four referrals from the Reports, Analysis and Audit Division.

The Office of the General Counsel completed 29 hearings and issued 29 orders which included the following.
The office issued 15 orders for failure to timely file reports in which no fines were imposed, and issued 14 orders for failure to timely file reports in which fines totaled $19,700 were imposed against the respondents.

The Office of the General Counsel imposed fines against the following respondents.

A fine of $550 was imposed against Melik At-Large.

A fine of $1,800 was imposed against James Butler for Mayor. Another fine of $1,800 was imposed against James Butler for Mayor.

A fine of $150 was imposed against Franklin for D.C. 2018. A fine of $300 was imposed against Ameer Flippin for Mayor. A fine of $1,900 was imposed against D.C. Recovery Act Initiative Committee.

A fine of $1,950 was imposed against James Butler for Mayor. Another fine of $1,950 was imposed against James Butler for Mayor. A fine of $1,850 was imposed against Lannette Wood for School Board.

A fine of $1,850 was imposed against
Karen for Ward 7 State Board of Education. A fine of $1,850 was imposed against the Committee to Elect Jacque Patterson. A fine of $1,600 was imposed against George Jackson for D.C. Mayor.

A fine of $1,600 was imposed against the Committee to Elect Alpha Bah, Esq. And a fine of $550 was imposed against DC Choice.

During the month of January the Office of the General Counsel received $3,000 in fines. That was a result of two transmissions of $1,500 installments from Jeffrey Thompson.

During the month of January 2019 the Office of the General Counsel maintained one open investigation. That investigation is OCF Full Investigation 2018-002.

The complainant in this matter is Emily Naden. The complaint was filed on December 4, 2018. The respondent in this matter is Council Member Brandon Todd and the alleged infraction is inappropriate use of government resources and that matter is still pending.

During the month of January 2019 there
were no requests for interpretive opinions and no show cause proceedings were conducted. And that should conclude my report.

MR. BENNETT: Thank you, Mr. Sanford. Ms. Montgomery?

MS. COLLIER-MONTGOMERY: Yes, I would like to add one thing and that is with respect to the proposed rules for the implementation of the Fair Elections Act of 2018.

And as you recall the board adopted the notice of proposed rulemaking for those rules which were proposed to the board by the Office of Campaign Finance. And the rules were published in the D.C. Register for public comment.

And we did in fact receive comments from members of the public and so those are being considered because the period for comment has expired. But we did receive the comments and they are being considered by the general counsel's office.

MR. BENNETT: Okay. And the board had comments as well. So once those are complete we'll
have to make a decision as to whether or not it needs to go back out for additional comment.

MS. COLLIER-MONTGOMERY: Yes.

MR. BENNETT: Anything else, Ms. Montgomery?

MS. COLLIER-MONTGOMERY: That concludes my report.

MR. BENNETT: Okay, great. Any questions, Mr. Gill?

MR. GILL: No.

MR. BENNETT: Any questions, Ms. Lewis?

MS. LEWIS: No, thank you.

MR. BENNETT: All right. Mr. McGhie.

MR. MCGHIE: Okay. The first thing I have on my agenda is a proposed rulemaking to amend Title 3 DCMR Chapter 4 which is entitled Hearings and Chapter 5 which is entitled Voter Registration.

With respect to Chapter 4 the purpose of the amendment to Chapter 4 is to clarify the board's hearing procedures including those concerning challenges to petitions.
The amendments mandate the use of a board form for the proper submission and adjudication of petition challenges and establishing clarified deadlines for filing of various pleadings in petition challenge cases.

With respect to 5 the purpose of the amendment --

MR. BENNETT: And the form though will be -- we want to be clear they have to use that form, and two, the form will be available online for them to complete when they file the challenge.

MR. MCGHIE: That's correct. We're going to try and see if we can move to a form procedure for challenges so that if somebody is challenging somebody for not being in the district -- not being in that single member district, it's a 1A or something like that, and not registered a 1B or something like that.

MR. BENNETT: So it should make it easier and more consistent in terms of the filings and dealing with the filings.

MR. MCGHIE: Yes, should be.
MR. BENNETT: Okay. That's the intent anyway.

MR. MCGHIE: Yes. And the purpose of the amendments to Chapter 5 is to codify the board's longstanding practice of not committing a power of attorney to effectuate a voter registration application or voter registration update notification, and two, clarify that applicants who are unable to affix their own signature to a voter registration application or voter registration update notification and call upon an assistant to complete their application or notification must also submit an affidavit of assistant form.

This all came up during the last challenge period where a spouse was attempting to argue that she affixed her husband's signature on the petition form because she had a power of attorney.

And we told her that no, that would not be acceptable. So in order to clarify that to the public that power of attorneys do not control whether or not you can register somebody to vote
or sign somebody's petition signature. These regulations will be in place.

MR. BENNETT: Okay. Any questions, Ms. Lewis?

MS. LEWIS: No. That's interesting though.

MR. BENNETT: It is interesting. So this is just for the -- this is just going to the Register, right?

MR. MCGHIE: Yes.

MR. BENNETT: Okay. For comment.

MR. MCGHIE: Yes. I'm asking the board to entertain a motion to adopt this as proposed rulemaking so that it can be published in the D.C. Register for a 30-day comment period.

MR. BENNETT: Okay. Mr. Gill?

MR. GILL: No comments. Support the motion.

MR. BENNETT: Okay. I have some thought about the power of attorney matter. I'm not quite sure. I do support it going in the Register for comment, but also want us to -- the
board members to think about that during this comment period too.

Because I agree, Ms. Lewis, it's interesting. Think about that.

But anyway, motion, Mr. Gill? You gave me one?

MR. GILL: Yes, a motion to move for publication of the proposal.

MS. LEWIS: Second.

MR. BENNETT: All in favor?

(Chorus of ayes)

MR. BENNETT: So that will go into the Federal Register for comment. Or the D.C. Register, sorry.

MR. MCGHIE: Okay, the last matter is a litigation status update. The only matter that we have pending in court is Graham v. the D.C. Board of Elections.

As the board may recall this was a challenge that was filed against the Board of Elections with respect to a referendum, referendum 008.
They planned to file in Superior Court alleging that it was not a proper subject. They were also challenging the board's formulation of the language and the notice that was given initially for the board to hold a proper subject hearing.

The Superior Court stayed the count with respect to proper subject, but found that the board's formulation needed to be changed. They changed that and also found that the board had not given proper notice.

The board and the interveners appealed the Superior Court ruling on December 13 and the Court of Appeals consolidated the intervener's appeal and our appeal and all parties are just waiting for the court's briefing schedule.

MR. BENNETT: Okay. So we don't know when we're going to be heard on that matter.

MR. MCGHIE: No.

MR. BENNETT: Okay. Okay, great. Anything else, Mr. McGhie?

MR. MCGHIE: No, nothing further.

MR. BENNETT: Any questions, Ms.
Lewis?

MS. LEWIS: No.

MR. BENNETT: Mr. Gill?

MR. GILL: No.

MR. BENNETT: Okay. We didn't have our -- Mr. Sindram is not available today?

MS. JENNINGS: He said he'd be here today but he didn't send several questions that are mandated items.

MR. BENNETT: Okay. Any public matters for the board today? Seeing none, tell Mr. Sindram he was missed. Seriously.

MS. JENNINGS: It's very sad.

MR. BENNETT: No, I do miss him. He had some good comments recently. So I guess that's it. The meeting is adjourned. Thank you.

(Whereupon, the above-entitled matter went off the record at 11:25 a.m.)