

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

+ + + + +

WEDNESDAY

JUNE 1, 2022

+ + + + +

The District of Columbia Board of Elections convened via Video Teleconference, pursuant to notice at 10:30 a.m. EDT, Gary Thompson, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

- GARY THOMPSON, Chair
- MIKE GILL, Member
- KARYN GREENFIELD, Member

BOARD OF ELECTIONS STAFF PRESENT:

- MONICA HOLMAN EVANS, Director
- TERRI STROUD, General Counsel
- CECILY COLLIER-MONTGOMERY, Office of Campaign Finance
- MARISSA CORRENTE, Assistant Registrar of Voters
- CATRINA JONES, Attorney Advisor
- WILLIAM SANFORD, General Counsel

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

2 (10:32 a.m.)

3 CHAIR THOMPSON: Good morning,
4 everybody. It's Wednesday, June 1. My name is
5 Gary Thompson. I'm the Chair of the Board of
6 Elections.

7 I see that our Court Reporter is
8 present. And also, this is on Zoom being
9 recorded. And with me today is Executive
10 Director Monica Evans of the BOE, General Counsel
11 Terri Stroud, Office of Campaign Finance Director
12 Cecily Collier-Montgomery.

13 And also by Zoom, I see Board Members,
14 Mike Gill, and Karen Greenfield. And that means
15 we have a quorum. Three for three, once again.
16 And so we're ready to proceed.

17 The first thing we do is adopt our
18 agenda. It's been distributed. We move up
19 towards the front to accommodate some timing
20 issues.

21 The challenge regarding Initiative 82,
22 so that change has been made. In general it's

1 good to me so I will move it. I move that we
2 adopt the agenda. Is there a second?

3 MEMBER GILL: Second.

4 CHAIR THOMPSON: And all in favor?

5 (Chorus of aye)

6 CHAIR THOMPSON: We've got our agenda.
7 Another quick housekeeping thing is the minutes
8 of our former regular meeting of Wednesday May 4
9 been distributed. We've all had a chance to look
10 those over. They look good to me and so I would
11 move that we adopt those minutes. Is there a
12 second?

13 MEMBER GILL: Second.

14 CHAIR THOMPSON: All right, all in
15 favor?

16 (Chorus of aye)

17 CHAIR THOMPSON: Okay, so we've
18 adopted out minutes. We have a little time for
19 Board matters if Mike Gill or Karyn Greenfield
20 and have, you all have anything to mention.

21 MEMBER GREENFIELD: I do not

22 MEMBER GILL: No, I don't other than

1 I'm having troubles with my camera. So I
2 apologize that you just get the witness
3 protection version. I'm also coming off of a
4 cold so if I, I'm trying to mute myself before
5 coughing into the entire Zoom.

6 CHAIR THOMPSON: All right. Okay, so
7 with that, I'll turn it over to General Counsel
8 Terr Stroud is going to lead us through the
9 Initiative 82 issue.

10 MS. STROUD: Good morning, everyone.
11 As the Chair indicated, the first item on my
12 report is the hearing on the challenge to the
13 petition filed in support of Initiative and
14 Measure No. 82, the District of Columbia Tip
15 Credit Elimination Act of 2022.

16 So I will go through the procedural
17 history for the measure and the challenge and
18 then the representative from the Voter Services
19 Division of the Board will read her report with
20 respect to the challenge into the record.

21 And then, the parties will have the
22 opportunity to make their arguments with respect

1 to the challenge. First, we will hear from the
2 challenger, or counsel for the challenger.

3 Then we will hear from counsel for the
4 proposer, and then there will be the opportunity
5 for the challenger to respond. And so the time
6 allotments will be five minutes per side and then
7 three minutes for the challenger.

8 And so with that I will just go
9 through the background of Initiative 82. The
10 measure was filed with the Board in January,
11 June 22, 2021.

12 On August 31, 2021, it was deemed a
13 proper subject for initiative, which meant that
14 it met the requirements to go before the voters
15 should it meet valid access requirements.

16 On February 22, 2022, a petition was
17 submitted in support of the Initiative Measure.
18 On March 7, it was challenged by Valerie Graham.
19 On March 24, 2022, the Board held a meeting to
20 determine the sufficiency of the petition.

21 And this process entailed a
22 determination based on the Board's 30-day

1 independent review process of the measure. I
2 should say at this juncture that there are sort
3 of two processes that can take place at the same
4 time with respect to Initiative Measures.

5 The Board undertakes a 30-day review
6 period where it does its own thing independent
7 verification to determine whether the initiative
8 petition meets the necessary numerical and
9 warrant distribution requirements.

10 Initiative Measure petitions are
11 supposed to contain the signatures of five
12 percent of the voters citywide, provided that it
13 must also contain five percent of the signatures
14 of voters in at least five of the eight wards.

15 And so, the Board held a meeting on
16 March 25 to determine the sufficiency of petition
17 based on its own independent review process. And
18 as an outcome of the meeting on that day, Wards
19 1, 2, 3 and 4 were deemed sufficient.

20 Wards 5 and 7 were deemed insufficient
21 and Ward 6 was, there was no decision with
22 respect to Ward 6 in terms of whether there were

1 enough signatures.

2 And so, based on feedback from the
3 Office of Planning, the Board undertook to
4 evaluate the signatures in all of Ward 6. On
5 March 28, 2022, a hearing was held before the
6 Board with respect to the challenge.

7 As I mentioned, there are two
8 processes that can take place at the same time.
9 In the event that a petition is challenged, we
10 proceed with the challenge process.

11 So it's separate and apart from the
12 Board's own independent 30-day verification
13 process as provided for the statute. There's
14 also the opportunity for registered voters to
15 challenge the petition on grounds that are
16 specified in the statute or the Board's
17 supporting regulations.

18 On March 28, 2022, a hearing was held
19 before the Board at which time the parties agreed
20 to defer consideration of the ward to challenge
21 pending the outcome of the determination with
22 respect to Ward 6.

1 On April 6, the Board held a meeting
2 at which it determined, based on the feedback
3 received by the Office of Planning and the ward
4 of the voter services division that Ward 6 was
5 sufficient in terms of the numerical and Ward
6 distribution requirement.

7 And on April 8, a written order which
8 memorialized the Board's oral ruling on April 6
9 was issued. On April 29, 2022, the Board held a
10 pre hearing conference with respect to the
11 challenge.

12 Just prior to that pre-hearing
13 conference but on the same day, the challenger
14 identified 500 signatures that she determined
15 should not have been accepted.

16 These were signatures that were not
17 included in the challenge that was filed on
18 March 7, but they highlighted, challenged, or
19 highlighted 500 signatures and indicated that
20 they should not be accepted for various reasons.

21 On May 9, the Office of the General
22 Counsel issued a pre-hearing conference to the

1 party, a pre-hearing conference order to the
2 parties outlining the issues that would be before
3 the Board at today's hearing.

4 And the issues are as follows, and I
5 just want to note for the record that neither
6 party objected to the outline of the issues as
7 they were presented in the pre-hearing conference
8 order.

9 And so, the three issues that are
10 before the Board with respect to the challenge is
11 whether the Board should consider should construe
12 the challenges that were coded in the March 7
13 challenge to include challenges to actual
14 signatures.

15 Not the signature lines, but the
16 actual signatures under the Board's regulations,
17 and the particular section that they would like
18 to now challenge the signatures on is --

19 Or they would like to have the Board
20 construe the challenges that they initially filed
21 to include challenges and signatures under 3 DCMR
22 Section 1007.1(I), which indicates that a

1 challenge to a signature if is not by the person
2 whose signature it purports to be.

3 The grounds that were initially
4 specified in the March 7 challenge were that the
5 signer, according to the Board's records, is not
6 registered to vote at the time that petition was
7 signed. And that challenge was indicated by the
8 designation NR for not registered.

9 The second grounds was that the
10 signer, according to the Board's records, is not
11 registered to vote at the address listed on the
12 petition at the time the petition was signed, and
13 that challenge was noted by code WA. The another
14 grounds was that the signature was a duplicate of
15 a valid signature, and that code was DU, or DUP,
16 for DUP.

17 And the final grounds that the
18 signatures were challenged on is that, or that
19 several of the features that were challenged on
20 was that the sole signer was also the circulator
21 on the same petition where the signature appears.
22 And that challenge was indicated by the code SSC.

1 So that was the first challenge.

2 And then the second, I mean, the first
3 issue before the Board, and the second is
4 whether, if the Board does not construe the above
5 referenced challenges as indicated above, the
6 Board should alternatively grant to the
7 challenger to amend the challenge.

8 So that each of the 500 challenges
9 towards two signatures include a challenge to the
10 actual signature under 3 DCMR 1007.1(I). And the
11 final issue before the Board is whether the
12 monthly report of voter registration statistics,
13 as of December 31, 2021, was the proper official
14 count to be used for evaluating the validity of
15 the petition.

16 And so the parties will be addressing
17 these issues today during the hearing, but first
18 we will have the Voter Services Representative,
19 Marissa Corrente read her report regarding the
20 challenge and with respect to the 500 signatures
21 into the record.

22 MS. CORRENTE: Thank you. So this is

1 a memorandum from myself Marissa Corrente, the
2 Assistant Registrar of Voters and Voter Services
3 regarding Initiative Measure No. 82 petition
4 challenge submitted by Valerie Graham.

5 On March 7 2022, Valerie Graham, a
6 registered voter in the District of Columbia,
7 submitted a challenge to the petition filed in
8 support of Initiative Measure No. 82, the
9 District of Columbia Tip Credit Elimination Act
10 of 2021.

11 The challenge alleged that the
12 petition did not contain valid signatures from at
13 least five percent of the registered voters in
14 Wards 2, 5, 7 and 8.

15 Well, Registrar of Voters' independent
16 review of the petition subsequently concluded
17 that the petition was insufficient as to Wards 5,
18 7 and 8. The Registrar found Ward 2 numerically
19 sufficient.

20 This memorandum addresses the
21 challenger's claim that the petition lines the
22 sufficient number of valid signatures in Ward 2.

1 The minimum requirement to obtain valid access
2 with respect to Ward 2 is 2,532.

3 The registrar's independent review
4 concluded that the petition contained 2,907 valid
5 Ward 2 signatures, 375 signatures above the
6 number needed for ballot access.

7 The Board accepted the Registrar's
8 finding at a meeting held on April 6, 2022. On
9 April 28, 2022, the Board's Office of the General
10 Counsel held a pre-hearing conference regarding
11 the challenge.

12 Just prior to the pre-hearing
13 conference, the challenger, through counsel,
14 provided a list of 502 signatures that counsel
15 stated appear to have been accepted by the Board
16 in which the challenger still maintained were
17 invalid.

18 On May 4, 2022, the challenger's
19 counsel provided an updated list of the 502
20 signatures that included explanatory notes on the
21 basis for challenging the signatures.

22 Two of the notes stated that the

1 signature had been erroneously identified, which
2 brought the total challenge signatures to 500.
3 The specific grounds upon which the signatures
4 are being challenged from that updated list of
5 500 signatures is as follows.

6 A signature not of a registered
7 elector, voted NR, 188 signatures. B signature
8 not of an elector at address, coded a WA, 171
9 signatures. See duplicate of another signature,
10 40 signatures.

11 Signature D, signature block did not
12 contain ward designation, 40 signatures. E
13 petition circulator only, petition circulator
14 only individuals signing petitions, 61
15 signatures.

16 My review of the 500 signatures
17 highlighted by the Challenger indicates the
18 following. Regarding signature not other
19 registered elector, those 188 signatures.

20 Of those 180 challenges, seven of
21 those signatures were previously rejected and
22 five are reassigned to another ward, which brings

1 these challenges for Ward 2 down to 176.

2 For the signature not of an elector at
3 an address, 171 signatures. Of those, 15 of
4 those signatures were previously rejected and two
5 were reassigned to another ward, which brings
6 these challenges for Ward 2 down to 154.

7 For the duplicate of another
8 signature, 40 signatures. Of the 40 challenges,
9 two of those signatures were previously rejected
10 which brings those challenges to Ward 2 down to
11 38.

12 For the signature block that did not
13 contain Ward designation, which is 40 signatures.
14 Of those, two of those signatures were previously
15 rejected and three were reassigned to another
16 ward which brings these challenges for to down to
17 35.

18 The remaining 35 challenges were
19 rejected as invalid because they were based on
20 the ward designation being omitted, which is not
21 a basis for invalidating a signature.

22 Writing the petition circulator, only

1 individuals signing a petition the 61 signatures.
2 Of the 61 challenges, one of those signatures was
3 previously rejected, and one was assigned to
4 another ward, which brings these challenges for
5 Ward 2 down to 59.

6 The remaining 59 challenges were
7 rejected as invalid because they were based on
8 the petition circulator being the only individual
9 who signed the petition, which is not a basis for
10 invalidating a signature.

11 Based on these findings, instead of
12 500 potential challenges for Ward 2, there are a
13 total of 462. Of those, 94 challenges were
14 rejected, leaving only 368 challenges, which is
15 not enough to bring the 2,974 signatures below
16 the required amount of 2,532 signatures.

17 In light of this finding and the fact
18 that the registrar has previously examined the
19 validity of the signatures in question, the
20 Registrar's Office did not re-examine the
21 remaining 368 challenges.

22 MS. STROUD: Okay, thank you

1 Ms. Corrente. Thank you. So, I just want to
2 confirm that the parties the counsel are present
3 for the proceedings. I think I see Andrew --

4 CAMILLE: What was that?

5 MR. KLINE: Yes, I'm present.

6 MS. STROUD: Thank you, Mr. Kline.

7 Mr. Sandler, are you present?

8 MR. SANDLER: I am present. Thank
9 you.

10 MS. STROUD: Thank you. Okay, so as
11 I indicated, we will hear first from Mr. Kline.
12 Mr. Andrew Kline, if you could just state your
13 name and your address for the record.

14 MR. KLINE: Yes.

15 MS. STROUD: And with respect to the
16 challenge.

17 MR. KLINE: Good morning, my name is
18 Andrew Kline with the Veritas law firm. I
19 represent Valerie Graham. Address is 1225 19th
20 Street, Suite 320. Washington, D.C. 20036.

21 CAMILLE: Mute your mic.

22 CHAIR THOMPSON: Hold on, we're having

1 a technical adjustment here. While we're
2 figuring that out, Mr. Kline, thank you so much.
3 I'm sure you'll address this.

4 But obviously, the sort of immediate
5 pending question is whether the challenge is new
6 in light of the math? Mathematical analysis that
7 was just presented? That of the 500 challenges,
8 it's really only 368, which is less than the 375
9 overage that is in place.

10 I guess, does that move whether do we
11 need to drill down on any further details
12 regarding the four specific bases for challenging
13 signatures and or signature accuracy. I'm sure
14 you're sure you're about to address that.

15 MR. KLINE: Sure. I mean, the central
16 issue here, and it's an issue that seemingly has
17 already been decided by the Board is the
18 denominator.

19 It's the third issue that's listed on
20 the pre-hearing statement in terms of what
21 official count to use. We've raised this issue
22 several times, I think the Board's already ruled

1 on it. So it's difficult for me to say if the
2 Board continues to reject that argument that our
3 position is numerically sufficient.

4 We believe the Board has that wrong
5 and we've asserted that several times, but I'm
6 aware that the Board has ruled. So that may be
7 determined if with respect to the challenge and
8 in terms of the numbers.

9 CHAIR THOMPSON: Okay, yes. Yes,
10 please proceed with, you know, elaborating on
11 that point or anything else you'd like to address
12 in the course of the next, you know, we, I think
13 we said five minutes.

14 MR. KLINE: Sure. Sure, and as we've,
15 I'm sorry.

16 CHAIR THOMPSON: I was going to say
17 obviously, we have been studied the, on that
18 issue number three, the March 24, 2022, letter
19 that your firm submitted, addressing that
20 denominator issue regarding December 31.

21 So, you know, certainly I've read that
22 closely as well as the one case I have read is

1 Price v. DC BOE. And there's a footnote, I think
2 it's footnote 18.

3 That seems to address the issue of the
4 appropriateness of using December 31 as the, as
5 the point in time for the official election
6 count, so. But, I'd love to hear your argument
7 on that or how you think that's distinguished and
8 you know, your overall thoughts.

9 MR. KLINE: Sure. The issue with
10 Price is it was decided before the Help America
11 Vote Act was passed and before the code was
12 amended to provide that the official --

13 (Telephonic interference)

14 MR. KLINE: I beg your pardon? That
15 the official voter registration role is the
16 interactive computer database and under the Help
17 America Vote Act, and under the D.C. code as
18 amended, that is the official voter roll.

19 The publishing of statistics in the
20 D.C. Register every month, those are not the
21 certified official --

22 CAMILLE: Mute your mic.

1 MR. KLINE: -- voter titles. They,
2 the official voter titles would be gleaned from
3 an analysis of the ongoing voter database, which
4 under both the Help America Vote Act and the code
5 as amended, is the official record.

6 And would constitute the vote totals
7 for purposes of calculating the denominator with
8 respect to the city wide totals, and the
9 denominators in each of the wards. We've argued
10 it and we've submitted.

11 I don't need to, to repeat all these
12 arguments. But that's our position. And I think
13 that distinguishes Price because Price predates
14 HAVA and predates the amendment to the D.C. code,
15 which specifically set forth what is the official
16 voter role.

17 UNIDENTIFIED SPEAKER: Can you close
18 the door? I'm in a meeting.

19 MR. KLINE: If the Board were to
20 change their position on that, then the
21 difference --

22 CHAIR THOMPSON: Hold on one second.

1 It's a public meeting and anyone can dial in, and
2 anyone can dial in, and we get a whole lot of
3 interference like that, and I apologize.

4 It's the nature of the public format.
5 So we switched to a mandatory mute. And then,
6 you have to ask to unmute yourselves. And then,
7 we'll do that. So we just unmuted Mr. Kline and
8 I think we'll unmute Board Members --

9 NATALIE: Can we get rid of Chris
10 LaFoe for interrupting? Look in the chat, he has
11 put some extremely inappropriate messages and --

12 CHAIR THOMPSON: Yes, we have --

13 MS. STROUD: He's been removed. Thank
14 you.

15 MR. KLINE: Mr. LaFoe is my associate,
16 and it appears that someone has been able to
17 impersonate other members of the chat.
18 Mr. Sandler has inappropriate remarks. I in no
19 way think they're from him.

20 So please do not dismiss Mr. LaFoe,
21 he's with my office. If you do, then you have to
22 dismiss Mr. Sandler, as well and I'm not asking

1 that you do that.

2 CHAIR THOMPSON: Thank you, so much.
3 Yes, we have to I think let a few people back in
4 now that we didn't mean to remove.

5 MS. STROUD: Yes.

6 CHAIR THOMPSON: So, so the point is,
7 where I was is, if the Board revisited that
8 issue, then the number would be much less than
9 375 and we challenge these various signatures
10 based on the signer. The signer, not the name of
11 the person printed, but the signer not being
12 registered or not being at the address.

13 In construing pleadings liberally,
14 that would be enough to consider whether the
15 person who signed is indeed the registered voter
16 because if they were not and they wouldn't be at
17 that address, and they would not be registered.

18 I also want to point out, although
19 it's not part of the pre hearing order, it occurs
20 to us that the sampling that was done of Ward 2,
21 when the Board ultimately decided to accept Ward
22 2 as having sufficient signatures, was improperly

1 done because the sample pool was changed after
2 the sampling was done.

3 And the Board proceeded to accept that
4 sampling anyway, even though the pool had changed
5 and that's simply incorrect, as I'm not even
6 going to say it's a matter of law. It's a matter
7 of statistics.

8 So that is what we have. The central
9 issue is what's the denominator and we've
10 articulated that over and over and I don't need
11 to beat that horse to death at this point. I
12 think we've made the arguments and I think the
13 very clear.

14 CHAIR THOMPSON: All right, thank you
15 so much. I think counsel for the proposer?

16 MS. STROUD: Yes, I got correspondence
17 from Mr. LaFoe. And I responded to it. And also
18 copied on that correspondence too was
19 Mr. Sandler.

20 And I informed them to log back in so
21 if we could just check to see whether or not
22 Mr. LaFoe and Mr. Sandler have logged back in or

1 attempted to log back in.

2 So they indicated that they have
3 attempted to log back and when attempting to do
4 so they receive a message that they cannot
5 because they were previously removed. Randi, is
6 it possible to, or maybe they could call another
7 number, okay? Mr. Sandler, are you on?

8 CAMILLE: Mr. Sandler asked to unmute.

9 MS. STROUD: Okay. Mr. Sandler, are
10 you there? I just asked him to email it to me.
11 When we look for a 607 exchange. I'm asking Mr.
12 Sandler what number he's calling in from. Ma'am,
13 could you scroll down, please?

14 CHAIR THOMPSON: We'll get it
15 straightened out. I think my favorite internet
16 funny thing was the lawyer that appeared as a
17 cat. That just cracks me up endlessly.

18 His daughter or his kid had changed
19 his face into a cat. My favorite part is are the
20 viruses. Your Honor, I just want the record to
21 reflect I am not a cat. If you just --

22 MR. SANDLER: Brenda, if you could

1 scroll down so we can see the images that are on
2 the screen, please? From the top bar from the,
3 where the blue arrow was. Where the blue arrow,
4 if you can go to the next screen. There he is.
5 Go to that. Joe's phone. There it is, Joe's
6 phone.

7 MR. SANDLER: Okay, can you hear me
8 now?

9 MS. STROUD: Yes, we can Mr. Sandler.
10 Thank you.

11 MR. SANDLER: Yes, I don't know what
12 happened there. I guess were both kicked out.
13 Thank you. I'm sorry for, and thank you, Mr.
14 Chairman, and Members of the Board. The --

15 I wasn't able to hear much of the
16 presentation, but I understand the position of
17 the, of the challengers with respect to the three
18 issues.

19 First, the challenges filed by the
20 challenge or cannot be reasonably construed to
21 allege that even a single signature, let alone
22 the hundreds that they've identified, is being

1 challenged on the basis that this voter signature
2 was forged, which is what they're saying.

3 The pre-hearing order listed the
4 challenges, it was specified in the challenge,
5 and none of them, remotely, connotes that the
6 signature of any voter was in fact forged.

7 Secondly, the challenger should not be
8 granted leave to amend for permit them to assert
9 a challenge to any of these signatures being
10 challenged on the basis that the voters is not
11 the one who signed the voter whose name is there
12 is not the one who signed.

13 There are no grounds for any
14 amendment. There is no newly discovered
15 evidence. In fact, there's no evidence at all to
16 support questioning even a single signature is
17 being fraudulent.

18 The challengers had the full time
19 allotted by the statute to inspect the petition.
20 They failed to identify a single forged signature
21 of any voter during that time and as we sit here
22 today, they've not identified a single forged

1 voter signature or produced any evidence that any
2 signature was forged.

3 At the pre-hearing conference, the
4 challenger indicated that they have identified
5 signatures that looked unclear, difficult to
6 read, and that was their basis for this very
7 serious allegation of hundreds of instances of
8 criminal conduct by some unnamed universe of
9 forgers coming in and signing the names of
10 voters.

11 Of course, there's absolutely no
12 evidence of that and in fact, at the pre-hearing
13 conference, voter services staff went through a
14 number of the signatures challengers had
15 identified as supposedly being fraudulent and
16 every one of them matched the signature card on
17 file with the Board.

18 So there's no basis for granting leave
19 to amend the challenge. And finally, the monthly
20 recorded voter registration statistics as of
21 December 31, 2021, published by the Board on
22 January 21, 2022, was the proper official count

1 to be used for evaluating the validity of the
2 petition.

3 The DCA code Section 1-1001.6(i)(1)
4 requires that the number used to determine
5 validity be consistent with, quote, the latest
6 official count of registered qualified electors
7 made by the Board 30 days prior to the submission
8 of the signatures.

9 The challenger has insisted that the
10 Board should have used the numbers as they
11 existed exactly 30 days prior, well January 22.
12 That is not what the statute says.

13 The statute is, says the latest
14 official count made by the Board at least 30 days
15 prior to submission, that's clarified also in
16 Section 1003.3 of the Board's regulations.

17 It clearly, the law and the
18 regulations contemplate that the Board is not
19 required to make a count, produce a count every
20 day of the year such they have a count exactly 30
21 days out.

22 To the contrary, the statute requires

1 the Board to publish, make the count, if you
2 will, on the third Friday of each month of the
3 numbers as of the last day of the month preceding
4 publication and that's exactly what was done
5 here.

6 The signatures returned in on February
7 22. The latest official count made by the Board
8 at least 30 days prior to that submission was the
9 count as of December 31, 2021, published on
10 January 21.

11 The fundamental fallacy in the
12 challenger's position is revealed only to well by
13 their own suggestion in their letter of March 24
14 to the Board that the January 31, 2022, numbers
15 should be used quote, as a proxy, end quote, for
16 the January 2, 2022, count.

17 Of course, that quote's proxy would
18 not going to select the actual January 22 numbers
19 either. And you said that count, which is what
20 the challenges are urging, would flagrantly
21 violate the statute because that count was made
22 less than 30 days prior to the submission.

1 So I will not address the issue that
2 Mr. Kline raised about the sampling in Ward 2
3 since that's clearly outside the scope of the pre
4 hearing order.

5 So for these reasons, we believe the
6 challenge should clearly be rejected. Thank you
7 very much, Mr. Chairman and members of the Board.

8 CHAIR THOMPSON: Mr. Sandler, I have
9 a question. Mr. Kline's made the argument that's
10 contained in their March 24 letter as well, that
11 HAVA came along and changed the D.C. statutory
12 rule in this regard.

13 Because HAVA makes reference to a
14 single uniform official, centralized,
15 interactive, computerized statewide voter
16 registration list that this phrase official, in
17 that context, essentially means there's no longer
18 a static, official list.

19 That is it's always moving in time and
20 there is such a thing as a January 22 official
21 list, otherwise it would have to be sort of
22 forensically reconstructed.

1 But what do you make of that point
2 that HAVA sort of supersedes all of this and
3 creates this moving official list? And I want to
4 be sure to distinguish that from the proxy issue
5 that you mentioned.

6 You know, even if we are January 22,
7 that doesn't necessarily mean that you borrow
8 backwards from January 31 and you, if you
9 reconstruct it, my understanding is that the
10 numbers are not that far off from December 31
11 anyway.

12 So it doesn't look like it's outcome
13 determinative. But in any event, how do you, how
14 do you address this issue that HAVA sort of
15 changes the way you look at this?

16 MR. SANDLER: HAVA is absolutely
17 irrelevant. The fact that there's an official
18 role existing on each day of the year with
19 different numbers is inarguable.

20 Nobody's counting that. The issue is
21 the D.C. statute. What is the number to be used
22 to determine the number of signatures required to

1 be submitted.

2 That's governed by solely D.C. law and
3 D.C. law doesn't say whatever the official role
4 is from 30 days out. It says that it, what was
5 made, the latest made by the Board exactly, you
6 know, at least 30 days prior.

7 It clearly is congruent with the
8 periodic issuance, you know, determination and
9 issuance by the Board of, you know, of what the,
10 of what the official count is.

11 I don't think Congress changes that,
12 you know, in any way. Congress does not purport
13 to dictate what number of signatures is supposed
14 to be used to determine the validity of
15 initiative petition in the District of Columbia.

16 CHAIR THOMPSON: Okay, thanks. So I
17 think that sets up rather nicely a rebuttal by
18 Mr. Kline.

19 MR. KLINE: The fact that anything
20 would, quote unquote, have to be forensically
21 reconstructed. This entire analysis was
22 forensically reconstructed. We had voters moving

1 in and out of words through, throughout the
2 process.

3 So I don't understand the hesitancy to
4 get it right. I don't understand the hesitancy
5 to use the redistricting, not redistricted
6 numbers, which the Director of the Agency
7 committed to the council would be used in all
8 upcoming elections and petition analysis.

9 So I'm baffled as to this whole, well
10 would have to be frantically reconstructed. What
11 was going on that 30 or 40 days it took to get an
12 answer to whether there was enough signatures?

13 Everything was forensically
14 reconstructed, that's what was done. So I, and I
15 vehemently disagree with Mr. Sandler in terms of
16 that argument relies on HAVA.

17 It relies on the D.C. code. The fact
18 that something is published once a month, I can't
19 find anywhere where the Board of Elections looked
20 at the December 31 numbers that were published.

21 And on January, whatever the date was,
22 and said, we certify this. This is this is the

1 official roll, nowhere to be found. So I don't
2 know how it is that the December 31 number gets
3 elevated to official.

4 But for the fact it was something that
5 was done, perhaps, before the code was amended,
6 and provided a different official measurement of
7 the number of registered voters.

8 CHAIR THOMPSON: Yes, thank you. Your
9 point is well taken, I think, you know, issue one
10 is, is the December 31 list the, quote, official
11 list?

12 If it's not, it really is supposed to
13 be January 22. I didn't mean to suggest that
14 just because it's hard to pinpoint the exact
15 denominator number on that date that you wouldn't
16 do it.

17 I mean, yes, I said forensically
18 reconstructed. But if that's the right date, and
19 it can be to do what the voter registration list
20 was on January 22, 2022, that's perfectly, would
21 be perfectly appropriate.

22 MR. KLINE: And we would submit that

1 that would include taking into account
2 redistricting because redistricting was not --
3 Mr. Sandler, please, you'll get your turn.

4 The redistricting was in effect as of
5 January 2. The numbers were supposed to be
6 adjusted. The Director of the Agency represented
7 to the counsel of the District of Columbia, that
8 the numbers would be adjusted in, before the
9 upcoming elections.

10 And if we're monkeying with numbers,
11 which is what's been done throughout this
12 process, let's be perfectly clear, then it makes
13 sense to do it in accordance with the electorate
14 that existed as of January 2, 2022, not what
15 existed last year.

16 CHAIR THOMPSON: Okay, Mr. Sandler,
17 why don't you have the last two rebuttal?

18 MR. SANDLER: Yes, the Petition
19 Sponsor Initiative Committee relied on the
20 Board's count that this would, that the numbers
21 were, we were told that it was the list as of
22 December 31, 2022, that was published. It was

1 made by the Board in accordance with the statute
2 30 days before the submission.

3 It would make no sense, it would be
4 ridiculous to then use the, to have one set of
5 numbers and then actually treat voters as being
6 in a different ward than they were on that list.

7 That, and of course, it would be
8 enormously unfair and unjust to the challenger to
9 say, well, I signed that, in fact, I signed this
10 petition myself when I was in Ward 3, and then I
11 moved to Ward 2.

12 I mean, you're going to count me in
13 Ward 2 now, after the rules have already, have
14 already been set? It's at, you know, it would be
15 enormously unfair to create a, you know, caste in
16 this process.

17 It's never been done this way. The,
18 we have, we have had, you know, multiple
19 petitions and with the, in recent years, and the
20 number of signatures required has always been
21 based on the last published, you know, at least
22 30 days before the petition submission.

1 There's absolutely no reason to, you
2 know, deviate from that. It's that's consistent
3 with the language of the statute. It doesn't say
4 the number that exists 30 days out. It says the
5 number made.

6 The fact it can be published and
7 issued by the Board 30 days prior to the latest
8 official count made by the Board 30 days prior to
9 the submission.

10 What would the Board's latest mean in
11 there if it was going to be, it would be
12 consistent with the account existing 30 days
13 prior? That's not what the statute says.

14 CHAIR THOMPSON: Thank you. That's an
15 excellent point to focus on what does the public
16 now in terms of the voter registration list
17 number.

18 And I believe the only thing that
19 we'll know was what was published on December 31.
20 So that's a point well taken. Okay, I guess that
21 concludes it.

22 MR. KLINE: I get last word, don't I?

1 Isn't that on the --

2 CHAIR THOMPSON: Just like 10 seconds.
3 Go ahead.

4 MR. KLINE: And it's important,
5 because what's been done is wrong. To address
6 Mr. Sandler's point as to where people are
7 supposed to be, the regulations are very clear.

8 People were supposed to be in the ward
9 they were in when they signed, which means that
10 those that signed before December 31, would be
11 put in the ward they were in as of December 31.

12 Then before, and those that signed
13 after would be put in the ward they were in
14 after. The regulations are very clear on that
15 point.

16 CHAIR THOMPSON: Okay. Thank you so
17 much.

18 MR. KLINE: And that is 3 DCMR 1009.5.

19 CHAIR THOMPSON: Okay, with that.
20 Anything else on this issue?

21 MS. STROUD: No, I think there's
22 nothing else on this issue. And so, it's to the

1 Board's determine.

2 CHAIR THOMPSON: Okay. So thank you
3 so much. We'll take it under advisement and I,
4 we're going to, we might go into Executive
5 Session at the end of this meeting to talk about
6 it, reach a determination, then come back on.

7 So stay tuned but we don't want to
8 interrupt the rest of you attending right now.
9 So why don't we move on to the next issue, which
10 is the adoption of a petition to recall and ANC
11 Commissioner?

12 MR. KLINE: Well, one point. If
13 you're going to deliberate, I hope you're going
14 to comply with the Sunshine Law requirements, and
15 that will be done in public.

16 CHAIR THOMPSON: Well, we do have the
17 right to, in almost every meeting we do, to go
18 into Executive Session pursuant to D.C. Code,
19 2-575(b)(13) to deliberate in the same manner
20 that any adjudicatory body would have the ability
21 to deliberate --

22 MS. STROUD: With counsel.

1 CHAIR THOMPSON: -- with counsel.

2 Well, that's what I'm talking about. I'm talking
3 about a proper statutorily appropriate Executive
4 Session.

5 MR. KLINE: Thank you.

6 CHAIR THOMPSON: Okay.

7 MS. STROUD: Thank you. The next item
8 on my agenda is the adoption of a petition to
9 recall Amber Gove, who was the Advisory
10 Neighborhood Commissioner for single member
11 district 6A4.

12 Just want to see whether or not the
13 proposer of the recall, Ms. Alexandra Kelly is on
14 the call? Okay, I see you Ms. Kelly. And just
15 want to see whether or not Ms. Gove is on the
16 line.

17 She is an elected official who is the
18 subject of the recall. Randy if you could scroll
19 and see? Gove, G-O-V-E. Okay. So do no see
20 G-O-V-E. Okay. So I do not see Ms. Gove.

21 CHAIR THOMPSON: Search for Amber.

22 MS. STROUD: Yes. And if Ms. Gove, if

1 you are on the line, if you could raise your
2 hand. Okay. I do not see Ms. Gove on the line.
3 But I just want to have a staff attorney from the
4 Office of the General Counsel, Katrina Jones,
5 come forth.

6 And speak to the circumstances under
7 which notice of this meeting was provided to the
8 parties. And Ms. Jones, if you could just state
9 your name and your professional address for the
10 record?

11 MS. JONES: Good morning. Can you
12 hear me? I'm sorry. My name is Katrina Jones.
13 My address is 1015 Half Street, Southeast, here
14 in Washington D.C.

15 MS. STROUD: Okay. So how was notice
16 of this meeting provided to you? We know that
17 Ms. Kelly, the proposer is here. And the purpose
18 of this proceeding is to adopt the petition that
19 the Board, that the Voters' Services Division
20 created.

21 And that is the sole purpose of this
22 particular proceeding. So if you could just talk

1 about the notice that was provided with respect
2 to this meeting to the parties?

3 MS. JONES: Correct, yes. So the
4 intent to recall was filed on April 28th. And I
5 immediately notified Commissioner Gove of that
6 intent to recall. And we started to have --

7 MS. STROUD: Of this meeting, let's
8 just focus on this meeting.

9 MS. JONES: Okay. Well, once she
10 received notice of the recall, she reached out to
11 me, and started asking me questions about
12 timelines. What would happen? And we talked
13 about this particular meeting.

14 She was very focused on what events
15 would transpire. And if any of the events
16 timelines could either be shortened or elongated,
17 which would shorten or elongate the whole
18 process. Right?

19 So when we talked about the June
20 meeting, she specifically wanted to know if the
21 recall was adopted today by the proposer,
22 Ms. Kelly. But, for example, she mentioned it

1 was submitted within the 60 days, before the 60
2 days would that speed up the process at all?

3 And when we talked through the
4 timeline multiple times, she wanted to know --

5 MS. STROUD: Did she get written
6 notice of today's meeting?

7 MS. JONES: She got a reminder email
8 yesterday.

9 MS. STROUD: Okay.

10 MS. JONES: That I had sent.

11 MS. STROUD: And before that, did she
12 receive any written notice of this meeting?

13 MS. JONES: No. But we talked many
14 times about this June 1st meeting.

15 MS. STROUD: So, she was aware?

16 MS. JONES: She was aware. She was
17 very clear about that.

18 MS. STROUD: Did you have a
19 conversation with Ms. Gove after you provided her
20 with a written notice yesterday of the meeting?

21 MS. JONES: Yes. Ms. Gove called me
22 this morning. And she said she thought she was

1 going to get an email notification prior to the
2 reminder yesterday. Well, that she didn't
3 remember that it was going to be today.

4 And I reminded her of the
5 conversations we had about the June meeting. And
6 she said, she may have misunderstood. But in all
7 of our communications, she went over with me the
8 timeline.

9 June 1st is the adoption. There are
10 60 days afterwards. And the fact that, given the
11 30 days that we had to certify, when a potential
12 recall could occur.

13 So we talked about this particular
14 meeting at length, at least seven times from the
15 moment she got noticed of the intended recall
16 until, again this morning, when I reminded her of
17 our conversations.

18 MS. STROUD: Okay. So she was aware
19 that the meeting was going to be on June 1st?

20 MS. JONES: She was very aware.

21 MS. STROUD: Okay.

22 MS. JONES: As a matter of fact, in

1 all of my conversations, she had me repeat. And
2 she wrote down. She wanted me to slow down, so
3 she could write down the specific dates.

4 The general meeting, the 60 days to
5 submit the petition signatures, our 30 days to
6 certify the petition, I mean, we went over those
7 details multiple times. She said she was new,
8 she didn't understand. She wanted to make sure
9 she got everything down, had about the timeframe.

10 MS. STROUD: Okay, so she, while she
11 didn't receive written notice of the meeting
12 until yesterday, she was aware that meeting was
13 going to be on June 1st. And --

14 MS. JONES: Very much, so.

15 MS. STROUD: Okay.

16 MS. JONES: Very much, so. From all
17 of our conversations, yes, ma'am.

18 MS. STROUD: Okay. So in light of
19 that, I mean, I know that Ms. Gove is not
20 present. And I, but I think that we can proceed,
21 particularly in light of the fact that -- and
22 this is for the Board members.

1 We can proceed in light of the fact
2 that this is a meeting for the proposer to adopt
3 the petition for circulation. And so, I think
4 that it's fine for us to proceed with the
5 meeting, with the adoption of the issuance of the
6 petition. And so --

7 CHAIR THOMPSON: Yes, I'm fine with
8 that recommendation. I think we can proceed.
9 Sounds like Commissioner Gove have got ample
10 notice. And in any event, this is a process that
11 typically doesn't call for the challenged --

12 MS. STROUD: Candidate.

13 CHAIR THOMPSON: -- official to make
14 any statement or comments at all. I think the
15 last one before us was an aberration in that
16 regard.

17 But this is really just to confirm
18 that the proposer of the recall petition is
19 comfortable with the language. And, and
20 basically, for us to confirm that the recall
21 petition can go forth for signatures. So I think
22 we can go.

1 MS. STROUD: Okay, so we'll proceed.
2 Thank you, Ms. Jones.

3 CHAIR THOMPSON: Thank you, so much.

4 MS. STROUD: So what I'm going to do
5 is to go through the process for the issuance of
6 the petition. What's before the Board is a
7 notice of intent to recall.

8 And the subject of the recall notice
9 is an Amber Gove, Advisory Neighborhood
10 Commissioner, and single member district 6A04.
11 The recall was filed on April 28th.

12 And it specified Mr. Gove as the
13 elected official whose recall was sought. A
14 response, Ms. Gove did timely file a response to
15 the statement of reason for recall on Monday, May
16 9th.

17 The Board has prepared and is prepared
18 to issue to the proponent an original petition
19 form. Which Ms. Kelly, you will have to come to
20 the office to receive if you want to pick it up
21 today, which is the official start, should the
22 Board issued a petition.

1 Because it has to be double sided. So
2 we would need for you to come and pick it up.
3 But we're prepared to issue the form today. And
4 that's the sole purpose of this process.

5 When we're asking whether or not you
6 will adopt the petition form as your own, we're
7 only inquiring as to whether or not you adopt the
8 form. And if you do, then the Board will
9 entertain a motion to issue the recall petition.

10 We're asking whether or not the
11 petition reflects accurately your name, the
12 statement of reasons provided in your recall,
13 your address, and things of that nature. It is
14 not to inquire as to whether or not you approve
15 of the elected official's response to the recall.

16 And so, Mr. Chair and the Board
17 members, we have prepared and issued a version of
18 the petition form to Ms. Kelly yesterday. She
19 had the opportunity to review the petition and
20 insure there are no mistakes.

21 CHAIR THOMPSON: Yes. All right.
22 Thank you, very much. Ms. Kelly --

1 MS. STROUD: Just state her name and
2 address for the record.

3 CHAIR THOMPSON: Yes, if you're here,
4 just quickly state your name and address please?

5 MS. KELLY: Yes. My name is Alexandra
6 Kelly. And I live at 1323 North Carolina Avenue,
7 Northeast, Washington, D.C.

8 CHAIR THOMPSON: Thank you, so much.
9 And have you had to review the petition that's
10 been prepared?

11 MS. KELLY: Yes, I did.

12 CHAIR THOMPSON: And do you approve
13 the petition form and adopt it?

14 MS. KELLY: I do. I think there was
15 one typo, but it's not significant. In the
16 fourth line, it was my desire to say that Amber
17 supported the proposal, and it was typed in
18 support the proposal. But you know, obviously,
19 that's.

20 CHAIR THOMPSON: All right. We'll fix
21 the typo. Thank you so much for pointing that
22 out. So I think that's all for now. It's not

1 the time to talk about the contents of the
2 petition. So having --

3 MS. STROUD: If you'll, yes --

4 CHAIR THOMPSON: The motion?

5 MS. STROUD: Yes.

6 CHAIR THOMPSON: Yes, let me go and
7 make a motion that Board approve the petition
8 form submitted by the proponent of the recall
9 measure. Is there a second? Board members
10 themselves have to --

11 MEMBER GREENFIELD: Second.

12 CHAIR THOMPSON: Okay. Are you there?

13 MS. STROUD: I think he's still muted.

14 CHAIR THOMPSON: I'm trying to get
15 Mike Gill unmuted. Well, any way, I'm in favor.
16 Karen, are you in favor?

17 MEMBER GREENFIELD: I'm in favor.

18 CHAIR THOMPSON: So we'll get Mike
19 unmuted, if he can join us or either provide
20 stirring dissent. Why don't we go ahead --

21 MS. STROUD: Yes.

22 CHAIR THOMPSON: -- until he can.

1 Well, so next, we'll ask the registrar, Marissa
2 Corrente, Assistant Registrar, to outline the
3 remainder of the recall process, so everybody
4 understands what happens next.

5 MS. CORRENTE: Thank you. So this is
6 a memorandum titled, Notice of Intention to
7 Recall Amber Gove, Advisory Neighborhood
8 Commissioner, Single Member District 6A04.

9 So on April 28th, 2022, Alexandra
10 Kelly, a duly registered voter in single member
11 district 6A04 timely filed a notice of intention
12 to recall Amber Gove, Advisory Neighborhood
13 Commissioner for SMD 6A04.

14 The notice specified Commissioner Gove
15 as the elected officer whose recall is sought,
16 meant in support of the recall. That did not
17 exceed the 200 word count limit.

18 And included the proposer's name,
19 telephone number, email address, residence
20 address, and an affidavit that the proposer is a
21 registered, qualified elector in the same single
22 member district as the elected officer whose

1 recall is sought.

2 Commissioner Gove timely filed a
3 response to Ms. Kelly's statement of reason to
4 recall with the Board on Monday, May 9th, 2022.
5 The response did not exceed the 200 word count
6 limit.

7 Pursuant to D.C. Official Code
8 1-1001.1(g), the proposer of the recalled ANZ, of
9 an ANZ, shall have 60 days to circulate the
10 recall petition and file the same with the Board
11 beginning on that date when the proposer of the
12 recall formally adopts the original petition form
13 as their own.

14 The petition form is available for
15 Ms. Kelly to pick up at the Board's office. In
16 the event the Board issues the petition today,
17 Ms. Kelly, you must file the recall petition with
18 the Board no later than 5:00 p.m. on Monday,
19 August 1st, 2022.

20 Pursuant to D.C. Official Code
21 1-1001.17(h)(3), a petition for the recall the
22 ANC shall include the valid signatures of 10

1 percent of the registered, qualified electors of
2 the affected single member district.

3 That 10 percent shall be computed from
4 the total number of the registered electors from
5 the single member district, according to the
6 latest official count of registered electors by
7 the Board, which was issued 30 or more days prior
8 to submission of the signatures for the
9 particular recall petition.

10 While the signature requirement cannot
11 yet be determined, the most recent registration
12 figures published by the Board reviews the
13 petition filed in support of the notice of intent
14 to recall Commissioner Gove would be required to
15 include the signatures of 189 duly registered
16 voters in single member district 6A04.

17 And that's 10 percent of 1,886, which
18 is the number as of April 30th, 2022. Both the
19 proposer of the recall measure and the elected
20 official who is the subject of the recall, are
21 advised to check with the Board's Voter Services
22 Office on a monthly basis as new statistical

1 reports are published.

2 CHAIR THOMPSON: Thank you, so much.

3 In only five short months, I've become an
4 election geek now. Because my favorite part of
5 this memo is, is that last part. And I know the
6 Initiative 82 people will really appreciate this.

7 That, at this point in time, the most
8 recent registration figures indicate that 10
9 percent is 189. But the proposer is advised to
10 check with the Board's Voter Services Office on a
11 monthly basis as new statistical reports are
12 published.

13 So 189 might be 190, or 187, or 192.
14 So as with all petitions, the proposer is advised
15 to overshoot the required number by a decent
16 margin to leave plenty of room for error. So
17 that's good advice.

18 And so with that, the proposer just
19 has to pick up the petition and just moves on
20 from there. And may or may not make its way onto
21 the general. This would be on the general
22 election ballot. Thank you, so much.

1 MS. STROUD: And Ms. Kelly, we are
2 going to correct the typo in the petition form in
3 your statement. And it will be available for you
4 to pick up today, along with enough copies of the
5 petition form to circulate and get the necessary
6 amount of signatures.

7 And if you have any questions you
8 certainly can, you know, ask us while you're here
9 or give us a call. And so the last item on my
10 agenda is litigation status. The first matter is
11 Jason Christopher Long v. The D.C. Board of
12 Elections.

13 This is an old matter and the only
14 update to this matter which involved a lawsuit
15 filed in D.C. Superior Court alleging negligence,
16 and unjust enrichment with respect to a poll
17 worker payment, is that there will be a hearing
18 on this matter on June 17th.

19 Henderson v. D.C. Board of Elections
20 involves the filing of a recall petition against
21 Sydelle Moore, Advisory Neighborhood Commissioner
22 for single member district 5D05. That petition

1 was rejected due to an insufficient number of
2 signatures.

3 And Ms. Henderson appealed the matter
4 to the D.C. Court of Appeals. The update in this
5 matter is that we filed the designation of the
6 record as we were required to do pursuant to a
7 Board order. We filed that administrative record
8 on May 23rd.

9 And the last item on my litigation
10 status is Public Interest Legal Foundation v.
11 Monica Evans, in her official capacity as the
12 Director of the Board. This was filed in U.S.
13 District Court under the National Voter
14 Registration Act.

15 The suit alleges that the Board is out
16 of compliance with the NVRA's public records
17 permission. PILF requested records from the
18 Board, which were denied due to provisions in
19 Federal law.

20 All pleadings in this matter have been
21 filed and we are just awaiting the next steps in
22 this matter. And that concludes my litigation

1 status report and my entire report. Thank you.

2 CHAIR THOMPSON: All right. Thank
3 you, so much. And for now, to Executive
4 Director's Report from Monica Evans.

5 MS. EVANS: Thank you. And good
6 morning. Voter Education and Outreach -- during
7 the month of May, the Voter Education and
8 Outreach Division conducted 25 outreach events on
9 behalf of the Agency.

10 Even though most of the events were in
11 person, two were virtual engagement events. I
12 attended the ANC 7B meeting on May 19. I shared
13 our vote plan for the primary election and
14 answered questions.

15 Voter Registration Rolls -- in May, we
16 registered 3,104 new voters and processed 6,937
17 registration changes. In total, we prepare
18 10,041 voter registration cards to be mailed.

19 We are within the 90-day window before
20 the primary election. Therefore, no additional
21 voters will be removed from an active to an
22 inactive status until after the election.

1 Online Voter Registration -- we're
2 continuing to register voters using our website
3 portal. As previously mentioned, our website
4 portal provides the same functionality as a
5 mobile app. Today, we have registered over
6 10,000 voters using the portal.

7 Update For the Primary Election -- the
8 primary election will be held on June 21st, 2022.
9 We have mailed or will mail a ballot to every
10 registered voter affiliated with one of the major
11 parties.

12 K&H began mailing ballots on May 16th.
13 To date, we have mailed 402,108 ballots, 10,235
14 ballots have been returned. We are continuing to
15 process new voter information and changes to
16 transmit that information to K&H for additional
17 ballot mailings.

18 The final mailing of ballots will
19 occur on June 10th. Those who do not receive a
20 ballot by June 16th, should plan to vote in
21 person. The location of our early vote centers
22 and 90 Election Day vote centers are listed on

1 our website.

2 Early voting begins on June 10th and
3 runs through June 18. Vote centers will be
4 closed on June 20 for the Juneteenth Holiday.
5 And will reopen on June 21 for the primary
6 election.

7 Mail ballot dropboxes opens on May
8 27th. We are currently collecting ballots twice
9 a day. I emphasize the boxes are open. There
10 are multiple locks on each box. However they are
11 locked in an open position.

12 And voters should be able to place
13 their ballot inside of the mail ballot drop boxes
14 without issue. Voters will also be able to
15 deposit ballots at any Vote Center during early
16 voting. And on Election Day, ballots may also be
17 returned to BOE using the U.S. Postal Service.

18 Election Workers -- we have met our
19 election worker training goal. We have trained
20 2,100 election workers for the June primary.
21 We're wrapping up site visit coordinator training
22 this week. And trained election workers are

1 using the online training portal to supplement
2 the in person training they received.

3 Communications -- our tagline, ready,
4 set, vote. Our first two postcard mailers have
5 gone out. The third and final postcard mailer is
6 scheduled to be mailed by the end of this week.

7 We began mailing the voter guide the
8 week of May 9th. The voter guide is also posted
9 on our website. We are currently placing yard
10 signs and distributing door hangers.

11 We are developing additional content
12 for print, radio, and television advertising.
13 Advertisements have run in DCist, East of the
14 River, Hill Rag, El Tiempo, and The Informer.

15 Our vote plan will run in Washington
16 Post next week. We have conducted radio
17 interviews with WTLP and WPGC. Radio advertising
18 is airing on Praise, WHUR, WPGC, and will run on
19 WTLP.

20 Our television commercial is airing on
21 OWN, MSNBC, CNN, and will start on, start running
22 on Channel 7 in the near future. Finally, we

1 mailed ballots to all eligible voters housed in
2 the Federal Bureau of Prisons.

3 The Department of Corrections will
4 also be used as a vote center. We are delivering
5 ballots to DOC today. We will also conduct
6 in-person voting for three days at the Department
7 of Corrections. That concludes my report. Thank
8 you.

9 CHAIR THOMPSON: Thank you, so much.
10 That was a beautiful report. It's like, you
11 know, the Control Room, NASA. Everything is,
12 systems are operating in good order. That is a
13 lot of amazing activity that, you know, knock on
14 wood, it's all going extremely well.

15 And that's by far the most important
16 thing we've talked about today. Is how well the
17 voting process is going to date. Thank you for
18 that, Brenda. Thank you everybody at the BOE who
19 is working so hard to make all that happen. So,
20 anything else before we turn to campaign finance?

21 MS. EVAN: No, thank you.

22 CHAIR THOMPSON: All right. Okay.

1 Office of Campaign Finance, Director, Ms. Cecily
2 Collier-Montgomery.

3 MS. COLLIER-MONTGOMERY: Yes, good
4 morning. For the record, the full report of the
5 activity of the Office of Campaign Finance for
6 the month of May 2022 will be posted at the OCF
7 website www.ocf.dc.gov before the close of
8 business today.

9 I will, however, at this time
10 highlight a few items of interest for the public
11 from the report.

12 In the Office of the Director, I will
13 point out that the Office of Campaign Finance
14 hosted the debates on May 16th, 17th, and 19th,
15 2022 in the contested races for the Offices of
16 the Mayor, the Attorney General, and At-Large
17 Member of the Council.

18 These offices are scheduled for
19 election during the June 21st, 2022 primary
20 election. All candidates certified to
21 participate in the Fair Elections Program, who
22 are in contested city-wide elections were

1 required under the Fair Elections Act to
2 participate in the debates.

3 The candidates registered for these
4 offices in the traditional campaign finance
5 program who qualified for ballot access were
6 invited to participate as well. The debate for
7 the Office of the Chairman of the Council was
8 waived.

9 Where there is no other FEP
10 participating candidate or willing
11 non-participating candidate, the mandatory debate
12 requirement may be waived under the Act. There
13 was only one certified FEP candidate in the
14 city-wide contest.

15 And the registered candidate in
16 traditional program was unavailable to
17 participate due to scheduling conflicts. The
18 debates were moderated by the Washington Post
19 reporter Michael Brice-Sadler and Julie Zauzmer
20 Weil.

21 The debates were held virtually and
22 streamed online at www.dcdebates.com. Where,

1 recordings of the debates will remain online for
2 viewing through the remainder of the calendar
3 year.

4 In our Fair Elections Program Division
5 during the month of May 2022, I will point out
6 that as of this date, during the 2022 election
7 cycle, the Agency has authorized the total sum of
8 \$10,349,186.80 for disbursement from the fair
9 elections fund, and base amount and matching
10 payments to the 33 candidates previously
11 certified in the program to participate in the
12 June 21st, 2022 primary election.

13 And actually there are 31 certified
14 candidates in the November 2022 General Election
15 and there are two candidates certified to
16 participate in the General Election.

17 During the month of May 2022, there
18 were no new candidates who are certified in the
19 program for the 2022 election cycle. The Agency
20 did authorize the disbursement of 35 matching
21 payments from the fair elections fund to
22 participating in candidates.

1 And also, the second half and final
2 base amount payment to 26 previously certified
3 candidates who are contested races for elected
4 office and have qualified for the ballot.

5 There has been no change in the amount
6 of remitted funds to the elections fund from
7 candidates who participated in the 2020 election
8 cycle and from candidates so far who are
9 participating in the 2022 primary election cycle.

10 With ongoing post-election full field
11 audits in the division, I would point out that
12 two final audit reports were issued on April the
13 7th, 2022 for two of the post election audit to
14 the campaign operation of candidates who
15 participated in the November the 3rd, 2020
16 General Election.

17 And those were the Friends of Allister
18 Chang, principal campaign committee and the
19 Committee to Elect Ebony Rose Thompson for D.C.
20 State Board of Education, Ward 7, principal
21 campaign committee. And in both of those orders
22 were compliance orders and they are available at

1 our website for viewing by members of the public.

2 In our Public Information and Records
3 Management Division, during the month of May,
4 there were three filing deadlines for the filing
5 of reports of receipts and expenditures.

6 The first deadline was April the 30th,
7 which was for the report, which was filed by our
8 Fair Elections Candidate Committees. This was an
9 optional report, and it fell on Saturday, and it
10 rolled over to May 2nd.

11 With our Legal Defense Committees, May
12 1st was the due date for the 26th report of
13 receipts and expenditures. And for our Fair
14 Elections Candidates Committees, May 10th was the
15 mandatory filing date for their activity report.

16 With new candidates and committees,
17 there was one new candidate who registered in the
18 traditional campaign finance program, and that
19 candidate registered for the Office of Mayor in
20 the primary election.

21 The candidate's name is Melvin Lawson.
22 He registered on May the 23rd as a write-in

1 candidate. Again, there are no new registrations
2 in the Federal Elections Program.

3 With respect to political action
4 campaigns there was one new registration. And
5 the new committee is Green New Deal for D.C.
6 Action. The committee registered on May the
7 23rd, 2022. Fifteen candidates registered and
8 treasurers complied with the mandatory entrance
9 conference during the month of May.

10 Also, the last thing I will report is
11 that in our reports, analysis, and audit
12 division, which is our traditional campaign
13 finance program, the audit branch issued three
14 final audits.

15 The first one was DoSomething
16 Constituents Fund, which was issued on May the
17 3rd, 2022. Again, that was a compliance audit.
18 It was a periodic random audit of the April 1st,
19 2022 R&D report, which was filed by the
20 Constituent Services Fund.

21 The Ward 7 Constituent Service
22 Program, the periodic random audit was issued on

1 May 12th. Again, that was a compliance audit.

2 And it was of the April 1st, 2022 R&D report.

3 The last was Rodney "Red" Grant for
4 Mayor. That was issued on May the 20th, 2022.
5 That was a compliance audit. And it was an audit
6 of the January 31st, 2022 R&D report.

7 Again, the final audits are available
8 at our website for review by members of the
9 public. And I don't, and also, I would indicate
10 that there are four ongoing periodic random
11 audits are currently before the traditional audit
12 program.

13 That concludes my report, but I would
14 ask Mr. Sanford, who is our General Counsel to
15 provide the legal report of the Office of the
16 General Counsel.

17 MR. SANFORD: Good morning, Mr. Chair,
18 and distinguished Board members Gill and
19 Greenfield. My name is William Sansford, General
20 Counsel for the Office of Campaign Finance.

21 During the month of May 2022, the
22 Office of General Counsel received six referrals,

1 completed 17 informal hearings, and issued 19
2 orders, which include the following.

3 Seventeen orders in which a total of
4 \$17,825 in fines were issued. Two orders, which
5 revoked the certifications of fair election
6 candidates, Kenyan McDuffie and Rodney Thomas
7 were issued pursuant to orders issued by the
8 Board of Elections.

9 Mr. Thomas was determined ineligible,
10 denied ballot access as a result of falling
11 short, after a review of his, the signatures on
12 his nominating petitions.

13 Mr. McDuffie was also determined
14 ineligible for the office, he sought, Attorney
15 General, after a review of his credentials by the
16 Board Election and the Board's denial, in
17 addition to the Board's decision being affirmed
18 by the D.C. Court of Appeals.

19 During the month of May 2022, the
20 Office of Campaign Finance collected one fine of
21 \$50 from a former candidate Dorothy Douglas.

22 Under interpretive opinions, we would

1 like to note for the record, that on May 16th,
2 the U.S. Supreme Court in the FEC v. Cruz
3 opinion, ruled that imposing limits and time
4 periods on the amount that may be recovered by
5 candidates from personal loans they make to their
6 own political campaigns is unconstitutional.

7 And that provision, that decision by
8 the U.S. Supreme Court, also by extension, makes
9 the District's law, which is located on under
10 D.C. Count 661-1163.10(a) unconstitutional.

11 In the Cruz opinion, the FEC had
12 imposed a restriction on the amount that could be
13 reimbursed to a candidate of \$250,000, and any
14 amount in excess of the \$250,000, the process for
15 collecting that had to begin at least 20 days,
16 within 20 days after the election.

17 In the District of Columbia, under
18 current law, a contact is only eligible to be
19 reimbursed for a maximum of \$25,000. And that
20 reimbursement must occur within six months.

21 Under the Supreme Court opinion, both
22 are unconstitutional. And the District of

1 Columbia Office of Campaign Finance has faced
2 situations like this before. In 2014, the
3 Supreme Court ruled in *McCutcheon v. the F.E.C.*
4 that imposing aggregate limits was
5 unconstitutional.

6 That resulted in the District's
7 long-term aggregate limit of \$808,500 that any
8 individual could donate to any campaign during an
9 election cycle as also unconstitutional.

10 The Office of Campaign Finance, then,
11 as it will now, decided that we would no longer
12 enforce those provisions. And in view of the
13 Cruz decision, we will no longer enforce
14 provisions regarding reimbursements of loans.

15 It took the D.C. Counsel a little over
16 a year to catch up with us. But they eventually
17 did. And we hope this time, they will be swifter
18 in their activity by repealing this
19 unconstitutional law.

20 During the month of May 2022, there
21 was no show cause proceedings. During the month
22 of May 2022, there were no requests for

1 interpretive opinion.

2 My report will be published at the
3 website of the Office of Campaign Finance by the
4 close of business today, June 1st, 2022. And
5 that should conclude my report.

6 CHAIR THOMPSON: All right. Thank
7 you, very much. Especially the report on the
8 latest Supreme Court opinion. I'm sure, the
9 counsel will help us figure it out what that
10 means. And thank you, so much for the entire
11 report.

12 I think everybody out there knows this
13 is a real banner year for the FEP program. It's
14 been widely utilized, and also a beautiful report
15 in that regard, a lot of detail and its
16 administration. But it's seems to be going
17 swimmingly. So thank you.

18 MS. COLLIER-MONTGOMERY: You're
19 welcome.

20 CHAIR THOMPSON: Yes. And that brings
21 us to -- anything else before we go into public
22 matters? All right. So we're always eager and

1 happy to hear from everybody out there.

2 We'll go around and recognize people.
3 If you could put your hand up, we'll call on you
4 one at a time. I'd ask you to please keep your
5 remarks concise, polite, brief, if you can.

6 I think we ordinarily are asking you
7 to try to limit your comments to about a minute.
8 Won't cut you off at exactly a minute. But, but
9 with that, I see Ms. Brizill has her hand up. So
10 why don't you go ahead? Just bear with us as we
11 unmute people. I think, Ms. Brizill, you can
12 unmute yourself now. I'm not sure.

13 MS. BRIZILL: Can you hear me now?

14 CHAIR THOMPSON: We sure can.

15 MS. BRIZILL: Okay. This is Dorothy
16 Brizill. I would like to raise a important issue
17 with the Board. As you know, the Board has its
18 monthly meetings. But the purpose of the monthly
19 meeting is not only to conduct, you know, Board
20 of Elections matters per se, but also to inform
21 and involve the public.

22 Today the Board had a lengthy

1 discussion about Initiative 82 and the petition
2 issue. However, trying to follow it as a citizen
3 was virtually impossible, because there was
4 nothing on the Board's website or in the D.C.
5 Register, clarifying what the issues are.

6 Now, as it turns out, the issue that,
7 it's likely to be decided goes far beyond the
8 text or the wording of the language on the ballot
9 for Initiative 82. It has to do with how we
10 determine and how we lead to determine what is
11 the Official Register of Voters.

12 Who is on and who is not. What date
13 to expect that list to be determined. So with
14 that said, Mr. Chairman, I would ask that when
15 the agenda for the Board's meeting is posted.

16 And especially for something as
17 important, which has legs long beyond this
18 particular issue, for example, that the General
19 Counsel, working with the Board staff, post some
20 information on the Board's website.

21 Detailing what the issue is. And
22 then, also posting on its website what the

1 decision will be. This decision will affect not
2 only the parties that spoke today at the hearing.

3 This decision has potential
4 implication for determining, in the future, when
5 there is an Official Register of Voters and what
6 that Register of Voters looks like. Thank you.

7 CHAIR THOMPSON: And thank you so much
8 for your comment. And I take that comment as
9 constructive advice to me, as well, to do a
10 better job just sort of setting up an issue and
11 explaining it to everybody who's listening.

12 And to back up and talk about what
13 this is, real simple terms just to help anyone
14 who's tuning in what the context of why we're
15 diving in, as we did today, suddenly to, you
16 know, a somewhat detailed issue about 42.

17 So I'll try to improve my setup in
18 that regard in the future. And that's that's a
19 good suggestion. So, thank you. I see Nickolas
20 Schiller, who has a hand up.

21 MR. SCHILLER: Yes, can you hear me,
22 okay?

1 CHAIR THOMPSON: Yes.

2 MR. SCHILLER: So I just would like
3 to comment about the challenge. My name is
4 Nickolas Schiller, address is 2448 Massachusetts
5 Avenue, Northwest, Washington D.C.

6 With respect to the challenge order,
7 and when is the official published data of the
8 voter registration information? The challenger
9 makes the case that the official count should be
10 published every single day.

11 Like, every single day that there's an
12 official account. But the way it's always been
13 construed is that what is official, is what's
14 published in the D.C. Register.

15 And they're almost making the case
16 that the D.C. Register must be published every
17 single day, in order to have an official account
18 30 days prior. So I think it's almost impossible
19 for that logic.

20 When the campaign started, back in
21 October, we were given the information to say
22 that, when should we find out what the total

1 signature threshold is?

2 Because if it's a, if it's updated
3 every single day, you know, an opposition
4 campaign can all of a sudden show up and spend a
5 lot of money registering 1,000s and 1,000s of
6 voters within that 30-day window, and potentially
7 skew everything.

8 And so, a campaign needs to have some
9 level of groundwork to work off of. And that is
10 why, you know, on January 25th, we received an
11 email from Cliff Tatum saying that the 31st would
12 be, of December, would be the data in which the
13 petitions would be checked against.

14 The campaign itself, as someone who
15 was in charge of training petition circulators
16 and helping check the signatures, the data that
17 we received from Board of Elections between was,
18 in January, in mid-January, still use the old
19 boundaries.

20 So when we were checking the
21 signatures, we are checking the signatures even
22 of people that have registered to vote in January

1 of 2020, still used the old address boundaries.

2 So we were then, under this logic, put
3 in a difficult position because we are using old
4 data provided by the Board of Elections,
5 unfortunately. The other part, there's two
6 places that can be an issue.

7 Someone who is registered to vote
8 between January 1st and February 22nd, I think
9 that's a small number of people that actually
10 signed the petition. And that would be the only
11 place.

12 And my analysis of the petitions using
13 the most recent data is very small. And the
14 Initiative 82 campaign will have reached the
15 5 percent threshold, both District-wide and in
16 five of the eight wards.

17 Thank you, so much for your time. And
18 I look forward to the determination and after the
19 executive session. Thank you.

20 CHAIR THOMPSON: All right. Thanks
21 for your comment. No pun intended, but your
22 point really registers with me. I really

1 appreciate what you, you know, the information
2 you saw in the District, as you went about
3 gathering signatures.

4 I'm looking for any, any other hands
5 raised. Maybe just -- I think they would pop up
6 at the top. All right. Going once, going twice.
7 All right, well, that concludes public matters.

8 Before we move to adjourn, does
9 anybody, any Board Members, any of the Directors
10 have anything else they want to raise? Oh, Mike
11 Gill.

12 MEMBER GILL: No, I just, I just
13 wanted to make sure I got unmuted before we got
14 to adjournment since I was a couple of times
15 trying to get unmuted during this thing.

16 My daughter's a huge Taylor Swift Fan
17 and she has a song, This Is Why We Can't Have
18 Nice Things. Zoom has been wonderful. But I am
19 ready to be back in that room.

20 And I want to throw Zoom out the
21 window because this was really -- to have someone
22 taken over in the chat and screw up two attorneys

1 that had briefed and taken the time is really,
2 really disappointing.

3 So I will be there in-person next
4 week. And we can't get off Zoom soon enough as
5 far as I'm concerned. I know that people are
6 going to want to keep it.

7 But today was, was, you know,
8 frustrating in a lot of ways. So that's that's
9 all I wanted to say. I want to make sure I got
10 unmuted before we adjourned.

11 CHAIR THOMPSON: Okay. Thank you.
12 With that, I'm going to move we adjourn.

13 MEMBER GILL: I'll second.

14 CHAIR THOMPSON: Pardon, me. I've
15 been reminded by General Counsel Stroud.

16 MEMBER GILL: Move to Executive
17 Session.

18 CHAIR THOMPSON: I withdraw my motion
19 to adjourn. And instead, move that we go to
20 Executive Session under D.C. Official Code
21 2-575(b)(13) to deliberate upon the challenge to
22 petition filed in support of Initiative Measure

1 No. 82.

2 To discuss, and perhaps decide upon
3 the issues that were just presented by counsel.
4 And then, maybe come back on the record and
5 announce our result. So pardon me. Thank you
6 for the reminder. So with that, it's actually a
7 motion to go into Executive Session.

8 MEMBER GILL: Second that.

9 CHAIR THOMPSON: All I favor?

10 (Chorus of ayes)

11 CHAIR THOMPSON: I think Karen might
12 be muted.

13 MEMBER GREENFIELD: Aye.

14 CHAIR THOMPSON: Okay. We'll do that.
15 And then, I don't know how long we'll be in
16 Executive Session. Somewhere between five and 25
17 minutes? So, why don't we say for good measure,
18 12:30 we'll come back. And tell you one way or
19 another whether we reached a determination.

20 (Whereupon, the above-entitled matter
21 went off the record at 12:08 p.m. and resumed at
22 12:31 p.m.)

1 CHAIR THOMPSON: All right. We're
2 back on the record. The Court Reporter is
3 present. I will start by moving that we resume
4 the public meeting. Do I have a second?

5 MEMBER GREENFIELD: Second.

6 CHAIR THOMPSON: All right. All in
7 favor?

8 (Chorus of ayes)

9 CHAIR THOMPSON: So, we are resumed.
10 And we are resumed to further discuss the hearing
11 on the challenge to the petition filed in support
12 of Initiative Measure No. 82. Having heard
13 arguments, having gone into Executive Session, at
14 this time, I'll make a motion that we reject the
15 challenge.

16 And the reasons for rejecting the
17 challenge will be set forth in a written opinion
18 to be issued at a later time. So there will be a
19 number of things to address in that written
20 opinion.

21 And among them will be the affirmative
22 answer to the third question posed for today's

1 hearing. Whether the monthly report of all,
2 registration statistics, as of December 31st,
3 2021, was the proper official count to be used
4 for evaluating the validity of the petition?

5 The first two questions posed to us
6 that have to do with the scope of the challenge
7 will be answered. I move that they be answered
8 in the negative.

9 The scope of the challenge was fixed
10 at the time it was made and it can't, can't
11 change to broaden into a challenge that gets into
12 signature accuracy.

13 There could be other things in the
14 written opinion that may need to be addressed.
15 Because we've talked a lot about a lot of nuance
16 and footnote out issues.

17 But the core of my motion is to reject
18 the challenge for reasons to be set forth in a
19 written opinion. So I ask for second and any
20 comment that other Board members may have on the
21 issue.

22 MEMBER GREENFIELD: Second. No

1 comment.

2 CHAIR THOMPSON: Member Gill, comment?

3 MEMBER GILL: No.

4 CHAIR THOMPSON: Okay. All in favor?

5 (Chorus of ayes)

6 CHAIR THOMPSON: All right. We are
7 three to zero, respectfully declining, the
8 challenge. Thank you to the challengers and, and
9 Mr. Kline and his firm for presenting all the
10 issues regarding Initiative Measure No. 82.

11 It's important that everything be
12 scrutinized. And you know, I fully agree, we
13 have to get the answer right. I think we have,
14 all along the way. And with that, assuming
15 nothing else with this initiative, 82 will be on
16 the ballot in the General Election in November.

17 Before I move finally moved to
18 adjourn, any other any other comments out there?
19 I mean, from the Board Members?

20 MEMBER GREENFIELD: No.

21 MEMBER GILL: None from me.

22 CHAIR THOMPSON: All right. So I move

1 we adjourn the public meeting.

2 MEMBER GREENFIELD: Second.

3 CHAIR THOMPSON: All in favor?

4 (Chorus of ayes)

5 CHAIR THOMPSON: Thank you, everybody.

6 (Whereupon, the hearing went off the
7 record at 12:34 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Board Meeting

Before: DC BOE

Date: 06-01-22

Place: teleconference

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