GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

REGULAR BOARD MEETING

FRIDAY
DECEMBER 14, 2018

The District of Columbia Board of Elections convened a Regular Board Meeting in Suite 750, 1015 Half Street, S.E., Washington, D.C., 20003, pursuant to notice at 1:30 p.m., Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

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

BOARD OF ELECTIONS STAFF PRESENT:

ALICE P. MILLER, Executive Director
KENNETH J. McGHIE, ESQ., General Counsel
CECILY COLLIER-MONTGOMERY, Director,
Office of Campaign Finance
WILLIAM SANFORD, ESQ., General Counsel,
Office of Campaign Finance
RUDOLPH McGANN, ESQ., Staff Attorney
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1:52 p.m.

CHAIR BENNETT: Let me start off with introducing the folks that are here. To my far left, Ms. Alice Miller, executive director of the Board of Elections. To her right and my left is Ms. Dionna Lewis, Board member, Michael Bennett, Chair.

To my right is Mr. Ken McGhie, general counsel, Board of Elections. His right is Board Member Michael Gill, and Cecily Montgomery, to his right, is the director of the Office of Campaign Finance.

ADOPTION OF MINUTES

CHAIR BENNETT: First thing on the agenda is adoption of the minutes from the November 15th meeting. Can I get a motion from one of the Board members?

PARTICIPANT: So moved.

MEMBER GILL: Second.

CHAIR BENNETT: It's been properly moved and seconded. All in favor?
(Chorus of aye.)

CHAIR BENNETT: Unanimous. Those minutes are accepted from the last meeting.

BOARD MATTERS

CHAIR BENNETT: Any matters from the Board? Mr. Gill?

MEMBER GILL: No.

CHAIR BENNETT: Ms. Lewis?

MEMBER LEWIS: No.

CHAIR BENNETT: None from me, other than the fact that we got through our third election for 2018, the first being in June, the primary second being November -- the general. Thank you, Ms. Royal. Then the third being the election of the Ward 4 Board of Education member. I think the winner was Mr. O'Leary. There was a question by many in terms of why we didn't have that particular election happen in November with the main election.

The reason is that there were some timing requirements for gathering petitions and those kind of things that didn't allow it by --
our following the law didn't allow it to be at
the November election. We had to have a special
election which, unfortunately, cost the city a
fair amount of money, but we had to have a
special election in December to be compliant with
the law. No other Board matters.

Office of Campaign Finance, Ms.
Montgomery.

MS. COLLIER-MONTGOMERY: Good
afternoon.

CHAIR BENNETT: Let me stop for a
second. Did we have anybody call in? Normally,
Mr. Sindram calls in.

PARTICIPANT: I did inform him you had
a meeting today, but he was not answering.

CHAIR BENNETT: Okay, great, thank
you. Ms. Montgomery.

MS. COLLIER-MONTGOMERY: Yes, good
afternoon. The first thing I would like to
report --

CHAIR BENNETT: Oh, I'm sorry. I
missed the adoption of the agenda for today.
ADOPTION OF AGENDA

CHAIR BENNETT: Can I have a motion for the adoption of today's agenda?

MEMBER LEWIS: So moved.

MEMBER GILL: Second.

CHAIR BENNETT: It's been properly moved and seconded. All in favor?

(Chorus of aye.)

CHAIR BENNETT: Unanimous, so the agenda has been adopted for today. Thanks, Ken. Ms. Montgomery -- I'm sorry. Go ahead.

CAMPAIGN FINANCE REPORT

MS. COLLIER-MONTGOMERY: Good afternoon. The first thing I would like to report is that the Office of Campaign Finance has been reorganized, consistent with the enactment of D.C. Law 22-94, the Fair Elections Amendment Act of 2018. As you know, the law became effective on May 5, 2018, and the provisions of the law became applicable on November 7, 2018.

The Office of Campaign Finance has been reorganized to establish a Fair Elections
Program Division. That division will be responsible for the administration of the Fair Elections Act Program. The division will be managed by a fair elections program manager.

As you may know, the Council, in the budget for the Office of Campaign Finance for fiscal year '19, also included three audit positions for the division, as well as an information technology specialist. The Fair Elections Program will be responsible for providing for the public financing to candidate who are deemed eligible to participate in the program. Under the public financing --

CHAIR BENNETT: Ms. Montgomery, can you turn your mic on? I don't think you're --

MS. COLLIER-MONTGOMERY: Okay. Under the Public Financing Program, the Act will provide for the provision of base amounts, as well as for matching fund payments. During the month of November, there was one filing date. That date was the 8th day pre-special election report of receipts and expenditures for
candidates who participated in the Ward 4 State Board of Education election.

The report was due on November 26, 2018. There were six required filers. All of the participating committees timely filed their reports, as well as electronically filed their reports.

I have an addendum to the referrals which were made to the Office of the General Counsel for the Office of Campaign Finance with respect to the October 10th Report of Receipts and Expenditures. These are failures to file. The first is with a political action committee Foodservice PAC. Sam LeBlanc is the treasurer. Also, I have the listing of the failures to file the 8 Day Pre-General Election Report of Receipts and Expenditures.

Those committees which were referred to the Office of the General Counsel are as follows: Melik for At-Large, Melik Ahmir Abdul, treasurer; Friends of Traci Hughes, Traci Hughes, treasurer; Rosenberg for Ward 6, Clayton...
Rosenberg, treasurer; Dibinga for D.C., Omekongo
Dibinga, treasurer; Committee to Elect James
Butler for Mayor 2018, Terrence Jordan,
treasurer; George Jackson for D.C. Mayor, George
Jackson, treasurer; The Committee to Elect
Professor Alpha Bah, Esq., MBA, Alpha Bah,
treasurer; Dustin DC Canter for Mayor, Tabitha
Zimmerman, treasurer; Nate Brown Mr. Ward 6,
Christina Brown, treasurer; Wreh for Council,
Chayanne Tweh, treasurer; Friends to Elect Calvin
H. Gurley, Calvin Gurley, treasurer; Ameer
Flippin, Ameer Flippin, treasurer; Citizens to
Elect Bill Lewis, Charlotte Lewis, treasurer.

The political action committees which
were referred for the failure to timely file the
8th day pre-general report were DC Choice, David
Pope, treasurer; DC Democratic State Committee,
John Hugh Allen, treasurer; Foodservice PAC, Sam
LeBlanc, treasurer; Metro DC Democratic
Socialists of America, Solidarity DC PAC, Gabriel
Rodriguez, treasurer; Ward One Democrats, Daniel
Orlaskey, treasurer; DC for Democracy PAC,
Vasudevan Abhiraman; Economic and Protection Party, Margaret Smith, treasurer; Holland & Knight DC PAC, Dennis Horn, treasurer; Ward 5 Democrats, William Lewis, treasurer.

We also, during the month of November, had new candidates and committees who registered with the Agency. The first was Save our Votes, no D.C. Council repeal of Initiative 77 referendum, registered on November 1, 2018; D.C. Proud 2019 Inaugural Committee, registered on November 14, 2018.

In the audit branch of the Agency, during the month of December, the audit branch conducted 133 desk reviews. Those were desk reviews of political action committees, our constituent service funds, as well as our principal campaign committees. Also, during the month of November, we have ongoing audits. The ongoing audits, first, would be a full field audit of Sheika Reed for Ward 1, which was initiated on August 29, 2018.

The periodic random audits in the
office, which are ongoing, are of candidates in
the 2018 election, the January 31, 2018 filing:
Kenyon McDuffie, 2018, which was initiated March
22, 2018, a periodic random audit of a continuing
committee in the 2018 election; the June 10, 2018
filing, Anita Bonds, 2018, which was initiated
September 11, 2018; a periodic random audit of a
constituent service program for the October 1,
2018 filing, Mayor Bowser's Constituent Service
Fund.

We also issued two audit reports, our
Ward 5, which was issued on December 5, 2018, and
the Citizens Outreach Fund, which was issued on
November 7, 2018. The final audit reports are
available at our website for review by members of
the public. At this time, I would ask William
Sanford, of General Counsel, to give the report
from the Office of the General Counsel.

MR. SANFORD: Good afternoon. I'll
just try to project. Good afternoon. My name is
William Sanford, general counsel for the Office
of Campaign Finance. Good afternoon, Mr.
Chairman and distinguished Board members. During the month of November 2018, the Office of the General Counsel received a total of 29 referrals. They include the following: 22 referrals were transmitted from the Public Information and Records Management Division, and seven referrals were transmitted from the Reports Analysis and Audit Division. During the month of November 2018, the Office of the General Counsel conducted ten informal hearings, issued six orders, which included the following.

Two orders were issued for failure to timely file reports of receipts and expenditures, in which fines totaling $2,350 were imposed, and four orders were issued for failure to timely file reports of receipts and expenditures, in which no fines were imposed.

During the month of November 2018, the Office of the General Counsel imposed fines against the following respondents. A fine of $1,650 was imposed against Justin Green, a candidate for the at-large council position. A
fine of $700 was imposed against Dustin DC Canter for Mayor, who ran for mayor in 2018 election cycle. During the month of November 2018, the Office of the General Counsel received payments of $3,000 towards fines. Those payments were made by Jeffrey Thompson, in accordance with a settlement agreement that was reached between the Office of Campaign Finance and Mr. Thompson in December of 2017.

During the month of November 2018, the office carried no open investigations, no requests for interpretive opinions were filed, and no show cause proceedings were conducted. That should conclude my report.

CHAIR BENNETT: Thank you. Next on the agenda is executive director's report, Ms. Miller.

EXECUTIVE DIRECTOR'S REPORT

MS. MILLER: Thank you, Mr. Chairman. As you mentioned previously, the Board conducted the December 4th special election for the Ward 4 State Board of Education member. Prior to that
election, we did mail postcards to every Ward 4 household, alerting them of the election date, time, and contest. Also, during the November 6th general election, we posted poster boards on each of the precincts in Ward 4, handed out flyers to the voters reminding them to basically come back to their precinct on December 4 to vote in this special election. Of course, information was available on our website. At this time, I would request that the Board certify the winner of that election, who is Frazier O'Leary who won that election, so we need a motion to certify Frazier O'Leary as the winner of the Ward 4 State Board of Education.

CHAIR BENNETT: Can I get a motion from a Board member?

MEMBER LEWIS: So moved.

MEMBER GILL: Second.

CHAIR BENNETT: It has been properly moved and seconded to certify Mr. Frazier O'Leary as the winner of the Ward 4 School Board seat. Can I get a vote? Those in favor?
(Chorus of aye.)

CHAIR BENNETT: I, as well, so it's unanimous. Thank you.

MS. MILLER: Thank you. Also, subsequent to the November 6th general election, we had several requests for recounts that were filed. As a result of those recounts, which we conducted, we have a new certification for 4C08, Leah Anderson, 8E01, Oye Owolewa, and that's it. So we just need the Board to have a motion to do a new certification for those two seats, 4C08 and 8E01.

CHAIR BENNETT: Can I get a motion?

MEMBER LEWIS: So moved.

MEMBER GILL: Second.

CHAIR BENNETT: It's been properly moved and seconded to certify the election of -- can you give me the names, again, Ms. --

MS. MILLER: It's 4C08 and 8E01, Leah Anderson and Oye Owolewa.

CHAIR BENNETT: Properly moved and seconded accordingly. All in favor?
(Chorus of aye.)

CHAIR BENNETT: Ayes have it. It's unanimous. Thank you, Ms. Miller.

MS. MILLER: You have, also, in your packets, the calendar for the upcoming year, which basically, as usual, goes to the first Wednesday of the month, with the exception of the July Board meeting, which will be after July 4th, and also the January meeting, which is January 3rd. We can make the adjustments later, as time goes on, but at least for January, if you want to have it on the 3rd or the 9th, we can put that on the website, whatever you decide today.

CHAIR BENNETT: We'll adjust to the 9th.

MS. MILLER: All right, thank you. That's it. I just want to say one other thing. On Thursday, December 20, the office will close at 1:00, so that the staff can head on holiday.

CHAIR BENNETT: Anything else, Ms. Miller?

MS. MILLER: No.
CHAIR BENNETT: Questions from the Board? Ms. Lewis, any questions?

MEMBER LEWIS: No questions.

CHAIR BENNETT: Any questions, Mr. Gill?

MEMBER GILL: No questions.

CHAIR BENNETT: All right. Next up is the general counsel, Mr. McGhie.

GENERAL COUNSEL'S REPORT

MR. MCGHIE: Okay, the first item I have on my agenda is Office of Campaign Finance petitions for enforcement. There are 15 petitions for enforcement that we would like to have the Board address, so that we can have orders, in order to file them in D.C. Superior Court for enforcement. Rudy McGann, of my office, is going to make the presentation on those petitions for enforcement.

CHAIR BENNETT: Great. Mr. McGann.

MR. Mcgann: Okay, good afternoon.

The matters for petitions enforcement begin as follows. Docket No. 15C-067, respondent's name
is Patterson for Ward 8. The amount of the fine is $1,650, and the missing filing is the August 17th filing from 2015.

The next matter is 16C-003, again Patterson for Ward 8. The amount of the fine is $1,600, and the missing filing is the February 17, 2016 filing. The third matter, 16C-040, again Patterson for Ward 8. The fine amount is $1,500, and the missing filing is the March 30th filing.

The next matter is 17C-001, Toliver for Ward 4. The fine amount is $1,750, and the missing filing is reports of receipts and expenditures from February 17th of last year. The next matter is, again, Patterson for Ward 8, 17C-003 -- I apologize. That's the new one. The amount of the fine is $850, and the missing filing is the reports of receipts and expenditures from February 17, 2017. The next matter is 17C-006, Holmes for Ward 8. The fine amount is $1,450, and the missing filing is a report of receipts and expenditures from February
The next matter is 17C-011, Toliver for Ward 4. The amount of the fine is $2,650, and the missing report is the report of receipts and expenditures from August 16, 2017. The next matter is 17C-014, again, Patterson for Ward 8. The fine amount is $1,700, and the missing report is the August 16, 2017 report of receipts and expenditures. The next matter is 17C-017, Committee to Elect Natalie Williams. The amount of the fine is $2,650, and the missing report is the report of receipts and expenditures from August 16, 2017. The next matter is Justin Green at large, 17C-019. The fine amount is $2,650, and the missing report is, again, the August 16, 2017 report of receipts and expenditures. Next matter is 17C-020, Sheila Bunn for Ward 8. Fine amount is $1,700. Missing report is the August 16, 2017 report of receipts and expenditures. The next matter is 17C-021, Carter at large, 2014. The fine amount is $1,700, and it's the August 16,
2017 report of receipts and expenditures. The
next matter is 17C-023, Lannette Woodruff for
School Board. The fine amount is $200.

It's a report of receipts and
expenditures from August 16, 2017. The next
matter is 17C-024, Committee to elect Jacque
Patterson, 2016. The amount of the fine is $200.

It's a report of receipts and expenditures from
August 16, 2017.

The next matter -- excuse me, the
final matter is 17P-008, D.C. Recovery Act for
Living Descendants. The fine amount is $1,800,
and the missing report is the report of receipts
and expenditures from August 16, 2017. Those are
all the matters that the General Counsel's Office
is seeking the Board to file with the Superior
Court for enforcement.

MR. MCGHIE: At this point, I'd ask
the Board to consider entertaining a motion to
accept Mr. McGann's report and to issue orders on
each one of the petitions for enforcement, so
that we can present that to the D.C. Superior
Court for an order of enforcement.

CHAIR BENNETT: Okay, do you have any questions, Ms. Lewis?

MEMBER LEWIS: No questions.

CHAIR BENNETT: Mr. Gill?

MEMBER GILL: No questions.

CHAIR BENNETT: Can I get a motion?

MEMBER GILL: Motion to accept Mr. McGann's report.

MEMBER LEWIS: Second.

CHAIR BENNETT: All in favor?

(Chorus of aye.)

CHAIR BENNETT: It's unanimous. Thank you, Mr. McGann.

MR. MCGANN: Thank you very much.

CHAIR BENNETT: Okay, next item.

MR. MCGHIE: Next, I have emergency and proposed rulemaking to amend Title 3, DCMR, Chapter 5, Voter Registration. The purpose of the amendment is to provide means for voters who are victims of covered offenses or covered employees, as defined in the Address
Confidentiality Act of 2018, to make their voter records confidential. In essence, this is a way for individuals that may have some type of protective order that was issued, or some type of domestic problem, to come here and have their voter records held confidential.

CHAIR BENNETT: Okay. Ms. Miller, you have any issues on that matter?

MS. MILLER: No.

CHAIR BENNETT: Is the registrar here?

PARTICIPANT: She was.

PARTICIPANT: She's in the back.

CHAIR BENNETT: I just want to make sure you don't have any issues with regard to the -- Mr. McGhie, would you repeat?

MR. MCGHIE: Yes, the Voter Confidentiality Act allowing individuals that may have a protective order to be confidential.

CHAIR BENNETT: That's not going to cause you any administrative challenges or problems? You're good with that?

MS. MILLER: I will add that we have
not really looked at them, so we will follow what
the regulations say, but if there's a problem
we'll come back and make adjustments. Right now,
it's fine.

CHAIR BENNETT: All right. Can I get
a motion?

MEMBER LEWIS: So moved.

MEMBER GILL: Second.

CHAIR BENNETT: Properly moved and
seconded. Vote is --

(Chorus of aye.)

CHAIR BENNETT: It's unanimous. Thank
you, Mr. McGhie.

MR. MCGHIE: Next, I have a proposed
rulemaking to amend Title 3, DCMR, Municipal
Regulations, Chapter 42. I don't think we're
moving on 43 right now. Those are Office of
Campaign Finance regulations. I will defer to
Ms. Montgomery to explain the nature of that
proposed rulemaking.

CHAIR BENNETT: Okay, Ms. Montgomery.

MS. COLLIER-MONTGOMERY: Yes. I would
ask Mr. Sanford to come forward to give a presentation on those regulations.

MR. SANFORD: Good afternoon, again, William Sanford for the Office of Campaign Finance.

PARTICIPANT: You may need to speak up a little, Mr. Sanford.

MR. SANFORD: Sure. As Mr. McGhie indicated, the amendment would amend Title 3 of District of Columbia Municipal Regulations to include two new chapters. Those chapters are designed for the implementation of the Fair Elections Program.

Chapter 42 includes the general provisions of the program, including registration, mandatory filing, contribution limits, etc., which will be available in the D.C. Register when these regs are published. Chapter 43, we can proceed it only covers disclosure information and, also, the disposal of surplus property.

Both chapters are designed for the
implementation of the new Fair Elections Program. I just wanted to add that these regulations will undergo further revisions in the future for this particular program.

That will include revising Chapter -- or amending Chapter 99 definitions section to include some of the language that is being used in the Fair Elections Program, and also making a revision to Chapter 37, which is the fine schedule, after we devise a schedule for fines under the Fair Elections Program. We'd like to ask the Board to carefully consider accepting these amendments to our regulations.

CHAIR BENNETT: I would like to entertain a motion to accept that as proposed rulemakings. The rulemakings will be published in the D.C. Register for a 30-day comment period. At the conclusion of that 30-day comment period, we will come back to the Board for a final rulemaking.

Any questions, Ms. Lewis?

MEMBER LEWIS: No questions.
CHAIR BENNETT: Mr. Gill?

MEMBER GILL: No questions.

CHAIR BENNETT: Can I get a motion?

MEMBER GILL: So moved.

MEMBER LEWIS: Second.

CHAIR BENNETT: All in favor?

(Chorus of aye.)

CHAIR BENNETT: It's unanimous. Thank you, Mr. McGhie, Ms. Montgomery, and Mr. Sanford.

MR. MCGHIE: The final matter I have is a litigation status update. The Board is in court on Graham v. D.C. Board of Elections. That was a case dealing with the referendum measure. Proponents of the referendum filed a referendum on October 31st to suspend an act of the Council. It was the Council act that was repealing Initiative 77. Initiative 77, which passed, would have phased out a two-tier minimum wage system, common in most states, that allows employers to count gratuities when paying tip workers.

It would have gradually raised the
current hourly tip wage from $3.89 to $15.00 by 2025. Employers would have had to make up the difference if tips did not add up to the standard minimum wage.

Again, this was a referendum to suspend the Council's repeal of Initiative 77. The Board formulated that initiative and published it in the Washington Post and the D.C. Register, and it was challenged in court. Basically, the challenge in court was for three reasons.

The plaintiffs alleged that there was not proper notice by the Board in its initial meeting, when it decided on the proper subject and when it made the formulation of the language. They also alleged that the formulation of the Board's language was improper or was misleading. Finally, they challenged the Board's determination that it was a proper subject for a referendum. It went to Superior Court Judge Neal Kravitz. Judge Kravitz ruled in favor of the plaintiffs on the notice issue.
He formulated the language for the initiative himself, and he held off on making a determination on the proper subject matter. That's scheduled for a status hearing on December 21st, just on the issue of proper subject matter.

Judge Kravitz also, in granting the plaintiff's motion on the proper notice, stayed the Board from -- allowed the Board to receive the petition sheets from the proposers on the 12th of December, but directed that the Board could take no further action on processing the referendum. At this point, the intervenors have filed a notice of appeal. The Board has yet to make a determination on whether we'll appeal the matter, as well.

CHAIR BENNETT: Anything else? Any questions, Mr. Gill?

MEMBER GILL: No.

CHAIR BENNETT: Ms. Lewis?

MEMBER LEWIS: No.

CHAIR BENNETT: None from me.

Anything else, Mr. McGhie?
MR. MCGHIE: That would conclude my report.

CHAIR BENNETT: Okay, great, thanks.

Any questions on this report, in general, Mr. Gill?

MEMBER GILL: No.

CHAIR BENNETT: Ms. Lewis?

MEMBER LEWIS: No.

PUBLIC AFFAIRS

CHAIR BENNETT: Next would be public matters. Any matters from the public? Ms. Brizill. Unfortunately, I think that neither one of those mics work, so if you could project, that would be great. There's only one mic there now, anyway.

MS. BRIZILL: Good afternoon. My name is Dorothy Brizill. I'm the executive director of DCWatch, a good government organization in the District of Columbia. I have a couple of issues or questions I'd like to raise with the Board, and I'd like a response back, if possible. First and foremost, on Mr. McGhie's last item regarding
the litigation that was filed in Graham v. The Board of Elections concerning Referendum 008, I would like a better sense of where the Board is on its belief regarding the requirement of notice.

As you heard from Mr. McGhie, Judge Kravitz essentially ruled against the Board, denied the referendum, because he felt that the issue of public notice regarding the November 9th Board of Elections meeting was not met. I must admit that I did read all the filings in the case.

What troubled me is Paragraph 9 of the Board of Elections' Motion to Dismiss, where it states -- your attorney has written prior to the discussion of the subject matter at your November 9th Board of Elections public hearing, the Board addressed the procedural issue of whether the hearing was properly noticed.

The Office of the General Counsel advised the Board that the District referendum laws did not contain a specific notice
requirement for the subject matter of formulation
hearing, and that any requirement for public
notice of a hearing under the District's
Administrative Procedures Act or Open Meeting
Clause was accomplished by the publication of
notice on the Board's website one week prior to
the hearing. Further, the Office of General
Counsel of the Board of Elections informed the
Board that notice letters had been delivered to
various public officials and interested parties,
and that notice of the hearing had been submitted
to the D.C. Register.

I will end there. That is a verbatim
reading of what the Board's attorney filed in the
matter. As you know, the public notice of a
hearing scheduled by the Board of Elections did
not appear in the D.C. Register until November
9th, the very day of the public hearing.

I would like some clarification, given
this language in a filing by your attorney in the
Superior Court, of what you believe the
requirement is regarding public notice is, both
with regards to subject matter, whether or not an
initiative or referendum or issue is proper
subject, as well as allowing for citizens and the
general public to comment.

CHAIR BENNETT: Ms. Brizill, first of all, thank you. Thank you for your question.
That is the very question that we're in the process of doing some analysis ourselves. We've been talking about that prior to this meeting, and we'll be meeting on that again afterwards. Right now, what I can refer you to is simply what you read and what you already have. After we finish our analysis and make some assessments, Mr. McGhie indicated earlier that we were considering appealing.

Once we do that, and once we make some assessment and determine how we want to move forward, we'd be happy to share our rationale with you. Right now, anything I give you is simply stream of consciousness and part of our thought process.

MS. BRIZILL: Mr. Bennett, what you've
just told me in response to my inquiry raises the
second part of my concern, which is you have
indicated that you and the Board are going to
have a discussion after this public meeting about
this very issue. Why can't you have a discussion
in front of the public, especially since it
corns an issue of adequate public notice?

CHAIR BENNETT: With regard to a legal
mater -- and there are issues around
attorney-client privilege, those kind of things
-- these will be discussions that fall into that
category.

MS. BRIZILL: I did not ask you the
question of whether or not this Board intends to
appeal the decision. I asked you the question of
how does this Board view and interpret what is in
the Code and in the regulations requiring public
notice.

CHAIR BENNETT: Ms. Brizill, the
answer to that question is exactly what you just
simply read. That is a part of our filings.
Obviously, the judge did not agree with us.
MS. BRIZILL: So you believe -- this Board believes that publication in the D.C. Register on the day of a public hearing is adequate notice to the public?

CHAIR BENNETT: Ms. Brizill, you're asking me to take a position on the matter that is a part of litigation, and I am not going to do that with you right now because I don't have a position on that at this point.

MS. BRIZILL: I'm just asking are you standing by what your attorney wrote?

CHAIR BENNETT: I've given you an answer. That's the answer that I'm going to stick with, Ms. Brizill. Do you have any other questions, ma'am?

MS. BRIZILL: Yes, I do.

CHAIR BENNETT: Okay, please, go ahead.

MS. BRIZILL: In your filings in the court, you make a big issue of indicating that the notice and the language of the referendum was published on your website.
CHAIR BENNETT: That's correct.

MS. BRIZILL: I am here to tell you it was not.

CHAIR BENNETT: Okay.

MS. BRIZILL: It was not, and I have email exchanges with your public information officer because it was not there. There was a banner headline saying it was supposed to be there, but the language, itself, was not there. It wasn't until November 27th that I got a response back from her, in which she provided me the language. It is a big fat error/lie to tell the court that it was on your website when it, in fact, wasn't. I don't know. I indicated -- I'd be glad to provide a copy of my email. I used multiple computers to try to bring it up. Finally, I wrote to your public information officer. She indicated there was a problem or an error. I also spoke to your attorney, Renee Christiansen. She had to intervene and provide me with it.

The final thing I would ask about was
-- an issue I'm going to raise, and I've already raised it, but I'll raise it with the Board of Ethics and Government Accountability, is the extent to which you're using closed-door meetings. I don't expect an answer to that.

Finally, I would like to ask about this matter that came up today about this Voter Confidentiality Act. What is its implications for those who are trying to verify whether or not someone is a registered voter? Are those records going to be redacted, so that we won't be able to find out, or how is it going to work?

CHAIR BENNETT: Ms. Montgomery or Mr. Sanford, would you like to -- I'm sorry; Mr. McGhie, you want to respond to that?

MR. MCGHIE: Yes. They're going to be treated like any other confidential voter. We have Supreme Court individuals that have confidential voters. We have judges that are confidential voters. I believe that it's just that no individual that's looking at the voter roll will be able to look at what their actual
address is.

MS. BRIZILL: Is the issue the
address, and not the fact that they're a voter?

MR. MCGHIE: It's the address.

MS. BRIZILL: So if I came to the
Board of Elections with a list of names and I
said I want to know whether or not these are
registered voters; I don't need to know whether
or not they're registered at this address; you
would be able to tell me?

MR. MCGHIE: You should be able to
look up and say that this person -- their name
should still be on the list, but their address
will not be on the list.

MS. BRIZILL: Will someone on the
staff here be able to tell me if they're a
registered voter at the particular address that
they might have signed on the petition?

MR. MCGHIE: Yes.

MS. BRIZILL: Thank you.

CHAIR BENNETT: Thank you. Any other
public matters for the Board? Yes, sir.
MR. SIMON: Chairman Bennett, members of the Board, my name is Gottlieb Simon. I'm executive director of the Office of Advisory Neighborhood Commissions. I don't seem to be in strong voice today. Can you hear me all right?

CHAIR BENNETT: Yes.

MR. SIMON: All right. I want to share with you a continuing saga of sorts. 1992, Peter Espenschied ran for re-election as an ANC commissioner. He got only about 40 percent of the vote. Lois Noroozi got the rest of the vote, almost 60 percent.

However, there was a small problem. She didn't realize she had to live in the single-member district in which she was elected at the time that she was elected. Before the results were certified, she sent a letter to the Board saying oops, my bad.

I have to withdraw. At which point, the question was who is going to become the commissioner? The Board, at that time, decided that it made sense to go to the runner up, so
they appointed the runner up as the winner of the
election. Some people were not satisfied with
this outcome, so the matter went before the Court
of Appeals. The Court of Appeals decided that
the Board had made an error and that the plain
language of the ANC statute was that the winner
-- let me put it this way, that the candidate who
got the most votes was the winner.

The Board had reasonably thought the
winner should be the most qualified or the only
qualified candidate, not somebody who was
unqualified. The court said no, that's not
right. You have to give it to whoever got the
most votes. That was 25 years ago.

Over the most recent decade, we have
had that issue come up more than once. In fact,
almost every election since -- to me, it might be
19, but actually since 2008, a person who has
withdrawn gets more votes than somebody else.
They call up to find out who is the winner, and
they may be told that the runner up is the
winner.
This is, of course, not consistent with the court opinion 25 years ago called Bates v. Board of Education. Subsequently, in each one of these situations, the Board has recognized that the wrong information went out and, subsequently, determined that there was no winner for those cases. I would like to suggest that we do something so that the confusion, and sometimes the embarrassment for all parties involved, could be mitigated. I would suggest that we perhaps put something into the regulations that would make this clear.

The plain language of the Act says the person who gets the most votes is the winner, whether they're qualified or not. That's a problem. Perhaps we could deal with some of that problem by having the Board insert a new definition.

My first reaction was to say why don't we call that the faux winner, or what about the unqualified winner, or what about the incompetent winner or the pretender to the seat winner. But
maybe the simplest and best definition might be -- and you may have much better ones than I can offer you right now.

Why don't we just define something called the pro forma winner and say that in the event that there is a pro forma winner, the Board will automatically declare there's no vacancy -- I mean that there is a vacancy. That way, when people call up, the confusion about how do you describe someone who got the most votes and is the winner, but isn't going to be seated, we need some term. There is no term for that at the moment. So a staff worker might very well respond to a telephonic inquiry and say you got the most votes, you're the winner, but that person may, in fact, not be allowed to take the seat, so that's confusing.

We had two cases this past election where a person withdrew belatedly. Their names were on the ballot, so they got the most votes, but they no longer could take the seat. Perhaps there was a lack of awareness of the decision
that I referred to before, Bates, which allowed
the information to get out that the first runner
up had won, and that turned out not to be the
case.

So a suggestion that we need to do
something so that when people look at the
regulations -- and I tried to find a clear
statement in the regulations that would tell
somebody that just because you're the runner up,
you don't get to be the person who takes the
seat. You can see there's some confusion, that
it would be helpful to have a clean statement, so
that everybody can know what the outcome is going
to be, without detailed and difficult research to
figure this out.

CHAIR BENNETT: Ms. Miller, do you
have a comment on that? That's an interesting
point, Mr. McGhie, but let me --

MS. MILLER: Obviously, Mr. Simon is
referring to something needing to be addressed in
the regulations. That case that he's referring
to, the Bates case, actually I'm trying to
remember it a bit. The way it came out was that
the loser never wins.

In other words, if there's someone who
receives more votes, then the next highest vote
getter -- and that person withdraws, we cannot
then certify the next highest vote getter as the
winner. There's some adjustment tweak in the
regulations that need to be made, in order to
qualify what he's saying and to put the proper
terminology beside that next highest vote getter
when someone withdraws. I believe that's what
you're saying.

MR. SIMON: Yes. I'm saying we need
to have some hook, so that people can see this
and identify it before it becomes a problem.

MEMBER GILL: I'm sorry; I got
confused -- so the decision, the court decision
was you can't just go to the runner up. I think
that makes a ton of sense because it may be 60
percent of the voters who just voted against that
person, so that's not right, either.

But your point being that we need
something in the regulations that allows for us
to describe the unqualified winner. I guess what
happens then, before -- we don't seat people who
are unqualified, but then there's confusing
thinking the runner up -- so we just need to
immediately say, as soon as we find out they're
unqualified, it's a vacancy. That's nowhere in
our regs, is that the issue?

MR. SIMON: It's not explicitly. If
you look up qualified/unqualified, you won't find
it this way. We did manage to clean up an issue
with regard to races that were only made up of
write-ins because in that case, it used to say
the write-in who's qualified or something of that
-- that was taken out. When we have a name on
the ballot and that person has withdrawn, we
don't -- at least I can't find any place in the
regulations that make it clear. It's not that
it's legally unclear, but it's --

(Simultaneous speaking.)

MEMBER GILL: -- imminently logical
thing to do.
MS. MILLER: Right, exactly.

MR. SIMON: I just wanted to give you a place mark for this issue because it happened this time. It happened the previous election. It happened the previous election. We should be able to get this cleaned up.

MS. MILLER: Actually, those vacancies, once they're certified, we don't conduct those elections anyway. The ANC does that.

MR. SIMON: Yes, but I'm talking about in a general election.

MS. MILLER: Right. I'm just saying, just so that you know, it's not an election we would have to conduct --

(Simultaneous speaking.)

MR. SIMON: The Board needs to establish that there's a vacancy.

MS. MILLER: Right.

CHAIR BENNETT: Explain to me, though, after -- thanks, by the way, for bringing that to our attention. After there is a person who is
unqualified that receives the most votes, that
person can't be seated. Obviously, because the
second-highest vote getter is not the winner,
they can't be seated either.

MR. SIMON: That is correct.

CHAIR BENNETT: Just from a procedural
prospective, or for my understanding, does the
ANC have the authority to, at some point, have
another election and seat someone in that seat
that is now vacant?

MR. SIMON: Yes. Once the Board
declares a vacancy --

(Simultaneous speaking.)

CHAIR BENNETT: The seat vacant,
right.

MR. SIMON: -- there is a procedure
for an advisory neighborhood commission to
conduct a vacancy filling procedure. But you
handle the general election process.

CHAIR BENNETT: So what you're asking
us to do is to clarify the regs to make it clear
that there is a vacancy that has occurred in
those cases where the winner cannot be seated.

MR. SIMON: That's right.

CHAIR BENNETT: Okay, got it. That's certainly fair. Is that something --

PARTICIPANT: Yes, we can do that.

CHAIR BENNETT: Could you submit -- I would really appreciate your submitting something in writing to us that made it real clear, so we don't end up missing the point.

PARTICIPANT: Exactly.

CHAIR BENNETT: All right, perfect.

Thank you so much for your time, and thanks for the point. Any other public matters before the Board? Okay, great. Thanks, this meeting is adjourned.

(Whereupon, the above-entitled matter went off the record at 2:44 p.m.)
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This is to certify that the foregoing transcript

In the matter of: Board Meeting

Before: DCBOE

Date: 12-14-18

Place: Washington, DC

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

[Signature]
Court Reporter