

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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SPECIAL BOARD MEETING

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FRIDAY

NOVEMBER 9, 2018

+ + + + +

The District of Columbia Board of Elections convened a Special Board Meeting in Room 7051, 1015 Half Street, S.E., Washington, D.C., 20003, pursuant to notice at 2:00 p.m., Michael Bennett, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

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

BOARD OF ELECTIONS STAFF PRESENT:

ALICE P. MILLER, Executive Director  
KENNETH MCGHIE, General Counsel  
RENEE CHRISTENSEN, Attorney Advisor

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

2 2:25 p.m.

3 MR. BENNETT: Good afternoon. My name  
4 is Michael Bennett, Chair of the D.C. Board of  
5 Elections. And we are opening up to have a  
6 hearing to, we're opening a meeting -- do we have  
7 a court reporter here? Can you hear us okay?  
8 Okay.

9 We're opening a meeting to have a  
10 hearing on the referendum regarding the repeal of  
11 the minimum wage provision that was passed and  
12 then repealed by the city council.

13 Let me introduce the persons that are  
14 here, to my far right, Ms. Alice Miller,  
15 Executive Director of Board of Elections, to her  
16 left, my right, Mr. Ken McGhie, General Counsel,  
17 Board of Elections, to my left, Board member,  
18 Michael Gill, and on the phone is Board member,  
19 Dionna Lewis. So we officially have a quorum.

20 I'd like to open up the meeting.  
21 There was -- we received a letter regarding this  
22 hearing not having been given timely notice. And

1 so we wanted to at least address that initially  
2 prior to proceeding. So I'd like for Renee to --

3 UNIDENTIFIED PARTICIPANT:

4 Christensen.

5 MR. BENNETT: -- I'm sorry, Renee  
6 Christensen to open up and to address the letter,  
7 please.

8 MS. CHRISTENSEN: Good afternoon,  
9 Board members. My name is Renee Christensen, a  
10 staff attorney for the Office of the General  
11 Counsel for the Board of Elections.

12 The Office of the General Counsel  
13 recommends that the Board continue with today's  
14 scheduled hearing concerning the referendum that  
15 was filed.

16 Notice of the Receipt and Intent to  
17 Review was submitted to the D.C. Register on  
18 November 1st for publication today, November 9th,  
19 to comply with Board regulation concerning  
20 publication of Notice of Intent, Notice of  
21 Receipt and Intent to Review.

22 Notice of the hearing was placed on

1 the Board's website last week, Friday, November  
2 2nd. Notice was also directly provided to  
3 various public officials and interested parties.  
4 Those interested parties have been identified  
5 from our record of those who participated in the  
6 Initiative 77 process. That particular notice  
7 was delivered to parties on November 1st.

8 MR. BENNETT: Okay. We've received  
9 and read the letter. Would the parties from --

10 UNIDENTIFIED PARTICIPANT: Barrison.

11 MR. BENNETT: -- yeah, Barrison law  
12 firm like to add anything to their, to the letter  
13 if they're here? Okay, if they're not here, it's  
14 done, everything.

15 Do the proponents of the initiative  
16 have anything to add to the issue around  
17 timeliness of the hearing?

18 MR. SANDLER: Mr. Chairman and members  
19 of the Board, I'm Joe Sandler. With me is Erin  
20 Tibe. We represent the proposer. Yuen Chung is  
21 also here, and the committee, Save Our Votes.

22 We believe that the notice was in

1 today's register, that it was, you know, it was,  
2 it is timely --

3 MR. BENNETT: Okay.

4 MR. SANDLER: -- and that, in any  
5 event, the requirements of the statute on  
6 administrative procedure have been satisfied  
7 through the notice on the Board's website.

8 MR. BENNETT: Joe, thank you. Do I  
9 have any questions from the Board members? Ms.  
10 Lewis, do you have any questions?

11 MS. LEWIS: No questions from me.  
12 Thank you.

13 MR. BENNETT: Mr. Gill?

14 MR. GILL: No questions.

15 MR. BENNETT: Okay. Since we have no  
16 other questions, the Board believes that timely  
17 notice was provided. And we'd like to, we will  
18 proceed accordingly. Okay. Mr. McGhie.

19 MR. MCGHIE: Okay. We are here for a  
20 proper subject determination hearing on whether  
21 or not the proposed referendum on a law repealing  
22 Initiative 77, Minimum Wage Amendment Act of

1 2018, is a proper subject for a referendum in the  
2 District of Columbia.

3 I've given out a handout, well, which  
4 explains on how a proper subject matter  
5 determination is made. If you don't have this  
6 handout, you can get one in the front or you can  
7 follow along with that easel.

8 It says initiative that is the same  
9 ten factors, or the same eight factors that, for  
10 an initiative is for a referendum.

11 So you can have a referendum in the  
12 District of Columbia on any law that you would  
13 like to suspend or suspend an act of the council  
14 from as long as it does not violate any of these  
15 eight provisions.

16 I'll just go through it real quick.  
17 This says, as long as it is not contrary to the  
18 terms of the Home Rule Act. It does not seek to  
19 amend the Home Rule Act. It would not  
20 appropriate funds. It would not violate the U.S.  
21 Constitution. It is not in compliance with the  
22 Office of Campaign Finance filing requirements.

1 It is not in the proper legislative form, whether  
2 it would lawfully discriminate, or would not  
3 negate or eliminate a budget act.

4 So that is the only determination that  
5 we're making today. We're not talking about  
6 anything on the merits of the referendum. It's  
7 simply an issue of whether or not any of these  
8 provisions apply that would preclude the  
9 referendum from going forward. And that would be  
10 it.

11 MR. BENNETT: Okay. Does the  
12 proponent of the proposed measure, let's see, I'm  
13 sorry, yeah, proponent of the proposed measure  
14 have any comments to make?

15 MR. SANDLER: Mr. Chairman, we agree  
16 and fully support the conclusion of the Office of  
17 Attorney General that it's a proper subject  
18 matter for referendum. Thank you.

19 MR. BENNETT: Okay. I'm sorry?

20 MR. MCGHIE: I was going to say, since  
21 he mentioned the Office of the Attorney General,  
22 I was going to say that the, I would like to have



1 the comments of the Office of the Attorney  
2 General submitted to the record. The Attorney  
3 General is, has concluded that it is a proper  
4 subject for referendum.

5 MR. BENNETT: Okay. And I think we  
6 have also the recommendation from the Board of  
7 Election General Counsel office that also  
8 indicates that it's a proper subject.

9 MR. MCGHIE: Yes, Ms. Christensen  
10 prepared that opinion. And would you like to  
11 state it now or --

12 MS. CHRISTENSEN: Yes, in short, the  
13 Office of the General Counsel has reviewed the  
14 measure and recommends that the Board accept the  
15 measure as a proper subject for referendum for  
16 the following reasons.

17 First, the proposer has satisfied the  
18 filing requirements specified under law. Five  
19 copies of the full text, Summary Statement, and  
20 Short Title of the measure were filed with the  
21 Board on October 31st. A statement of  
22 organization was filed with the Office of

1 Campaign Finance on October 30, 2018.

2 Second, the measure does not seek to  
3 suspend an act categorically or substantively  
4 exclude it from the referendum process. The part  
5 of the act which the measure seeks to suspend,  
6 mainly the repeal of Initiative 77, is not an  
7 emergency act, an act levying taxes, or an act  
8 appropriating funds for the general operation  
9 budget.

10 And substantively, Initiative 77  
11 provided for the gradual increase of the minimum  
12 wage for tipped employees to match the minimum  
13 wage of non-tipped employees by 2026.

14 The Board previously considered the  
15 subject matter of Initiative 77 and determined  
16 that it was a proper subject of initiative. That  
17 particular administrative order is enumerated  
18 Administrative Order 16-005. Specifically, the  
19 Board found that Initiative 77 did not  
20 appropriate funds.

21 Further, the measure does not violate  
22 or amend the Home Rule Act, authorize

1 discrimination contrary to the District of  
2 Columbia Human Rights Act, or negate or limit a  
3 budget act of the council.

4 MR. MCGHIE: Okay. Would the proposer  
5 or the counsel for the proposer like to be heard  
6 on whether or not this is a proper subject for  
7 initiative, I mean, referendum? Nope. Okay.

8 Is there anybody that would like to be  
9 heard opposing the referendum, that it's not a  
10 proper subject? Nope.

11 MR. BENNETT: Any questions from Board  
12 members? Ms. Lewis, on the phone?

13 MS. LEWIS: No, thank you.

14 MR. BENNETT: Mr. Gill?

15 MR. GILL: Nope.

16 MR. BENNETT: Okay.

17 MR. MCGHIE: Okay. At this time, I  
18 would ask the Board to entertain a motion to  
19 accept this as a proper subject for referendum in  
20 the District of Columbia.

21 MR. BENNETT: Can I get a motion, Mr.  
22 Gill?

1 MR. GILL: Motion to, for the Board to  
2 accept this as a proper referendum.

3 MR. BENNETT: Ms. Lewis, can I get a  
4 second?

5 MS. LEWIS: Second.

6 MR. BENNETT: Okay. It has been  
7 properly moved and seconded.

8 MR. MCGHIE: Okay. With that said,  
9 this being found to be a proper subject for a  
10 referendum --

11 MR. BENNETT: And voted upon.

12 MR. MCGHIE: -- and voted upon --

13 MR. BENNETT: As we are in unanimous  
14 decision on it. Thank you.

15 MR. MCGHIE: Okay.

16 MR. BENNETT: For the record.

17 MR. MCGHIE: All right. Then the next  
18 step would be to formulate the language that  
19 would appear on the ballot and be on the  
20 petition.

21 We have, my office has prepared a  
22 draft Summary Statement, Short Title and Summary

1 Statement for the Board's consideration. And,  
2 Ms. Christensen, do you have more?

3 MS. CHRISTENSEN: I do --

4 MR. MCGHIE: Can you hand some out to  
5 the public?

6 (Off mic comments.)

7 MR. MCGHIE: Does anybody else want  
8 any? Okay.

9 As I indicated, the law office has  
10 prepared a draft for the Board's consideration,  
11 which I will read into the record. Our draft  
12 proposal reads as follows.

13 The referendum measure number 008,  
14 Short Title, Referendum on Law Repealing  
15 Initiative 77, Minimum Wage Amendment Act of  
16 2018.

17 Summary Statement, a majority of  
18 District of Columbia voters approved Initiative  
19 77 on June 19, 2018. Initiative 77 gradually  
20 increases the minimum wage for tipped employees  
21 from the current rate, \$3.89 an hour, to the same  
22 minimum wage as non-tipped employees by 2026.

1                   In October 2018, the Council of the  
2 District of Columbia enacted a law to repeal  
3 Initiative 77. Referendum 008, if approved,  
4 would preserve Initiative 77 as originally passed  
5 and reject the repeal.

6                   Vote for Referendum 008 to keep  
7 Initiative 77 in effect and reject the repeal.  
8 Vote against Reference 008 to permit the repeal  
9 to become law and repeal Initiative 77.

10                   That Summary Statement and Short Title  
11 comes out to 97 words. The requirement is no  
12 more than 100.

13                   Would anybody from the public like to  
14 be heard on whether, on the Short Title or the  
15 Summary Statement, either for or against?

16                   MR. SANDLER: Thank you. Yes, on  
17 behalf of the proposer and the committee, we  
18 strongly support the revised language that your  
19 office has recommended. It's a formulation that  
20 was also endorsed by the Office of Attorney  
21 General.

22                   It's much clearer to the voter than,

1 in fact, what we had proposed. And so we  
2 appreciate your revisions and strongly support  
3 it, because it makes clear that if you vote for,  
4 you're voting for the, to retain the initiative,  
5 and if you vote against, you're voting the  
6 opposite way.

7 We hope the Board will adopt this  
8 revised formulation of the Summary Statement.  
9 Thank you.

10 MR. BENNETT: Thank you.

11 MR. MCGHIE: Is there anybody else  
12 that would like to be heard on, I mean, offer any  
13 comments or edits to the proposed Summary  
14 Statement?

15 MR. BENNETT: Okay. That's it.

16 MR. MCGHIE: So I would, if the Board  
17 members have any other questions, then I would  
18 ask the Board members entertain a motion to adopt  
19 the proposed --

20 MR. BENNETT: I'm sorry.

21 MR. MCGHIE: -- language of the Office  
22 of the General Counsel.

1           MR. GILL: May I make a motion that  
2 the Board adopt the language that was proposed by  
3 the General Counsel?

4           MR. BENNETT: Ms. Lewis, do you have  
5 a second?

6           MS. LEWIS: Second.

7           MR. BENNETT: All in favor?

8           (Chorus of aye.)

9           MR. BENNETT: Okay. Thank you. It's  
10 adopted.

11           MR. MCGHIE: I don't have anything  
12 further except to mention that now that the Board  
13 has adopted the summary language, the Board is  
14 required to publish it in the D.C. Register and  
15 at least one newspaper of general circulation.

16           Once it is published in a newspaper of  
17 general circulation, ten days from the  
18 publication date any registered, qualified  
19 elector can challenge the language and say it's  
20 misleading or for whatever reason. And if they  
21 do challenge the language, they have to go to  
22 D.C. Superior Court to challenge the formulation



1 of the language.

2 If nobody challenges the language  
3 within those ten days, it's deemed to be  
4 approved. And the Board will schedule another  
5 hearing to give you your petition. Does anybody  
6 have any questions?

7 MR. BENNETT: Hearing none --

8 MS. LEWIS: No, thank you.

9 MR. BENNETT: Mr. Gill, do you have  
10 any questions, comments?

11 MR. GILL: Just the comment for the  
12 proposers, if this goes through its process,  
13 you're going to have the opportunity to gather  
14 signatures to put this on the ballot. You are  
15 aware of the rules of gathering signatures,  
16 correct? Thank you.

17 MR. BENNETT: Okay. Any other  
18 comments or anything? Thank you, Mr. Gill, and  
19 most appropriate considering the last few months.

20 We thank you for your time. Apologize  
21 for your having to wait for a few minutes. But  
22 we thank you for the opportunity to speak with

1 you on this. And this meeting is hereby  
2 adjourned. Thank you.

3 (Whereupon, the above-entitled matter  
4 went off the record at 2:39 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Special Board Meeting

Before: Board of Elections

Date: 11-09-18

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.



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Court Reporter

**NEAL R. GROSS**

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