The District of Columbia Board of Elections convened a Special Board Meeting via Video-Teleconference, pursuant to notice, at 2:00 p.m. EDT, Gary Thompson, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

GARY THOMPSON, Chair
J.C. BOGGS, Member
KARYN GREENFIELD, Member

BOARD OF ELECTIONS STAFF PRESENT:

MONICA HOLMAN EVANS, Director
TERRI STROUD, General Counsel
CECILY COLLIER-MONTGOMERY, Office of Campaign Finance
(2:00 p.m.)

CHAIR THOMPSON: Happy Friday. It's a pretty nice day out there. Thank you, everybody, for being here. My name is Gary Thompson, the Chair of the Board of Elections, and joining us today are my fellow board members, Karyn Greenfield and J.C. Boggs.

We have a quorum. The very first thing I'll do is make a motion that we depart from our executive session which we've been in to deliberate. Do I hear a second?

MEMBER BOGGS: Second.

CHAIR THOMPSON: All right. All in favor?

(Chorus of aye.)

CHAIR THOMPSON: Okay, we have exited our executive session, and we are now here with you, the public, to make a determination on the matter pending before us, the Make All Votes Count Act of 2024.

Before we do that, I just want to take
a moment and say thank you again to everybody who has submitted testimony, written comments, supplemental written comments. This morning we received a new batch of written comments, both for and against. And we had enough time to read and study those.

I also just want everybody to know that we studied everything you submitted, every citation you gave us, every case you mentioned, we really worked hard on this one because we want to get it right. And your comments were really, really helpful to all of us at the Board of Elections to make sure we were reading everything that we should read to understand these issues and to keep careful track of other jurisdictions and, in some cases, courts that have commented on them. And of course, among your comments, we read a lot of commentary about the wisdom of the two proposed measures, either ranked choice voting or a partially open primary, and we appreciate those.

But as I said in the last hearing, our
job on the Board of Elections is not to opine on
whether there should or shouldn't be ranked
choice voting or whether there should or
shouldn't be an open primary. Our focus in this
hearing is whether these things constitute a,
quote, proper subject under the D.C. Charter,
under the D.C. Code, which also incorporates
asking ourselves whether these measures are
constitutional, consistent with the D.C. Human
Rights Act, consistent with the D.C. Charter.

So that has been our focus. And
before I make a motion, I also want everybody to
know, and hopefully to appreciate, that we are an
independent agency and an independent board. The
board itself of the Board of Elections, the three
of us, J.C. Boggs, Karyn Greenfield, and myself,
we are private citizens. We don't work for the
D.C. government. We are appointed by the mayor,
confirmed by the Council. We are called upon for
this civic service, and we truly are independent.

And I would like everybody to know and
appreciate that nobody calls us, nobody lobbies
us, no elected politicians, you know, have called me and told me anything about their views on this. And in fact, the only time the three of us have spoken about this on the merits is in our executive session, which we announced at the last public record. And we had some time, the three of us to share our thoughts and views and ask each other questions, which we did in a very deliberative way. And now we're out of that executive session. So hopefully to our independence and integrity, I thought it would be good for everyone to hear that reminder as to who we are.

So we heard all your testimony at our last hearing. We talked about it, we deliberated, we thought through every single issue that you raised, and at this time I'm going to make a motion.

And my motion -- by the way, there's no public comment in this public hearing. We've heard that from you, and so we'll just -- I'll make my motion on the record, we'll make some
comments, and then vote, and that will conclude the meeting.

So my motion is to declare that the proposed voter initiative called the Make All Votes Count Act of 2024, does present a proper subject of initiative under D.C. law without running afoul of the D.C. charter, D.C. Code 1-1001.16, the U.S. Constitution, or the D.C. Human Rights Act. In short, my motion is that we approve the voter initiative as a, quote, proper subject for the ballot.

And my motion having been stated, I would ask if there's a second.

MEMBER GREENFIELD: I second.

CHAIR THOMPSON: And before I call the vote, as is customary, all three commission -- all three board members -- I said commissioners because I used to be an ANC commissioner. All three board members may want to comment. We don't have to, we can just vote, but I'll just share briefly my own thinking.

The first issue is whether the voter
initiative appropriates funds or requires the allocation of revenues to new or existing purposes. The answer to me is no, it does not, because the proposed initiative incorporates a clause that makes it subject to appropriations. And as one of the witnesses, an attorney, very candidly stated, it remains a completely independent decision of the D.C. Council as to if this passes, as to whether or not they would appropriate funds to implement it. That will remain completely within their discretion. That's the core reason. I certainly read the Campaign for Treatment case, at page 797 in particular, which the OAG pinpointed. To me that was the sort of key turn in the case law that gave me comfort in that regard.

With respect to the ranked choice voting component of the initiative, I don't find that it violates the D.C. Charter or the Constitution or the Human Rights Act. There's been some case law on this topic in other jurisdictions that has found that ranked choice
voting is not unconstitutional. And once again, whatever I may or may not think about ranked choice voting in terms of its wisdom, this vote is simply to let the voters make that decision.

And finally, with respect to the partially open primary component, that's the one I struggled with the most, as I think I indicated on the record last time. And I want to thank the supplemental submissions in particular for helping us parse and zero in on what it is we're deciding here.

And ultimately, I found that it does not run afoul of our D.C. charter. We will still have, quote, partisan elections in that after the primary process, each party will still have a party nominee and only one on the general ballot. Neither do I find that it violates the Constitution or the D.C. Human Rights Act, largely for the reasons that cases in other jurisdictions, and in one Supreme Court case in particular had pointed out. And once again, I don't know whether it's wise or unwise, it's just
something that to me it is an issue that we can
certify as a, quote, proper subject matter and
pass on to the voters to decide.

So that's -- there's a lot of detail
in all of that, but that's my thinking in terms
of why I made the motion and why I plan to vote
for it. And with that, I'll ask Board Member
Greenfield next if she'd like to make some
comment.

MEMBER GREENFIELD: First of all, I
want to reiterate the thanks for all of the
hearing and all of the information and the
testimony. I think this is more than I've ever
seen before. I understand that means that's how
important it is. But it was very helpful on
that, I want to thank and appreciate it. We did
do a lot of deliberation on this issue.

But as we stated, agreement with what
the motion is, for other reasons, I do think that
they've addressed the issue in terms of
appropriation of funds with the language that's
in the initiative itself. And the open primary
or even the RCV is not a violation of the D.C. home charter, and that this is an initiative that needs to get in front of the voters. Based on that reason, it should get in front of the voters based on that reason. And that's the only determination you make is, is it a proper subject matter -- a proper subject of the initiative. We don't make any decision on the merits itself.

CHAIR THOMPSON: And Member Boggs.

MEMBER BOGGS: Yes, thank you, Gary and Karyn. I'm just going to add my thanks to my colleagues on the board. They're really true public servants. We had a great discussion on Wednesday and earlier today about this. It was dispassionate, it was thoughtful, and I think came to a good and unanimous conclusion to send this to the voters.

Now I think we may all have different views on open primaries and ranked choice voting. I don't know what your views are. It was dispassionate, and we really got to the nugget here. We're not opining on the merits or the
wisdom of either. But this deserves -- it was a proper subject, and it deserves to move forward.

I also want to thank the staff of the Board of Elections. They do a tremendous job in helping prepare us. I see Terri Stroud on here too, and she was part of the discussion and very helpful. So it makes my job or our job easier, I think, in working with these legal issues. We put a lot of time and thought into this.

And my third thanks goes really to all of you who participated in educating us on the issues, both for and against. It's extremely helpful. There were some excellent memos on the merits, on the legal issues, on just generally your views on the subject, and not just in writing, but earlier this week at our hearing.

I typically plan about an hour for these monthly meetings, and I think that went for maybe three hours more or less, four hours, and a great discussion, and just it's super helpful to us, but also it's just, you know, heartwarming to me to see that interest from folks, again, on
both sides of the issue and taking time out of
your days, busy days to weigh in on it.

So those are my three thanks, to my
colleagues, to the staff, and to all of you.
Thanks.

CHAIR THOMPSON: Okay, with that we'll
do a roll-call vote. I am in favor of the
motion.

Board Member Greenfield, how do you
vote?

MEMBER GREENFIELD: Aye. I'm in favor
of the motion.

CHAIR THOMPSON: Board Member Boggs?

MEMBER BOGGS: Aye.

CHAIR THOMPSON: All right, we are
unanimous. We have a lot of steps between now
and the time this may appear on the ballot.
Obviously the opponents have other options, but
I'll ask our General Counsel Stroud to address
next steps.

MS. STROUD: Thank you, Mr. Chair, and
good afternoon, everyone. A subject matter
determination having been made with respect to
the Make All Votes Count measure, the Board shall
assign a serial number to the initiative measure.
This would be initiative measure 83. Within 20
calendar days after acceptance, the Board has
several tasks that it must complete.

It must prepare a summary statement
that bears the serial number and expresses the
purpose of the measure. It must prepare a short
title that will allow voters to readily identify
the initiative measure and distinguish it from
others that may appear on the ballot. It must
prepare formulations in the proper legislative
format, and we do this with the assistance of the
Attorney General and the General Counsel for the
Council, and they are -- to that end they provide
feedback with respect to the legislative form.

Finally, we must request a fiscal
impact statement from the Office of the Chief
Financial Officer. And the -- we will get a
request out to the Chief Financial Officer either
today or Monday, and the Chief Financial Officer
has 15 business days of the date that we request such fiscal impact statement. And so if we send it out on Monday, that request would need to be fulfilled by August 14th.

And so after the receipt of the fiscal impact statement, then the Board will hold a public meeting to adopt the formulations. That would take place at a public meeting where we would -- we will have prepared our language for the formulations, and then there's the opportunity for the public to weigh in on the appropriateness of the language proposed.

And then within 24 hours after that public meeting, we would publish the summary statement and formulations and the fiscal impact statement on our website and submit it to be published in a newspaper of general circulation. And we would also publish the formulations in the D.C. Register. And that's an important date because it does trigger a period during which the formulations can be challenged.

And so that -- those are just
basically the next steps, and then depending on
the outcome of all of those processes, the Board
would also hold another public meeting to issue
the petition which would be used to circulate the
initiative measure.

And so, Mr. Chair, and for members of
the public, that -- those are basically the next
steps. So again, we would look to hold a public
hearing regarding the formulations at some point
after August 14th, which would be the date by
which the fiscal impact statement would have to
be provided by the Chief Financial Officer.

CHAIR THOMPSON: All right, thank you
so much for that. We won't take questions now,
but obviously there are multiple steps ahead,
and at each step we will communicate by notices
and publications. So everybody who is a part of
this or everybody who wants to follow this will
have future opportunities to make comment. And
obviously, as Terri Stroud just explained it, if
it gets to this point, petitions would be issued
and that's for signature gathering. And at a
point beyond that, we would still have to certify
that enough signatures are gathered as we had
some, you know, close calls with the last voter
initiative, 82, in that regard.

So it's a long road ahead before, you
know, it's on the ballot. All of these
procedures are there to -- for the best interests
of the voter, to make sure that what the voter
sees next year, if this makes it that far, is
proper and fair.

And I guess to kind of cap it off,
democracy belongs to the voters, and the voters
will decide whether they want these things or
don't want these things. And that's where it's
heading. So we really thank you again. It's
been really educational. And as a Board member
and as an attorney, really thoroughly interesting
to take a close look at all this.

So with that, unless any other Board
members or our General Counsel have anything,
I'll -- not seeing anything, I will move that we
adjourn and enjoy our weekend. That's part of
our motion, move that we adjourn and enjoy our
weekend. Is there a second?

MEMBER GREENFIELD: I second.

CHAIR THOMPSON: Okay. All in favor?

(Chorus of aye.)

CHAIR THOMPSON: All right, thank you
everybody.

(Whereupon, the above-entitled matter
went off the record at 2:27 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Special Board Meeting

Before: DC BOE

Date: 07-21-23

Place: teleconference

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

[Signature]
Court Reporter