GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ELECTIONS

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REGULAR BOARD MEETING

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TUESDAY

JULY 18, 2023

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The District of Columbia Board of Elections convened at 1015 Half Street, SE, Suite 750 in Washington, DC and via Video-Conference, pursuant to notice, at 10:30 a.m. EDT, Gary Thompson, Chair, presiding.

BOARD OF ELECTIONS MEMBERS PRESENT:

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

BOARD OF ELECTIONS STAFF PRESENT:

MONICA HOLMAN EVANS, Director
TERRI STROUD, General Counsel
CECILY COLLIER-MONTGOMERY, Office of Campaign Finance
WILLIAM SANFORD, General Counsel
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  1. Public Interest Legal Foundation v. 
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  2. D.C. Board of Elections v. Lamont 
     Harrell (D.C. Superior Court)

  3. Stacia Hall, et al., v. D.C. Board of 
     Elections (U.S. District Court for the 
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  **B. Proper Subject Matter Determination**

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## Adjournment
P-R-O-C-E-E-D-I-N-G-S

(10:34 a.m.)

CHAIR THOMPSON: Good morning, everybody attending by Zoom. Looks like 32 participants; a couple of dozen here in the audience with us. We are going to mute everybody joining via Zoom. And when the time comes, we'll call on you by Zoom.

So, my name is Gary Thompson. I'm the Chair of the Board of Elections. And present today is J.C. Boggs, Karyn Greenfield. So all three Board members are present. We have a quorum. And we are open for business.

And the first thing we do is adopt an agenda. So the agenda having been distributed, I would move the agenda.

MS. GREENFIELD: Second.

CHAIR THOMPSON: All in favor?

(Chorus of aye.)

CHAIR THOMPSON: And with regard to the agenda, we have our items for our normal meeting process, which we're going to put at the
top of the meeting.

It's going to take us about 15, maybe 20 minutes to get through our regular reports. And then, we'll turn to the main issue of the day, which is obviously the proper subject matter determination hearing for the proposed initiative, the Votes Count Act of 2024.

Which will occupy I'm sure the bulk of our meeting. So bear with us over the next 15 or 20 minutes while we got me through our normal monthly agenda. And of course, much of it might be of great interest to you.

So another quick housekeeping measure are the minutes of our last meeting of June 20th have been distributed to the Board members. We've all had a chance to review them and at this time, I would move those minutes.

MS. GREENFIELD: Second.

CHAIR THOMPSON: All in favor?

(Chorus of aye.)

CHAIR THOMPSON: Minutes are adopted.

(Simultaneous speaking.)
CHAIR THOMPSON: That's my mother, by the way, who's talking. Hi, mom. And my wife, there's my wife. All right, so Board matters, I don't have any random Board matters to address. Any, any other Board members?

MS. GREENFIELD: No, I don't.

CHAIR THOMPSON: Hearing none, we will turn to the Executive Director's Report from Monica Holman Evans.

MS. EVANS: Thank you and good morning. The Executive Director Report for the month of June is as follows. As far as hearings during the month of June, I appeared before Congress on June 7th, and there was a Council roundtable on June 26th.

On June 7th, I testified before the Joint House Administration Committee and Committee on Oversight and Accountability to discuss election integrity in the District of Columbia.

This hearing was a precursor to the introduction of the American Confidence in
Elections Act or ACE Act. And the ACE Act has now passed in committee and will be going to the full House.

On June 26th, I testified before the Council Committee on executive administration and labor. I address preparations for the 2024 election cycle and the implementation of newly passed legislation.

As far as precinct mapping, as required by our regulations, the Board is looking at our current precinct boundaries to divide the District into appropriate voting precincts based on our election wards.

We are working with Gottlieb Simon to complete this task. We are currently creating additional SMDs in our Electionware software platform.

And we will also need to conduct a comprehensive simulation of the redistricting changes based on the test decks before the mapping process is finalized.

ANC vacancies, we have 13 ANC
vacancies for the 2023-2025 term. These positions are in different stages of being filled.

After candidate filing requirements are met, an open vote of registered voters of the affected SMD will be held during regularly scheduled ANC meetings.

Based on current resignation notifications, the number of vacancies is expected to increase at the end of this month.

As far as the next steps and off year election planning, our draft primary and general election calendars for the 2024 election cycle have been posted on our website.

We have started processing election worker applications that have been submitted for the 2024 cycle. We are updating election worker assignment and training forms.

We are updating special ballot envelopes and prompt screens in our poll pads to adhere to new legislation allowing non-citizens to vote in local elections.
We are further reviewing the requirements of the Elections Modernization Amendment Act and the Local Resident Voting Rights Amendment Act. And we have provided information to our equipment vendors.

We've had several conversations to determine what is needed to augment our current systems. We will need to create a data visualization interface on our website and create a database solution to house non-citizens who registered to vote in local elections.

VR Systems is assisting us with these efforts. We will require additional equipment with our mail ballot processing activities. We received funding in our FY 2024 budget to purchase an additional Agilis machine that processes mail ballots and additional ballot tabulation equipment.

We are working on a brochure and other informational materials that will be used to assist us with our outreach in the District of Columbia to non-citizens. And we are creating an
election worker training addendum to address non-citizen voting in local elections.

Additionally, we're updating the election worker training platform, developing the 2024 voter education and outreach plan, and assessing our plan for vote center and mail ballot dropbox locations.

Our plan for the vote center and mail ballot dropbox locations will be posted this summer, likely late August, or early September.

As previously mentioned, we joined a cross-state data workgroup to explore ways to share voter history to address cross-state voter fraud.

Even though we are a member of ERIC, the Electronic Registration Information Center, many states are not members. Our participation with this group will allow us to engage more States.

Subgroups have met and we are discussing the development of a legal MOU and data requirement if they are utilizing the state-to-state data sharing program to report canceled
licenses.

Under this program, it provides another step to identify D.C. residents who move out of the District. But we have been informed by DMV that they are not using this data sharing program.

We are also engaged in conversations with Maryland, Virginia, and North Carolina to discuss the best ways to share data, and update information outside of ERIC.

Virginia has requested a current list of registered voters so that they can conduct their own comparison of the list. Upon request, Virginia will share the results of such a comparison with our office.

All of the most recent voting history data is in. And all of the deceased and in-state reports have been received from ERIC. We are currently working on cross-state triage. We are also acting on the records we receive from ERIC regarding the monthly duplication or duplicate information.
As far as other administrative matters, voter education and outreach, during the month of June, the Voter Education and Outreach Division conducted six outreach events on behalf of the Agency.

Events included a voter registration drive at Pennsylvania Avenue Baptist Church in celebration of Juneteenth and the Mayor's 12th Annual Senior Symposium.

Finally, we are preparing a voter education and outreach strategy that will be used in the implementation of the Local Voter Rights Amendment Act.

And we did receive funding in our FY 24 budget to hire a multilingual outreach specialist. In June, we registered 2,163 new voters and processed 5,145 registration changes. In total, we prepared 7,308 voter registration cards to be mailed.

Additionally, 39 registered voters moved out of D.C.. And 321 voters canceled their registrations and registered with other
jurisdictions. And 617 voters registered in D.C. after canceling their registrations in other states.

We’re continuing to register voters using our website portal. To date, we have processed over 36,125 applications using the portal. These include new voter registrations and updates to existing registrations. And that concludes my report. Thank you, Mr. Chair.

CHAIR THOMPSON: All right. Thank you very much. And now turning to our Campaign Finance Report from Director Cecily Collier-Montgomery. Is your mic on?

MS. COLLIER-MONTGOMERY: For the record, the full report of the activities involved in the Office of Campaign Finance for 2023 will be posted on our website, www.ocf.dc.gov before the closing of the hearing today.

I will, however, at this time highlight a few items of interest for the public from the report. This office for the record, for
the month of June, on June the 26th, 2023, I
presented testimony on the fair election program
as a roundtable on elections convened by -- thank
you.

Convened by Council Member Anita
Bonds, who is the Chairperson of the Committee on
Executive Administration and Labor of the Council
of the District of Columbia.

In our Fair Elections Program
Division, I would report that for the 2022
election cycle, the Office of Campaign Finance
has of this day authorized the total sum of
$13,557,106.70 for disbursement from the fair
elections fund in based amount and matching
payments to the two candidates who was certified
in the program to participate in the June 2022
primary election, as well as the November 2022
general election.

There was no disbursements authorized
during the month of June to the participating
candidates in the Fair Elections program for the
2022 election cycle.
With the 2024 election cycle, to date, there is one certified participating candidate, and one registered candidates who is seeking to participate in the program for the 2024 election cycle.

There were no disbursements from the fund, which were authorized by the office during the month of June 2022. The Division conducted 29 desk reviews of reports of receipts and expenditures which had been filed and issued four requests for additional information based on the review of those reports.

As of June 2023, the total sum of $686,433.82 has been remitted or deposited in the Fair Elections fund from the campaign operations of those candidates who are certified in the 2022 election cycle.

With our ongoing 2020 post-election full field audits, there are currently 15 post-election audits which are ongoing before the division at various stages.

And most recently, the Kevin Brown for
D.C. Council, Ward 7, non-compliance final audit report was issued and referred to the Office of General Counsel on June the 11th, 2023 for enforcement action. And that audit report is available at our website for review by the members of the public.

The FTP division has issued a total of 19 final audit reports of the post-election audits, which were initiated for the 2020 election cycle. The status of all the pending audit reports is stated in our report. And again, it will be posted at the website today.

With our 2022 post-election full field audit, I would indicate that we have issued 42 post-election audit or letters for the June 2022 primary election and the November 2022 general election to the candidates who were certified to participate in the Fair Elections program.

And those letters were issued in March of 2023. I would indicate that as of this date, we have issued eight preliminary statements of audit findings, and three final audit reports for
the 2022 election cycle. Again, the final audit reports are available for members of the public for their review at our website.

During the month of January, we did issue a preliminary audit findings report in the matter of Sriqui (phonetic) for Ward 3 schools for D.C. State Board of Education. And that was a preliminary audit findings report, which was issued on June the 13th, 2023.

And for the record, I would just indicate that with our preliminary audit reports, the candidate and the committee have the opportunity to respond to the preliminary audit findings before the final report is issued and made public.

In our public information and records management division during the month of June 2023 there were no due dates for the filing of reports, or receipts and expenditure.

With respect to new candidates and committees for the 2024 election cycle, there was one new candidate committee that registered in
the traditional campaign finance program and one
candidate who registered in the Fair Elections
program during the month of June 2023.

In the traditional program, for your
information, there are currently a total of four
candidates who are registered to participate in
the June 2024 primary election.

And the new registration is for the
office of U.S. Shadow Representative in the
primary election, Oye Owolewa and he registered
on June the 7th, 2023.

In our fair elections program, again,
there are currently two candidates who are
registered to participate in the 2024 June
primary.

And one of those candidates has been
certified as a participating candidate in the
program. The new registrant is for the Office of
Council, Ward 2.

And the candidate is Brooke Pinto, who
registered on June the 14th, 2023. There were no
new committee registrations during the month of
June. We did have five candidates and treasurer who completed the OCF mandatory entrance conference.

And those were: Brooke Pinto, candidate for Ward 2, city council; Gretchen Wharton, treasurer; re-elect Brooke Pinto 2024; Rahman Branch, candidate for Ward 8, city council; Rahman Branch, treasurer; Friends and Family to Elect Rahman Branch; Philip E. Pannell, treasurer; Make all Votes Count D.C.

In our traditional campaign finance program and that's our reports, analysis and audit division, during the month of June, the traditional audit programs conducted best reviews of the reports, and receipts, and expenditure, which have been filed.

And they conducted 23 desk reviews, and they issued, again, two requests for additional information based on the review of the reports which had been filed.

In the traditional audit branch there are two ongoing full field audits. And those are
full field audits which were initiated of newly
elected officials.

The first is Mendelson for Chairman
2022. Preliminary draft audit report was issued
on June 5th, 2023. And we are awaiting the
response from the committee, and once the
response is reviewed, the final audit report will
be issued and available at our website.

The second is Kenyan McDuffie 2022.
The audit field work is in progress, and the
audit field work is under review by the audit
manager.

And once that is completed, again, in
that particular audit, the preliminary audit
report will issue. The committee will have the
opportunity to respond to the findings before the
final audit report is entered.

And I would just also, the one last
thing I would mention for members of the public
is that we currently have posted on our website
the fact information sheets for the 2024 election
cycle, for both our fair elections program and
the traditional campaign finance program.

I would ask William Sanford, who is the General Counsel for the Agency to give the report of the legal division.

CHAIR THOMPSON: And while he's coming up, thank you so much for that report.

MS. COLLIER-MONTGOMERY: Thank you.

CHAIR THOMPSON: And just so everybody understands, we have a fair election program here in the District, which allows candidates access to public taxpayer dollars to fund their campaigns.

So we're busy this year auditing all the candidates who availed themselves of that program in the 2022 cycle to make sure that every dollar they spent was properly spent.

And we're obviously preparing now for the upcoming 2024 season where we expect the great majority of candidates to utilize the fair elections program.

So there's a lot of detail and hard work by the staff that goes into making sure that
that program operates appropriately. So thank you.

MS. COLLIER-MONTGOMERY: Thank you.

CHAIR THOMPSON: And with that, OCF General Counsel, Bill SanFord.

MR. SANFORD: Good morning, Mr. Chairman, distinguished Board members Greenfield and Boggs. I'm William SanFord, General Counsel for the Office of Campaign Finance.

During the month of June 2023, the Office of the General Counsel completed in eight informal hearings, and issued eight orders which included the following. One order was issued, in which no fine was imposed.

Six orders were issued, in which a total of $9,850 in fines were imposed. And one order was issued, in which the fine was reduced from $3,450 to $1,725, pursuant to a motion for reconsideration.

During the month of June 2023, the Office of General Counsel transmitted nine
petitions for enforcement to the Office of General Counsel for the Board of Elections.

For the record, the Office of Campaign Finance transmits petitions for enforcement to the Board of Elections, General Counsel for enforcement of orders and fines that have been imposed, subsequent to the time period in which a respondent could pay the file or appeal. And those petitions are enforced in the D.C. Superior Court.

During the month of July, of June, excuse me, the Office of the General Counsel imposed fines against the following respondents. A fine of $1,300 was imposed against Committee to Elect John Patterson. A fine of $1,000 was imposed against a second committee to Elect John Patterson.

A fine of $1,000 was imposed against the Committee to Elect Bill Lillis; a fine of $1,050 was imposed against a second committee to Elect Bill Lillis. A fine of $2750 was imposed against Friends of Courtney Snowden; and a fine
of $2,750 was imposed against Marcus for D.C.

During the month of June, the Office of General Counsel did not have any open investigations. There were no requests for interpretive opinions, and no show cause proceedings were conducted. And that should conclude my report.

CHAIR THOMPSON: Thank you so much. And that that demonstrates what happens when a candidate doesn't file their reports on a timely basis, among other things.

It elevates to the level of fines being issued. So thank you so much, Counsel SanFord. With that, let's turn to the General Counsel's report from the BOE, General Counsel Terri Stroud.

MS. STROUD: Good morning, everyone. I have the only litigation status on my report for this morning, I have three cases. The first is Public Interest Legal Foundation v. Monica Evans in her capacity as the Executive Director of the Board.
And this case is in the U.S. District Court for the District of Columbia. It is a suit that was filed under the NVRA, the National Voter Registration Act alleging that the Board is out of compliance with the NVRA's public records provision.

The Board's motion to dismiss, which was filed by the Office of the Attorney General, which is handling the case for the Board, was denied. And we are awaiting a briefing schedule on this matter.

The next matter is Petition for Enforcement, which Mr. Sanford and the Board Chair just spoke about. This matter is the D.C. Board of Elections v. Lamont Harrell in the Superior Court of the District of Columbia.

The Board's petition for enforcement of an Office of Campaign Finance order issuing a fine for failure to file a report was granted and a judgment was entered.

The last matter is Stacia Hall v. the Board of Elections. This is in the U.S. District
Court for the District of Columbia. The Office of the Attorney General, which is handling this case for the Board, as it concerns the Constitutionality of an act of the counsel.

The motion to dismiss that was filed by the OAG was filed on July 14th. And the Board's reply is due on July 28th. And so, that's where those matters stand. And that concludes my report.

CHAIR THOMPSON: All right. Thank you so much. And just so everybody's aware, that last lawsuit by Stacia Hall is the suit that asked a Court to enjoin our implementation of the D.C. Counsel's Act to allow non-citizens to vote.

So unless, and until, a Court issues an injunction in that regard, we are proceeding with planning for the 2024 election to include non-citizens as per the D.C. Council Act.

Okay. With that, I will turn to the main subject of today's hearing, the proper subject matter determination for the proposed voter initiative, The Make All Votes Count Act of
2024.

SUBJECT MATTER DETERMINATION HEARING

MAKE ALL VOTES COUNT ACT OF 2024

CHAIR THOMPSON: And I'll start with how we're going to proceed. I'll make some opening remarks. Then our General Counsel, Terry Stroud, will supplement my remarks. We'll cover some of the clerical/technical issues.

And then we'll turn to hearing your testimony. We will start with those who are in favor of the proposed initiative. And then, we'll turn to those who are opposed.

And when we start with those who are in favor, I'd like to start with the proposer, Lisa Rice. She's welcome to speak. And in addition, I believe she has counsel, Joseph Sandler, who will, we would also recognize.

I don't know if somebody from the D.C. Office of Attorney General would like to speak, but I would recognize them next as they submitted an opinion in favor of the proposed initiative.

And then I'll just call out the names
in no particular order really. Just it's the list I have based on written comments that were submitted to make sure we hear from everybody in the space of no more than three minutes.

We generally aren't strict about timekeeping. But I think we're going to have to stick to that today, because we have almost 30 people signed up.

So that would be over an hour and a half, even at three minutes. So think about your comments in advance. Think about how you could limit them to three minutes, or it would be great if we were only two minutes.

If you're an organization, we extend that to five minutes. So if you're speaking, if your organization is speaking on behalf of many individuals, we'll extend that to five.

And then when we turn those opposed, we'll hear first from the General Counsel's Office at the D.C. Council. Ms. Nicole Schiller submitted an opinion opposing the proposed initiative. So either he or someone from that
office could speak first, if they're here.

Otherwise, we'll turn to the list of
those who have submitted written testimony or
signed up to testify. So that's, that's how
we're going to proceed. And so I'll start with
my opening remarks.

You know, just in case everybody
doesn't understand this, our D.C. charter, our
Home Rule Act, allows for voters to propose laws,
just like our D.C. Council can propose laws.

There are provisions in the charter
itself. And as further addressed in our D.C.
Elections Code, in our own regulations, to
provide for an orderly process for the voters to
place initiatives on our ballot.

In any election, there's typically one
or two such initiatives as many longtime D.C.
residents know. The process for having a voter's
initiative appear on the ballot involves several
steps.

The first step is this one. We, the
Board have to ask ourselves whether the proposed
initiative is, quote, proper subject matter, which I'll summarize in just a second.

If it is a proper subject matter, we then turn to what will this Act be called? What are the words that will appear to summarize the voters' initiative?

That's a whole another, that's a different hearing from this one. And then the proposer has to go and acquire a certain number of signatures from across the city.

And a certain threshold has to be met in all eight wards, as well as the city-at-large, 5 percent, I believe. And if that threshold is met, then we would certify the initiative to appear on the ballot.

And that's subject to challenge, as well. And that's a different, that's a whole different hearing. So it's at least those three major steps and probably a few more.

(Audio interference.)

CHAIR THOMPSON: All right. Maybe we took care of that. And so that's a common
occurrence in the age of Zoom. Zoom bombers make a run at it from time from time to time. You might hear another one before the day is over. So our apologies. So where was I?

So there's multiple steps in the process. At no point in this process does our Board take a position on the merits of the proposed initiative. We don't ever say we're for it or against it.

We are the process for getting that initiative onto our ballot. So we don't mean to suggest we have a position one way or another when we're talking about procedural issues, like whether this is a proper subject.

That's not our role. That's obviously for the voters to decide, and that starts with whether or not this is a proper subject matter.

And to summarize that issue, our D.C. charter itself, which allows for initiatives, defines an initiative as a process by which the electors of D.C. may propose laws, except laws appropriating funds.
And that's -- that's one of the hurdles that the initiative has to cross. And there's at least seven or eight D.C. Court of Appeals opinions on this issue.

Because this frequently gets appealed up into the Court system. So we have a decent amount of guidance from our Court of Appeals. To quote one case, it's called Hessey, a measure is deemed to appropriate funds if it, quote, would intrude upon the discretion of the Council to allocate District Government revenues in the budget process.

And it then defines as unlawful any initiative that: 1) blocks expenditures of funds; 2) directly appropriates funds; 3) requires the allocation of revenues to new or existing purposes.

And I won't read the rest, but there's some pretty good guidance. And in that regard, I was reading from one of our own opinions since we're frequently called upon to address this issue of appropriations.
That was the more recent case of In Re Elizabeth Davis, Education Equity Pathway Policy Act of 2022, which our Board ruled upon I think about a year and a half ago. So we're no stranger to the issue. But that's not the only hurdle or issue that we have to address before we (audio interference) in our D.C. code, as well as our own municipal regulations. And those are well summarized in the notice that was issued for this meeting.

That our Board must refuse to accept the measure, if it determines that number one, the measure conflicts with the charter, our D.C. charter.

And that's not just with respect to appropriations. But there's other aspects of the charter that I think we'll hear about today, like the charter's design of a partisan election process.

Which impacts how we conduct our primaries, and whether the proposed open primary aspect of the initiative would interfere with
that. That's where that would fall.

We also have to address whether the measure conflicts with the United States Constitution. Obviously, it can't violate equal protection of laws, due process clause, et cetera.

In a more technical vein, we have to address whether the measure was properly filed, whether there's a verified statement of contributions that was filed in a timely manner. We have to address whether the measure would authorize discrimination in violation of the D.C. Human Rights Act.

We have to, of course, address the appropriations issue, whether it would negate or limit a budgetary act. Or more to the point, I think, here today, whether the measure would impermissibly appropriate funds under applicable D.C. Court of Appeals ruling.

So we have a lot to think about as a Board. And there's also, obviously, two aspects to this proposed initiative. They really might
have been two different initiatives.

But they're together in one, which is -- I'll let other people summarize exactly what it is. But it proposes the possibility of utilizing ranked choice voting in our elections here in D.C.

And in addition, it proposes having open primaries so that unaffiliated voters who aren't affiliated with either party could if they choose, participate in the Republican or Democratic primary election, at that time.

So those are the two issues that are proposed for our consideration. We have to filter it through all of those issues. And so, that is, that's my overview.

And I wanted to explain that in part to make sure people understand that, that's our focus today, is proper subject matter determination.

We're thinking about whether this requires appropriations. We're thinking about whether this is Constitutional or violates the
Human Rights Act.

We're thinking about whether this is consistent with our charter. We're not really thinking about whether this would ultimately be good, or bad, or a wise, or unwise thing for D.C.

And we very much appreciate it if you would like to share your opinions in that regard, but just so everybody understands what our focus is for this hearing, we're thinking about proper subject matter determination.

And with that overview, I would ask General Counsel, Terri Stroud, to supplement or add to anything I said.

MS. STROUD: Thank you, Mr. Chair. I think you did a very comprehensive job of explaining the background on initiatives and what the Board is to do today.

I would just state for the record that the initiative measure was filed on June 16th with our office. It met all of the filing requirements necessary in order to proceed.

The proposer, Ms. Lisa Rice provided
the requisite number of copies of the text measure for the initiative: a summary statement that did not exceed 100 words, a short title of the measure to be proposed by the initiative.

And she provided an affidavit which gave all the required information. And we also received a copy of the statement of organization and a report of receipts and expenditures, which are collectively called the verified statement of contributions with the Office of Campaign Finance.

And Wesley Williams, who is a staff member, he's the Operations and Policy Officer for the Office of Campaign Finance did provide a message to me on June 16th.

Indicating that the verified statement of contributions had in fact been timely filed, as well as the committee's first report of receipts and expenditures. And he indicated that the committee had satisfied its registration requirements with the Office of Campaign Finance.

They also provided that ahead of
submitting the initiative measure. And so, Board members, the initiative did meet all of the clerical requirements with respect to filing.

CHAIR THOMPSON: All right. Thank you so much. So that's two of the seven issues that I talked about, we don't have to think about anymore.

It met all the proper requirements for filing and contributions, et cetera. So with that, unless there's any other opening comments from our Board members, we will turn to testimony from those who are in favor.

And by the way, I mean, we divided this between those who are in favor and those who are opposed. Obviously, some people might have a mix of opinions in that regard so don't feel like these are absolute (audio interference).

She's submitted written. Ms. Rice, thank you so much, and welcome. And also remind everybody who speaks -- yes, please have a seat.

As all of us perhaps need reminding, from time to time, is to lean into the
microphone. And try to speak up especially so that I think the people on Zoom can hear, as well, so.

And yes, please. And I will try to keep time, you know, in a three minutes. Five minutes as the proposer? You're the proposer. You've got five minutes. All right. Thank you so much. Please proceed.


I'm the proposer of the Make All votes Count Act of 2024. I'm a registered Independent voter, designated as NP, no party, on my D.C. voter registration card.

Born and raised in Washington, D.C.. I live in the Ward 7 home my husband and I renovated in 2015, which my parents bought in 1964 when I was just three years old.

I've registered to vote in D.C. when first eligible to exercise the right to vote at
age 18. I am the matriarch of a deeply rooted
multi-generational Black family with a vested
interest in this community. I'm also the mom of
a D.C. public school teacher.

I serve my local community as an
Advisory Neighborhood Commissioner for single
member district 7B07, representing residents of
the Penn Branch, Dupont Park, and Fort Davis
neighborhoods.

The Make All Votes Count Act of 2024
is deeply important to me. The two electoral
reforms proposed in the measure, open primaries
and ranked choice voting are critical in making
our elected officials accountable to we, the
people of Washington D.C.

The combination of the two would be a
bold, next step forward in holding politicians
accountable and ending voter suppression. I,
along with 86,000 others am currently ineligible
to vote in D.C.'s most important election, the
primary, because I don't belong to a political
party.
Independent voters like me are discriminated against, our votes suppressed, simply because we choose to exercise our Constitutionally guaranteed right to vote without subscribing to a political party.

If D.C. voter registrations aligned with national trends, over 50 percent of our young people aged 18 to 25 are registering as independent. We risk losing an entire generation of voters if we don't accept them and expand the franchise.

(Audio interference.) Open primaries (audio interference) primary elections. We must have that right. Voter suppression in D.C. must end. I wonder if in fact the current system where independent voters are excluded from primary elections may be in violation of the intent of the D.C. Human Rights Act.

This proposed ballot initiative seeks to correct the error which permits discrimination against a specific category of voters, those registered with no party. I am one of these
voters.

Reforming primaries is a necessary policy change to encourage the participation of more Washingtonians in the democratic process. From a voter's perspective rank choice voting is easily explained and executed. As adults, we rank our decisions regularly.

The criticism that rank choice voting is too complicated for Black voters and seniors, I am both, is insulting and archaic. Ranked choice voting gives candidates the opportunity to campaign in a new and exciting way.

Because candidates need more than 50 percent of the vote to win, we would be rewarded with politicians who must work hard for our support. What could be better or more democratic than that?

I strongly believe that combination of open primaries and ranked choice voting gives candidates and elected officials more independence and freedom to be true to their values and the concerns of their constituents.
These electoral reforms helped create the space for politicians to engage with us as true public servants, as they likely intended to in the first place.

It's time to put voters first. Let's end voter suppression here in D.C. with open primaries and make politicians work to be accountable to the people.

I appreciate each and every one of you. Thank you for the opportunity to address this hearing. I'm delighted to bring these reforms to the ballot in 2024 and let the people decide.

CHAIR THOMPSON: Ms. Rice, I want to thank you.

MS. RICE: You're welcome.

CHAIR THOMPSON: Our charter and our laws have a process for voters to propose laws. And it's quite elaborate, but it takes a voter to step up and make the proposition. So thank you for taking the time.

MS. RICE: My pleasure to do it. I'm
really excited. Thank you.

CHAIR THOMPSON: You were provided five minutes. Thank you. And if I didn't say it before, I'll hold up one when you're speaking when you have one minute left. And just do your best.

And also, I should say for the record, we have received written comments. Some of the -- those who have submitted written comments also signed up to speak, to speak as well. But just so everybody knows, we received that. And we read them carefully.

Your comments, Ms. Rice, comments from Kelsye Adams, Kymone Freeman, Stefan Katz, Harsha Jodali, John Koza, Brianna McGowan, Slobodan Milic, and Whitney Quesenbery. We have all those in the record and we read them closely. With that, I believe Ms. Rice is represented by Joseph Sandler --

MR. SANDLER: Yes.

CHAIR THOMPSON: -- by Zoom. And Mr. Sandler, please proceed.
MR. SANDLER: Thank you very much, Mr. Chairman and members of the Board. Can you hear me?

CHAIR THOMPSON: We sure can.

MR. SANDLER: Great. Of the seven potential grounds on which the Board could determine that initiative is not a proper subject, it appears that only one is really potentially at issue here, and that is whether the measure appropriates, impermissibly appropriate funds.

We recognize that there's a disagreement on this issue between the counsel to the D.C. Council and the Attorney General of the District of Columbia. But we respectfully suggest that the Attorney General's opinion on this issue has the better of the argument.

As the Attorney General points out, if an initiative is made subject to appropriations, it does not compel then the Council to appropriate any money, but it's conditioned on the independent decision of the Council to
appropriate funds for the measure if that is necessary, according to the fiscal analysis.

The counsel to the D.C. Council suggests that if that position were adopted, then every initiative that requires the allocation of additional funds would be a proper subject of initiative which render a nullity the Home Rule Act's prohibition on initiatives that are laws appropriating funds.

That is not so. It's only in the situation where an initiative is made subject to appropriations that it basically would not cross the prohibition that's set in the Home Rule Act.

Furthermore, the Home Rule Act provision precedes two statutory developments. One, the requirement for, basically that everything is subject to, automatically considered to be subject to appropriations, D.C. Code 1.301.47A(d). And the more recent 2020 amendments, which require a fiscal analysis for initiates.

So we respectfully suggest the
Attorney General has the better of this argument. It does not appropriate funds. It is only effective if the Council determines to appropriate such funds as may be necessary to be appropriated based on the fiscal analysis. And accordingly, it's a proper subject for an initiative.

CHAIR THOMPSON: Mr. Sandler, I'm going to ask you some questions. If I may?

MR. SANDLER: Sure, Mr. Chairman.

CHAIR THOMPSON: You are in what the Attorney General set forth in his opinion. I mean, obviously, and I think it's a matter of record as well, ranked choice voting if implemented, and open primaries if implemented, would require expenditure of funds, additional staff, additional time, et cetera.

There's really no doubt that money would have to be spent. The act, as proposed, you know, mandates that these things happen. And then in Section 5 of the proposed act that it has special statutory language that in so many words
says, subject to appropriations.

So I guess the hard question for you is, well, if all you have to do is add this final section that says subject to appropriations, don't you, in fact, circumvent or really make meaningless the charter and the code's prohibition on initiatives that require appropriations?

For example, you could propose that a new school be built, and just say at the end, subject to appropriations. I mean, isn't that a circumvention?

And if you could, in your answer, maybe I'm sure you've read it, maybe address this campaign for treatment case that the Attorney General underlined?

MR. SANDLER: Well, it's not a circumvention precisely because despite the will and the voters approving the measure, it does not become effective. It doesn't become a law of the District unless funds are appropriated, and there's no limitation in initiative, or also in
the law, on the discretion the Council can
exercise in the normal course as to whether it
ever decides to appropriate those funds.

So it's a very, very significant, you
know, limitation condition on the act becoming
effective. And it's not, you know, in that
regard, it's not a, you know, it's not a
circumvention at all.

It serves the purpose of the Home Rule
prohibition by not forcing, you know, the
Council's hand or forcing the appropriation of
funds that aren't independently decided to be
appropriated by the Council.

The campaign treatment case in which
the Attorney General relies appears to, you know,
support that position, because in the one case
where -- they didn't find a prohibition in the
one case where it was subject to appropriations.

But you know, declined to just read
that language into everywhere else. And
therefore, those other provisions did infringe
the prohibition. So we agree with the Attorney
General's reading that, subject to appropriations condition, obviates the prohibition, and would also note that, in terms of reading it into the language, it's automatic now under, again, this Section 1.301.47A.

But in any event, we have tried to obviate any ambiguity on that by including the subject appropriations language in the proper form.

CHAIR THOMPSON: So I guess to be clear, if this initiative, if it is approved for the ballot and the voters were to implement or to adopt, say yes, and it was passed, to be clear, the initiative would not, in fact, implement ranked choice voting or open primaries.

That D.C. Council would then have the completely independent ability to decide whether or not to fund it. And it could be the present Council or maybe a future Council, they have the final say and really the only say on whether appropriations would be a dedicated to it actually implementing the ranked choice voting
and open primaries. Is that right?

MR. SANDLER: Yes, that is that is exactly right. It would note that the -- yes, it would, of course, there's a certain, you know, moral force, equitable force to the voters' decision that then, hopefully, you know, we would hope the Council would respect and follow.

But they're absolutely under no, you know, legal obligation to do so, as you point out. And this is on the assumption, Mr. Chairman, that the fiscal analysis shows that there are appropriations needed.

CHAIR THOMPSON: Yes, well the consequences --

MR. SANDLER: We're assuming that for purposes of our argument, though. And that's --

CHAIR THOMPSON: My last one -- the concept that I read is that the voters are allowed to propose any law that the D.C. Council can propose. They really sit in substitution of our D.C. Council when they're proposing legislation.
So my question is, does the D.C. Council, maybe not typically, but sometimes adopt legislation that is left contingent on a subsequent decision by a different Council, or a different act of Council to fund it?

MR. SANDLER: I'm not sure about that. I don't know if that's -- I assume, I mean, I can't think of examples right away. But theoretically, certainly that's possible.

CHAIR THOMPSON: I saw some hands go up. Maybe someone in comment will address that. But those are all my questions of a legal nature for counsel Sandler. All right. Anything else? Mr. Sandler, I did have one more question. You said -- I apologize.

You said that the subject to appropriations issue is perhaps the only issue. And I wanted to point out that there are other issues we have to address. And maybe I'll throw this one to you as well.

Our D.C. charter quite clearly provides that our Mayor, our Council, and the
Attorney General are all to be elected on a, quote, partisan basis. Which means that the party, that proper party, whoever that might be, Democrat, Republican, Libertarians, Statehood, a party has the right to put forward a nominee for the general election.

And to quote from the charter, a political party may nominate a number of candidates for the office at-large member of Council, et cetera. So there's reference to not just partisan elections, but the right of political parties to make this nomination.

So when you turn to this concept of there being an open primary, you know, generally as a -- well, right now we have a closed, what you would call a closed primary where only those who choose to affiliate with the Democratic Party can vote in the Democratic primary, et cetera for Republicans.

This initiative proposes that we have a system whereby you still can't switch from Republican to Democrat, or vice versa, within 21
days of the election.

But if you are unaffiliated going into
the election like Ms. Rice said she is, on the
very day of the election, you can choose to
select the ballot, or say the Democratic primary
and vote in that primary.

Allowing unaffiliated voters,
individuals who have chosen not to affiliate the
Democratic Party or the Republican Party to
nevertheless vote in that party's primary, does
that run afoul of the system that's outlined in
our D.C. charter?

And it's really an intertwined
question. Does that in fact, violate the First
Amendment Right of a party to select a nominee of
its own choosing, what's called the right of
association? If you read the case law, there's a
Supreme Court case on this called Jones, et
cetera.

So there's this issue of whether an
open primary is permissible under D.C. charter,
which distinguishes itself perhaps from Maine, or
San Francisco, or some of these other, you know, cities where this has been looked at. Is that something we should be concerned about?

MR. SANDLER: No. It does not violate the home rule provision. A partisan primary means that each party nominates whatever in the case of at-large, whatever the permitted number is, for at-large it's two. The number of candidates that you know, are supposed to be selected, they're labeled by party.

Only those who are either registered party members or publicly declare themselves to be affiliated with the party for purposes of that one election participate in the primary.

And if you look at the, you know, the concepts in the Jones case, and the Washington Grange case, it's clear that this is consistent. It's a partisan election, you know. They're nominated by, the candidates are nominated by party. They run with the party label.

They're not multiple, you know, it's not a blanket primary where you have, you know,
multiple candidates from the same party in one
general election, or they don't run with the
party label under any, you know, framework.

It's definitely a partisan election.

It is, we don't believe that it, you know,
violates the Constitutional, the associational
rights of the party.

Again, these are voters that publicly
declare themselves to be, you know, wanting to
participate in the primaries of their choice.

The party can contact them. They can
treat them as, you know, members going forward.
And we do not, we don't believe that there's any
Constitutional concern in that regard.

MS. STROUD: But just for the record,
by the terms of the measure, the individuals who
are unaffiliated do not register prior to the
ballot?

MR. Sandler: Right.

MS. STROUD: Okay, I just want to
clarify that.

MR. Sandler: Exactly. But there is
a record of which ballot.

MS. STROUD: Thank you.

CHAIR THOMPSON: All right. Thank you so much, Mr. Sandler.

MR. SANDLER: Thank you.

CHAIR THOMPSON: We really appreciate you being here. Next, I'll ask if Attorney General Brian Schwab or somebody from his office is present and would like to speak? You don't have to. We have your written comment. But I'll look for a raised hand on Zoom if somebody from OAG would like to address us.

(Pause.)

CHAIR THOMPSON: All right. And just so, you know, everybody knows this process of rendering a subject, proper subject matter determination, expressly entails advisory opinions being submitted to us from the Attorney General, and also from the General Counsel to the D.C. Council, which is also counsel to D.C., counsel of Council.

And we've received those two opinions.
And they differ. So we have, I guess, representing both sides is rare I think, we have those dueling opinions. So we've read them closely.

I want to thank Attorney General Schwab and his team for submitting this opinion. And it's really quite a detailed and contains a lot of legal citation.

And as an attorney, it gave me all the citations I needed to, kind of, find my way to relevant cases and statutes. So just a word of appreciation. So not seeing a hand from OAG, if you change your mind, just let us know.

I will turn next to, I guess, the second person who signed up for testimony, the Reverend Wendy Hamilton. If she's here, or here by Zoom? And bear with us as we kind of spot somebody that's here by Zoom only.

REVEREND HAMILTON: I am here. Can you hear me, okay?

CHAIR THOMPSON: Yes, I can. Thank you so much.
REVEREND HAMILTON: I'm not sure why my camera's not showing right now. But I am here and thank you so much for allowing me to testify this morning. Good morning to all of the Board members and all of the folks on the call.

My name is Reverend Wendy Hamilton. And I am here to testify in support of the Make All Vote Count D.C. Act of 2024 as a valid subject matter and a critically important opportunity for D.C. voters.

I am an ANC Commissioner in the great Ward 8. I'm a D.C. statehood activist, a faith leader, and a Caucus Co-Chair on the D.C. Democratic Party State Committee.

But I am also, and most importantly a resident, a voting resident of Washington D.C., who believes that opening the primaries is a tangible step toward ending voter disenfranchisement in our city.

As all D.C. residents are taxpayers and they pay for the Democratic primaries. Though, unaffiliated residents are barred from
participating in these primaries, where most political outcomes for D.C. elections are decided.

Since we are a majority Democratic city, I think it's important that all the people in the city have a voice in our elections. Over one sixth of the D.C. voting population right now is disenfranchised because of our closed primaries.

And this ballot initiative rectifies that violation of voting rights. So open primaries, but also rank choice voting. I support rank choice voting because it is a proven system that reflects our democratic values of inclusion, equity and choice.

I have been a vocal proponent and supporter of rank choice voting for several years, after seeing how it can address a number of problems in our electoral system, and help elect and protect the political power, particularly of women and people of color. In both -- excuse me.
In Federal, State, and local elections, nationwide, rank choice voting has demonstrated its effectiveness in assuring that candidates win with a majority, 51 percent of the vote.

And that represents the voices of the voters, the majority of voters in those jurisdictions. I believe we deserve that same opportunity here in D.C., and this initiative makes that happen.

So if we care about all voices being represented, and this is, you know, indicative even in the statehood fight. We're fighting for representation for all 700,000 D.C. voters. I think we need to do the same thing here.

And I believe that open primaries, and certainly ranked choice voting are two measures that will move us more close to that particular goal.

So let's make all votes count here in D.C. and take this initiative to the people. Let the people decide. Thank you so much for your
time. I appreciate being able to testify.

CHAIR THOMPSON: All right. Thank you, Reverend Hamilton. And as a former ANC Commissioner, thank you for your service on the ANC. Next, speaking of an ANC Commissioner, we have Peter Wood, from ANC 1C003. If Mr. Wood is here? Or maybe --

MR. WOOD: Right here.

CHAIR THOMPSON: -- there he is. Go ahead, please.

MR. WOOD: Good morning, hi. My name is Peter Wood. I'm a Ward 1 resident, currently serving Adams Morgan as ANC Commissioner. I'm here today to express my support for affirming the Make All Votes Count Act of 2024 as being a proper subject matters to be considered as a ballot initiative on the 2024 general election ballot in Washington, D.C.

To begin, I want to advocate for why D.C. voters should be given an opportunity to vote on this act. As we know D.C.'s history with democratic representation leaves quite a bit to
be desired.

For example, we have seen it is extraordinarily difficult for any group to earn elected representation in D.C. unless it is done through the majority political party.

Because of this, closed primaries with low turnout, and until the advent of the Fair Elections program, relatively few candidates have been the mechanisms for determining who governs D.C.

This system was not chosen by D.C. residents, but imposed through Federal legislation written by Congress numbers, D.C. voters had no choice and electing. Including, the Make All Votes Count Act on the 2024 ballot gives D.C. voters an opportunity to choose a system that works for us.

I just want to briefly review how this act holds up when evaluated according to the rules binding this Board's decision. First, the U.S. Constitution, which states the United States shall guarantee to every state in this union a
republican form of government.

Now, of course, the key word in this clause is State, given that D.C. Statehood remains a goal unachieved. But this is the exact type of moment D.C.'s local bodies like the Board of Elections need to make abundantly clear. D.C. behaves like a State because we are one.

And as such, D.C. voters are given fair opportunity to vote on proposals to potentially make our elections more representative of the voting populace.

Related to this is Federalist Paper 39, which notes it is essential to such a government, that is one that is a Republican representative system, that had been derived from the great party of the society, not from an inconsiderable proportion, or a favorite class of it.

The Make All Votes Count Act addresses this question of representation in government and deserves to be decided upon by the voting populace. Next, the D.C. Human Rights Act, D.C.
has 21 protected traits listed in this Act.

No. 12 on that list reads, political affiliation belonging to or supporting a political party. Not only does the Make All Votes Count Act of 2024 not violate this, but is a useful example of how we still have room for improving how political minorities are treated in D.C. and that includes non-affiliated voters.

Voters deserve to decide whether the Make All Votes Count Act is a desirable proposal for further advancing human rights in the District of Columbia.

And lastly, the D.C. Home Rule Act, of the many items addressed in the text, section regarding at-large members of D.C. Council is, I think, particularly relevant. The specific language reads not more than two of the at-large members, excluding the Chairman shall be nominated by the same political party.

It is clear, by at least to me, that the rules regarding elected representation in D.C. were written with an understanding that
single party monopolies on power ought to be avoided.

By offering the people of D.C. a chance to vote on the Make All Votes Count Act of 2024, we can take a step toward potentially furthering this goal of representing diverse viewpoints in our diverse community.

Washington D.C. is a democracy that has too often had its residents denied opportunities to speak for themselves. I urge the Board of Elections to let us vote on this act next year. Thank you.

CHAIR THOMPSON: All right. Commissioner Wood, thank you so much. Next, we have David Krucoff. He's here in person. Nice to have everybody here in person -- either way.

MR. KRUCOFF: Good morning. Hello, can you hear me?

CHAIR THOMPSON: We're good. Okay, three minutes.

MR. KRUCOFF: Good morning. My name is David Krucoff. I'm a third generation
Washingtonian. I'm happy to be here today to testify in support of the initiative.

I believe what could be more appropriate than it being allowed, because it empowers us Washingtonians to have a stronger franchise. I'll be as brief as I can. I have some written remarks.

Many of us complain about political polarization nationally. We are a very, we are pretty upset with partisan political battles on Capitol Hill that prevents smart legislative action.

We are upset that almost everything the administration does is about the next election instead of about helping citizens. Locally, this condition is not a problem except when it comes to our disenfranchised existence. In political polls --

In D.C. public polls polarization is not the issue. Monopolization, is. For example, there has never been a non-Democratic person elected to the Council from a ward. It hasn't
happened.

Diversity of reasoning and background should provide a better foundation for decision making. We don't have any political diversity in the District of Columbia.

Human beings are individuals. But in D.C., our vote, for our vote to matter, we must be part of a Democratic primary. Perhaps hundreds of thousands of us who live in D.C. do not either wish to be a Democrat nor a Republican.

The first reason why I support the Make All Votes Count initiative, if implemented over time, it will help empower voters who do not wish to affiliate with either party, or with any party for that matter.

It empowers the individual. A closed Democratic Party which garners 20 percent turnout should not be the determining election in Washington D.C.

The second reason why I support the initiative is, non-majority winner takes all
primary winners, helps myopic candidates.

Using rank choice voting, on the other hand, encourages candidates to win over more than just their base. Going after second and third place votes in all places for all types of voters becomes much more important. Evidence shows the candidates campaign accordingly.

Lastly, and related to the second point, obtaining majority support just legitimizes the winner. Winning a closed primary without a majority of the vote in a multi-candidate field does not.

Elected politicians who won with a majority provided in instant runoff through rank choice voting should provide us with better leaders. Let's work together to improve our democracy in D.C., the nation's capital.

One way to do this is to allow the Make All Votes Count ballot initiative hit the ballot. We'll gather the signatures. Then the voters will vote on initiative. And it will pass or fail by majority vote.
The political monopoly way of doing things in our city should be over. Let's encourage new ways and ideas for a better, more pluralistic system. The Make All Votes Count initiative is the way. Let's do this. Thank you.

CHAIR THOMPSON: Thank you very much, Mr. Krucoff. Appreciate your comment. Next we have Barbara Zia, the President of the League of Women Voters of D.C. who is here with us in person. Welcome.

MS. ZIA: Good morning and thank you. I'm representing the League of Women Voters of the District of Columbia. And the League encourages electoral methods that provide the broadest voter representation possible, that are expressive of voter choices and encourage those with minority opinions to participate.

The League recognizes that many voters in the District choose to be unaffiliated because of preference, job requirements, professional discretion or, as is often the case with our
incarcerated voters, a distrust of political parties.

The League has been working with the Board of Elections and many coalition members to register incarcerated voters and provide voter education in the D.C. jail and in Federal prisons around the nation.

We registered 747 D.C. voters at the D.C. Department of Corrections, of which, 241 voted in the 2022 election. And we registered 920 D.C. voters at the Federal Bureau of Prisons, of which over 400 voted.

At this time, a sizable share, 16 percent of registered voters in D.C. have no party affiliation. Providing opportunities to voters without party affiliation to choose to vote in one party's primary election supports our goal of voter participation and engagement.

And the League has supported rank choice voting in the District since 2015 for partisan elections in both primary and general elections.
We believe it provides voters more choice in elections. It assures that the winning candidate will obtain a majority vote. And it leads to more representative government. Based on our understanding of the D.C. Human Rights Act, this ballot initiative does not authorize discrimination in violation of the Act.

Actually this ballot initiative broadens the rights and access of voters by providing those who register without a party affiliation an option overwhelmingly chosen by our incarcerated voters to have a voice in the primaries.

Based on our understanding of Title 4 of the D.C. Home Rule act, this ballot initiative is not in conflict with that Act. The initiative preserves partisan primaries consistent with the Act's requirements. Thank you.

CHAIR THOMPSON: All right. Ms. Zia, thank you so much. Next, we have Ankit Jain. I hope I said that correctly. Ankit? Okay. Thanks for being here.
MR. JAIN: Thank you for giving me the opportunity to speak today. My name is Ankit Jain. I'm a member of the Make All Votes Count Act team.

I'm an attorney admitted to practice law in Washington D.C. And I am both a Statehood activist and a member of the Ward 2 Democrats.

So there are several requirements for an initiative to the proper subject matter. I first want to talk about what's not at issue here.

No one is arguing that this ballot initiative is not in the form of legislative text, does not include a short title or summary statement of no more than 100 words.

That it does not meet the necessary technical filing requirements. That it violates or seeks to amend the Home Rule Act. That it authorizes or would have the effect of authorizing discrimination prohibited under D.C.'s Human Rights Act.

That it negates or limits an act of
the D.C. Council pursuant to section 1-204.46. Or finally, that it violates the U.S. Constitution. So really the only question at issue today is whether this ballot initiative appropriates funding.

The D.C. Attorney General has written now two thorough reasoned analyses explaining why this ballot initiative does not appropriate funding.

In the first opinion, the Attorney General's Office found that even if the initiative would appropriate funding, which it expressly reserved judgment on, this Board could add a subject to appropriations clause to the initiative to void any appropriation of funds.

Out of an abundance of caution, the Make All Votes Count Act team withdrew the initiative and refilled it with an explicit subject to appropriations clause to ensure there was no question that it did not appropriate funds.

The Attorney General's Office has now
reanalyzed the modified initiative and once again concludes that it does not appropriate funds because it is subject to appropriations. The Board should listen to this thorough and well-reasoned opinion.

Now, the D.C. Council's General Counsel, which is a very learned at office that has issued many, you know, proper opinions, they argue that this ballot initiative does appropriate funds.

The Council's General Counsel filed a one page opinion simply directing the Board to its first opinion, which it claims addresses the possibility of the initiative appropriating funds even if a subject appropriations clause is added.

Now, that opinion seems to hinge mostly on a legislative purpose or public policy argument, I should say. It seems to argue that if this were allowed, then it would it opened the door to other options.

So I think there's two things to say here. First, as the Chair, implied, there are
plenty of times where the D.C. Council has passed
the law subject to appropriations of a future
D.C. Council.

And this would be something very
similar to that where the law would be passed,
but it would be subject to a future Council
deciding to move forward on that. And that is
generally in keeping with historical practice
with the D.C. Council.

Second, I'll point out that the
Council seems to have understood that this was a
possibility when it passed the initiative and
referendum, Improvement Act of 2020. The first
opinion by the D.C. Attorney General cited this
Act.

And in that Act, there's a requirement
for a fiscal impact statement. And the question
is, why would they require a fiscal impact
statement if there wasn't an assumption that it
was possible to pass a ballot initiative that is
subject to appropriations, and that could then be
funded later by the D.C. Council?
And so I would say the legislative purpose is that this would be valid. If the Council felt otherwise they could always pass a law, to change the law, and prohibit something like this from happening.

But we believe that a subject appropriations clause is valid and makes this initiative a valid proper subject matter. Thank you.

CHAIR THOMPSON: I really appreciate your testimony, especially your point that this, the D.C. Council itself can make its own Act subject to appropriations, an appropriations decision by subsequent Council.

And also, just so, I just want to get this in the record. This voter initiative does come with a fully drafted piece of legislation with full Text. Maybe you were involved in that? So thank you.

But the phrase, we say subject to appropriations. But there's a phrase in Section 5A -- this act shall apply on the date of
inclusion of its fiscal effect in an approved budget and financial plan. Can you comment on that? What does that phrase mean? There's a lot of words in there.

MR. JAIN: Yes. I believe that's just the general language that's used for Council laws that they want to make subject to appropriations. Just requiring that the budget fund the law for it to take effect.

CHAIR THOMPSON: Okay. So picked that up from precedent?

MR. JAIN: Yes. From previous Council, yes.

CHAIR THOMPSON: Thank you so much. Okay, Commissioner, ANC Commissioner Joseph Van Wye. Okay. I understand Mr. Van Wye is not going to testify live today.

We're looking for a hand just in case he's here by Zoom. Feel free to raise your hand at a later time or put it in the chat box, if we're running right past you. That would make Mr. Ryan Prince next. Welcome.
MR. PRINCE: Thank you for having me.

I'd like to thank the Board for having us all here today. I'm here in favor for this ballot initiative.

Every Washingtonian knows how it feels to not have a say on the national level. We pay our taxes, and yet we don't have a voting representative in Congress.

This injustice is compounded for an independent voters here in D.C., but by the local government. This is not right. The Democratic primary here is the only election that matters.

By the time, the general rolls around, all the decisions have been made. I understand why some in local government would oppose this. The City Council, local government, they would oppose this.

It's because they fear for their monopoly. But I believe residents here in D.C. want everyone to have a voice. They want people to take part in their local government.

I think this democracy reform would
have a positive effect for everyone in D.C. And I would just like to at least have the voters have a say and give it a chance. That's all.

CHAIR THOMPSON: All right. Thank you very much, Mr. Prince. Next, we have Victoria Pelletier, I guess, either perhaps by Zoom? Ms. Pelletier?

MS. PELLETIER: Thank you.

CHAIR THOMPSON: Welcome.

MS. PELLETIER: Thank you so much.

CHAIR THOMPSON: We can hear you. Please go ahead.

MS. PELLETIER: Okay, great. Hi, everybody. My name is Victoria Pelletier and I'm speaking on behalf of Represent Women in support of the Make All Votes Count Act of 2024.

Thank you all for the work you do and for your careful consideration of what we are sharing with you today. Represent Women, which is based in D.C. has the most comprehensive database on jurisdictions that use rank choice voting, and the impact rank choice voting has on
the representation of women and women of color.

We have published two -- on rank choice voting. One, in 2016, and one in 2020. We are published in the academic journal, Politics and Governance, and in various textbooks on politics and gender.

Based on our own research, and research from around the world, we know that having more women in office strengthens democratic processes and policy outcomes. Representation is not only about equality, but it's also about doing democracy better.

And I'd like to share some of the evidence we have on the impact of rank choice voting on equitable representation within our government.

So based on our data as of January 2023, women make up 40 percent of mayors in cities that use rank choice voting. This is compared to the national average of 31 percent of cities with over 30,000 residents.

And as of January 2023, women make up
49 percent of city councils in cities that use rank choice voting. This is compared to the national average of 33 percent in cities with over 30,000 residents.

And I'd also like to talk about my personal experience with rank choice voting. I'm an elected official serving on the Portland, Maine, City Council. I'm the second black woman Portland has ever elected.

We currently have the most racially diverse Council in our city's history. Our Council is currently women led for the first time in our city's history.

We have all women committees for the first time in our city's history. And the implementation of rank choice voting here in Maine made this possible.

One of the words that got thrown around a lot in my race was experience. The person I ran against was 30 years older than me, was a former State Representative and a former Counselor.
He out-funded me and was an extremely well-known candidate. And I was what the press lovingly called a political newcomer and an activist with no political resume.

So that being said, I have always countered the word experience with the words access and opportunity. And I believe you can't get opportunities without being granted access.

And you can't get access without dismantling systemic barriers, the same systemic barriers that disproportionately impact black women, indigenous women, women of color, low income women, women with disabilities and women who are disenfranchised.

By enacting this initiative, D.C. would be doing its part and pushing for a fair representative democracy and would be eliminating the barriers that block so many women from having that access and opportunity that we all deserve.

We have countless examples of the positive outcomes that occur in rank choice voting elections to ensure that the winner of the
election is truly decided by the will of the voters.

The Make All Votes Count Act of 2024 is a critical step to advancing our democracy into the 21st century. Thank you.

CHAIR THOMPSON: All right. Thank you so much. We appreciate you joining us from Portland, Oregon. Oh, Maine, Portland, Maine, sorry.


CHAIR THOMPSON: Okay. I'm such a D.C.'er. Phillip Pannell, Treasure of the Make All Votes Count, D.C. Committee. Welcome, Mr. Pannell.

MR. PANNELL: Thank you.

CHAIR THOMPSON: Thanks for being here.

MR. PANNELL: Thank you for having me here. Good morning, members of the Board. My name is Phillip Pannell. And I'm here to testify in support of the Make All Votes Count D.C. Act
of 2024 as valid subject matter and a critically important opportunity for D.C. voters.

I am the Treasurer of this initiative, a former Recording Secretary of the D.C. Democratic Party, a five time president of the W8 Democrats and have been active in the civil rights movements for over five decades.

As treasurer, it was imperative that we set up the campaign correctly, following our due diligence and ensuring that we submit a verified statement of contributions and the committee's statement of organization in order to begin the ballot initiative process to bring rank choice voting and open primaries to our great District of Columbia.

Lisa Rice, the proposer of the initiative, and I did this on May 17th of this year. Rank choice voting is a proven system that reflects our small d, democratic values of inclusion, equity, and choice.

As someone who trusts science and data, I have been a proponent of rank choice
voting for over 20 years after seeing how we can
address a number of problems in our electoral
system and help elect and protect the political
power of women, of people of color and other
minorities.

Council Member Henderson's RCV bill, the Voice Act, wasn't able to make it out of committee. I hope and pray that the people can decide whether we support this needed improvement reform to the way that we vote in the District of Columbia.

I know how some D.C. Democratic Party leaders feel about open primaries because I was once vehemently against them. At one time, I felt that open primaries were an assault on the organizational integrity of my party.

I was affronted by the idea that independents who are not part of the daily operations of the party could participate in selecting its nominees.

But I have evolved to realize that many registered Democrats are exactly the same
way and that the party should focus on engaging voters. Even if they aren't already willing to join the party, like so many young people are these days.

We should make room in our big tent for the one in six Democratic voters whose votes are suppressed under the current primary voting system.

In New York City, there was a campaign leading up to 2022 election where voters learned about and decided they wanted a new system that helps hold politicians accountable. The voters of D.C. deserve the same. Let's make all votes counts here in D.C. Thank you.

CHAIR THOMPSON: Thank you. Thank you, Mr. Pannell. Next, we have Brianna McGowan.

MS. MCGOWAN: Hi, all, good morning.

CHAIR THOMPSON: Welcome.

MS. MCGOWAN: Thank you. Thank you for holding this hearing. My name is Brianna McGowan. I'm a Ward 5 resident, a Democrat, a grassroots advocate fighting to make common sense
changes that are proven to hold politicians accountable.

And in the deeply felt voter suppression for one out of every six D.C. voter, and to help protect black political power in the District of Columbia in the face of a rapidly gentrifying city, I'm here today to raise my voice in strong support of the Maker Votes Count Act of 2024 to enact rank choice voting and open the primaries.

And I know that this hearing, however, is not on the merits of this initiative, but rather to address if it is proper subject matter. I would argue that this ballot initiative rectifies a voting rights injustice by establishing a new voting right for a protected class under the D.C. Human Rights Act.

The OAG opinion found this to be proper subject matter after extensively explaining their sound legal reasoning. The D.C.'s Council Office of General Counsel whoever rejects this people-powered initiative without
laying out their legal reasoning.

They base their entire opinion on one comment made about a different bill. Though inspired by the Voice Act, the Make All Votes Act of 2024 has significant differences.

It does not tell the BOE how it should spend funds for education. That was an intentional move to allow this initiative to be considered proper subject matter.

The OGC opinion fails to consider this, a crucial oversight. It is clear that this initiative is proper and we should be able to take this to the people.

The Attorney General's Office lays out clearly while we are legally sound by meeting all seven criteria and leaving the appropriation to remain in the hands of the legislature.

I am worried at the OGC's opinion was hasty, possibly even negligent, which furthers the cracks and mistrust in our democratic process. I hope that our Board of Elections will honor legal precedent and clear election law
analysis so we can move forward.

You can restore trust in our democracy and let voters decide whether they want this change for D.C. or not. Let all, let's make all votes count in D.C. and take this initiative to the people. Thank you.

CHAIR THOMPSON: Thank you so much. Appreciate your comments. Next is Kelsye Adams, listed as from, Long Live Go-Go. Perhaps with us by Zoom? Could you raise a hand, or unmute yourself?

I think, oh I thought I saw Kelsye Adams's name up there a moment ago. Looked like he was walking through a Starbucks of something. No? Oh, all right.

I'll tell you what? We'll circle back or raise your hand when you got here. We'll double check on you at the end. Next is Makia Green. Makia, I'm sorry. Makia Green is listed, but not here.

So next Jacqueline Castaneda. Also not here. Thank you for letting us know. Next
is Kymone Freeman from We Act Radio. Oh, there
he is. Kymone Freeman, can you hear us? We see
you.

MR. FREEMAN: Yes, can you hear me?
CHAIR THOMPSON: Sure can.
MR. FREEMAN: Okay, give me a second.
I'm driving. Let me just pull over here.
CHAIR THOMPSON: Yes, step one, be
safe. I won't start the clock yet.
MR. FREEMAN: All right. Just give me
ten seconds. Okay. All right, greetings. My
name Kymone Freeman, Every Black Man Therapy. I
dropped the phone. Co-Founder, We Are Graham.
My pronouns are me/we.
As an independent media professional
for the past decade, I've seen establishment and
corporate media try to ruin a lot of good ideas.
Just like the Zoom bomber on this call today.
The most insulting notion, that's
critical of rank choice voting, that I come
across in my research was from some of our
leaders in the D.C. Democratic Party Committee.
The corrupt establishment, as I like to call them, they think black people are too stupid to understand how to rank their choices.

Like we don't do that every day trying to decide what, how do we survive in the most expensive city in America? So let me say this, we just had a Mayoral race.

But let's go to our alternate universe. The incumbent is a popular establishment candidate, but there's a growing opposition. Let's say there's a mayoral election, 40 percent re-elect the Mayor but there's 60 percent out there willing to support the opposition.

But instead of being a one, single challenger, you had a Robert White, Trayon White, Barry White, Maurice White all running and they had to split that 60 percent under our current system ensuring that none are successful in unseating an incumbent.

Now, like all the ways I just mentioned, but by creating a ranked system where
I can select my first, second, third choices, we have more choice.

It stops political displacement where multiple candidates you do like run. It opens the door for people who want to run for Mayor, but don't even join the race because their name is purple, or black, or off white.

It nullifies the notion of voting for the less of two evils. Ranked choice voting will ensure that the winning candidate would truly represent the majority of the voters' support and make it easier to hold politicians accountable.

And opening the primary elections will allow young people who don't know whether they want to join the Democratic Party to still have a say in the most important races, ending D.C. voter suppression.

It won't cost the Board of Elections any extra than what they already get to make this happen. We are ready to get the word out and educate the community about ranked choice voting, open primaries and making all votes count.
Let's build better community for better power. Put it on the ballot. Let the people decide. This is Kymone Freeman. Do something.

CHAIR THOMPSON: All right, thank you, Mr. Freeman. We appreciate it and please drive safely.

MR. FREEMAN: Yes, sir. Peace.

CHAIR THOMPSON: Next we have Malik Mack. Mr. Mack? Can you raise your hand or unmute yourself. Mr. Mack is there?

We don't see in the list of names. Some people use nicknames or phone numbers. But I will, we'll open it and we'll give a chance at the end if you, to make sure we're not missing anybody.

Next is Kenyatta Smith. All right, Kenyatta Smith? We'll give it a second to look. Okay, not seeing Kenyatta Smith, we'll turn to Nolan DiFrancesco.

MR. DiFRANCESCO: Thank you, yes. Hi, I'm Nolan DiFrancesco a Ward 2 resident and I'm
grateful to be able to submit testimony today in support of the Make All Votes Count Act. And I encourage the Board to consider the merits in determining this initiative as proper subject matter.

Very briefly on the need for this reform. In our current system, communities often split their vote and weaken their collective power.

And in crowded D.C. primaries, a candidate can and often will win with far, far less than 50 percent of the vote. Ranked choice voting would allow for campaigns in which diverse communities are free to vote in solidarity and build a power together.

And the candidate who wins can only do so once they get a real majority, representative of the true views of the people. At the same time, over 86,000 registered voters in the District do not belong to a political party and cannot participate in the most important elections.
We should do all we can to fight against that disenfranchisement, and open primaries are the clear solution. I strongly encourage the Board to fully consider the arguments laid out by the Office of the Attorney General.

The initiative is not in violation of the Home Rule Act nor the U.S. Constitution and is subject to appropriations clause is sufficient for legality.

Ranked choice voting and open primaries are these kinds of issues that can sometimes lead to strong opinions or strong assumptions. But what we should all agree on is that the people have a right to have their voices heard.

They should have the right to vote on this initiative so the law can reflect the will of the people. And I encourage the Board to ensure that voters have that right and allow this initiative to go to the ballot. Thank you.

CHAIR THOMPSON: All right, thank you
so much. Next is Nikolas Schiller.

Mr. Schiller, welcome.

MR. SCHILLER: Welcome. Finally nice
to see you guys in person today.

CHAIR THOMPSON: Yes.

MR. SCHILLER: You can see me on the
little square screen. Folks up there see the
square scene as well. I was actually hoping to
be able to respond to the other side's opinions.

Because today we're doing it, you
know, who was in support and who was against, and
I was hoping to hear what everyone had to say who
was against it.

But we're going first. So it changes
things around. My name is Nikolas Schiller. I
was in one of these subject matter hearings about
ten years ago for what ultimately became
Initiative 71.

During that subject matter hearing,
there was a divided opinion. The Attorney
General's Office, or Nathan at the time, he said
that the ballot initiative violated the, it
discriminated because people in low income housing wouldn't be able to legally possess cannabis.

They still can't actually. But that division still allowed the ballot measure to go forward. And the larger issue here at hand is, are we stuck with the same electoral process?

Like, we as voters have the ballot initiative process to allow us to change laws that we feel are not being addressed by the people that we elect?

So right now, if we had a law that said, you have to only use pencils to vote with, but no, we want to have red pens. And you can only vote with red pens and voters are like, you know what?

We want to vote with blue pens. Would that have a process that we have to change? Are we stuck with only using pencils or red pens? Or we, the voters, can we actually create new laws to change the way we vote?

And that is the essence of this
hearing today is that, are we able to change the electoral processes that we have? Are we only beholden to the 13-member Council that we have?

And so ballot initiatives all cost money. And I think I mentioned it earlier that the CFO analysis is going to be there, like for Initiative 82.

They have to put up the minimum wage posters in, in every different establishment. Well, someone has to pay for those posters. That's going to be something that's going to be required.

It's not necessarily directly saying, hey, this ballot initiative requires you to post new posters in there. That's the existing law, and it has an effect no matter how you slice or dice it.

With Initiative 71, the police officers had to be trained. There was a new protocol. You can't arrest people anymore. That costs staff time.

So no matter what, changing laws is
going to cost money. The question is, does it appropriate the money? Does it say, you must spend this money on it?

I mean, the question that you offered earlier, Mr. Thompson was, can we write a ballot initiative that says we want to build a school subject to appropriations? I believe we can.

And I think if we wanted to be able to do that process, the citizens should be able to go forward and say, you know what? We think a new school should be built in Ward 3.

And we don't, although we don't, aren't able to appropriate the funding for this, we want to have a ballot initiative on that. But we can't actually do that for just Ward 3.

It would have to be 5 percent of the citywide signatures to actually put that question on the ballot. So I really appreciate your time here today.

And another thing that actually came up while we are on the way here, and it was my analysis of the Human Rights Act about when the
Attorney General's Office actually put in there that this is actually going to expand the Human Rights Act.

Because right now people are discriminated against. And I was like, man, we can have a class action lawsuit. All of the NPA voters, all 86,000 of them signed up to be like, we want to be able to be able to participate in all aspects of District life, which right now they're being denied. And I thought about how, like, the Board itself -- almost done? On time, okay.

CHAIR THOMPSON: Well, I'll let you finish out your point.

MR. SCHILLER: Well my point was that I just want to thank you guys for your time. And that NPAs are actually, it makes you think like the largest, second largest voter registration in the District of Columbia are people that are not registered with any political party.

CHAIR THOMPSON: I just also wanted to thank you. You just registered a point that I
think it's important that something can cost
money but appropriation means something
different.

Appropriation means the Council's
making a decision to actually spend that money
relative to other things they might choose to
spend it on, like affordable housing or fighting
crime.

There's a lot of issues right now that
the Council is juggling in terms of what he wants
to spend its money on. But you, I mean, I think
it's good that you drew attention to the word.

MR. SCHILLER: Well it has a mission
to educate voters.

CHAIR THOMPSON: Right.

MR. SCHILLER: That's a part of the
mission. So that's already going to be spent to
educate voters about how to vote. So if it
changes how the people vote, that's already
within the mission of the, of the Board of
Elections.

CHAIR THOMPSON: Yes.
MR. SCHILLER: So thank you so much for your time and I appreciate, you know, the opportunity to speak today.

CHAIR THOMPSON: Okay, Keshini Ladduwahetty, who I believe is on here and is with us by Zoom. Welcome.

MS. LADDUWAHETTY: Thank you so much, commissioners. My name is Keshini Ladduwahetty. I'm here today to testify in strong support of the May All Votes Count act of 2024.

I enthusiastically support the Make All Votes Count Act of 2024. I enthusiastically support this initiative to expand the power of D.C. voters to rank candidates, and to open primaries to independent voters.

And I am confident that the act is a proper subject of initiative. I very much hope that this Board concurs with Attorney General Schwab, who has concluded that it is a proper subject of initiative because Section V specifies that the act shall apply only when any additional costs have been appropriately budgeted.
I believe that the Office of General Counsel, OGC, is wrong. The initiative may require additional funds temporarily to make administrative and procedural changes as well as for public education.

These are costs that are associated with most ballot initiatives. It merely, if we were to apply OGC's logic, the Board would have denied many ballot initiatives that it has approved in the past because they required administrative changes and public education.

Here are a few examples of past initiatives that BOE has approved despite the fact that they entailed additional costs. Initiative 71, as Nick Schiller just said, legalized the possession and cultivation of limited amounts of marijuana.

Such a major change to drug policy required significant administrative changes on the part of MPD and the D.C. courts, as well as public education by a variety of government agencies.
Initiative 70, approved by BOE in 2012, which prohibited corporate campaign contributions in D.C. elections would have required changes in administrative procedures and public education by the Office of Campaign Finance.

Initiative 69, the Video Lottery Gambling Terminal Initiative of 2006, which would have expanded the lottery to include Video Lottery terminals, would have required new administrative procedures on the part of the D.C. lottery and charitable games Board.

These examples illustrate the fact that BOE has approved a number of initiatives in the past that entailed changes to administrative procedures and public education.

Such changes frequently have a fiscal impact of a temporary nature, but the Board has rightly concluded that they do not pose an obstacle to D.C. voters exercising their democratic rights through the ballot initiative process.
The Make All Votes Count Act of 2024 is similar to the initiatives that BOE has approved in the past. I hope that you will follow your own precedent in finding it a proper subject of initiative. Thank you for the opportunity to testify.

CHAIR THOMPSON: Thank you very much. Thanks for being with us by Zoom. So now I'm going to circle back and make sure I didn't miss a few people. Kelsye Adams, Malik Mack, Kenyatta Smith? Did we accidentally miss someone scrambling to sign on by Zoom?

Okay, and is here anybody else present that would like to speak in, on the in favor side? If you could just maybe come forward and take turns and just state your name, please. And what we appreciate it if you'd maybe take just two minutes, but please take three if you need it.

MR. EIDINGER: And I did, I did email that I was going to testify. I don't know why I'm not on the list. My name is Adam Eidinger.
I'm a Ward 2 resident. I'm a Democrat. I've lived in D.C. most of my life. I'm here because I believe our limited democracy should be about the will of the people before the will of party bosses.

The Make All Counts, Make All Votes Count Act is indeed a proper subject matter. I was the proposer of Initiative 71. I was also the treasurer of Initiative 81 and the treasurer of Initiative 82.

All these initiatives there was talk about them costing money but until the Chief Financial Officer determines the true costs of this measure, I think we're assuming this is going to cost money but we shouldn't be.

You already have a budget to administer elections. You're just going to be using that budget to administer this type of election if this becomes law.

Also, I think it's very clear that it's not subject, it's not spending money. This is more of an advisory ballot initiative. But
they all are.

    Every single ballot initiative that has been passed can be overturned or ignored by the D.C. Council. And this one is no different. Except it now says if there's a cost, it will be paid for by the Council, not by this ballot initiative.

    So I think that we actually are not spending any money here. We're not appropriating money. We're leaving it up to the Council but we're giving a lot of advice to this Council.

    And the unicameral government, where the ballot initiative process is the only hope we have for a bicameral government where we have the people as the other chamber or the other branch of government, and we are very limited in what we can do.

    I want to point out also that initiatives have been overturned in the past by the D.C. Council, Initiative 77. And it we know was subject to referendum and we turned in 35,000 signatures. We still were not able to have
another vote on that matter because of process errors made by the Board, unfortunately.

I'd like to also address the term unaffiliated. I think this is an important legal term. It's another way of saying I don't belong to a party. However, if you choose a ballot under this new law, you are affiliating.

You're saying I want to vote in the Republican primary or I want to vote in the state of Green Party. Or maybe you want to vote in the Democratic primary as a citizen who's paying for the primary.

I mean, it's our tax dollars that are paying for the primary as citizens. So really, I think right now, we're already violating the D.C. Human Rights Act.

We're already disenfranchising 86,000 independent voters. So, you know, is there affiliation? Yes, at the time of when you vote. That's when you're affiliating.

You're not voting in two primaries. You're voting in just one and you're affiliating.
Almost out of time, okay. The last thing I want to say is that, let's, you really should be waiting for the CFO to determine things as well.

And I think this process is a little out of order sometimes. I think we should have had that coming into this hearing. It would help everyone determine what we're really looking at.

Like, I think this ballot initiative might actually save the District money, not actually cost money. Initiative 71 saved over 26 million, I think was the number in policing costs. So whatever costs there were in educating the voters were offset by the savings. Thank you.

CHAIR THOMPSON: Thank you, Mr. Eidinger. Welcome. What's your name?

MR. STREGE: My name is Brian Strege. Thanks, Mr. Chairman, and members of the Board. I'm an ANC Commissioner representing a portion of 8F, which is Navy Yard referring.

But I'm not here today representing the ANC. So feel free to cut me off at three
minutes. But I'd like to come in support of this ballot initiative.

I know that today's hearing is just a subject matter determination to decide whether or not the text submitted is valid. But I wanted to express my sincere hope that the measure makes it through today.

And with a clean bill of health, then the question of ranked choice voting and semi-open primaries is ultimately put before the voters of D.C.

I think that this measure, were it to be adopted by the voters, would inject some vibrancy into our electoral process. I get the sense that there's kind of a general dissatisfaction with the process here.

And that there's a whole lot of strategic voting going on, which is basically one voter cares more about who they're voting against than who they're voting for.

Then they try to become a pundit and predict who has the best chance of beating the
candidate that they don't like, and they vote for that person, even if they don't really like them.

To me, that's kind of a sad state of affairs. And it's a direct result of rule elections in multi-candidate races. The ranked voting piece of this measure would solve that problem.

Instead of voting for someone that they don't really like because they've got the best shot against the least favorite candidate, voters would be free to vote for their actual favorite candidate. And if nobody gets a majority, depending on who's eliminated, they've been able to at least register their choice for second.

I have a part also advocating for the semi-open the primary component but I want to get to a question that you posed about whether or not it conflicts with the on a partisan basis language of the District charter. So I'll skip this part and try to address that.

CHAIR THOMPSON: Thank you.
MR. STREGE: I believe that it does not run afoul of that language. And I think the Board would do well to look at the differences between the Alaska System and the Maine system. They are two states that are both experimenting with ranked choice voting.

However, in Alaska they've combined all the primaries into one called a jungle primary, where a certain number then make the general regardless of party.

So it could be four Democrats could make, four Republicans or whatever you may. Maine doesn't change the underlying structure, and neither does this.

So there's still a Democratic primary. There's still a Republican primary, and they still own a slot into the general election. So a Republican is going to be on the ballot in the general election because there will be a Republican primary. That means this is still on a partisan basis.

It is not a jungle system. So, I
would implore you guys to take a look at the
difference between those two systems. I don't
believe it runs afoul of the language and I'll
end it there. But as I said, I sincerely hope
that it makes it through today. Thank you.

CHAIR THOMPSON: Thank you very much.
I appreciate that. Welcome, tell us your name.

MR. CRUZ-RODRIGUEZ: Hello.

Mr. Thompson and members of the Board. My name
is Daryl Cruz-Rodriguez. I am the founder of
Students for Open Primaries, a national project
of the National Open Primaries Organization.

A lot of people have already spoken on
the issue of subject matter. And so I'm just
here to lightly touch on why open primaries are
beneficial.

I understand you guys don't take a
position but I'd still like to remind the
opposition to what they're standing in front of.
In D.C. 16.5 percent of voters are independent.
They make up the second largest voting bloc in
the entire District.
And personally, I find it kind of ironic that our nation's capital is probably one of the most undemocratic places in the country, given you guys don't have representation in either chamber of Congress.

Independent voters can't vote, etc., etc. I feel like this ranked choice voting open primaries measure will allow more Washingtonians a voice in who they elect, so that they can focus on electing representatives that care about them more than their party lines.

Open Primaries and national organization in a partnership with Student for Open Primaries actually did research last summer on the impact on young voters.

One important metric is that 69 percent of young voters feel that they're not represented by either the Republican or Democratic Parties.

I remember Mr. Rice mentioned that about 50 percent of young voters between the age of 15 and 25 are independents in D.C. And so
ranked choice voting in open primaries poses a
true possibility that we can have a system where
voters can elect people that represent them
instead of a hardline party base.

And so I would just like to make it clear that I am in support of open primary until it's backwards. Thank you.

CHAIR THOMPSON: Thank you. Thank you very much. Welcome, sir. Tell us your name and please proceed.

MR. AMINE: Thank you. My name is Abel Amine. I am a Ward 4 resident. I am a non-citizen, which if I'm counting the days right, as of today, I'm now a qualified elector because of a law that was passed by the D.C. Council with exactly the same applicability clause.

Which was only just removed as of today, July 8, when the Budget Support Act, the Emergency Readiness Support Act became law. So I will also cite another example of this later on.

I want to first speak about the D.C. Council's opinion on this matter. In their
second opinion, they state that their original opinion addresses the subject of whether a ballot initiative includes, whether it's a proper subject matter if it includes a subject to appropriation clause.

And I went back and looked at their original opinion. And it was only in their footnote on the very last page on footnote 14 in which they actually refer to this subject.

And they do it in a very dismissive way by referring to the fact that when the advisory opinions were was submitted for the Elizabeth David Education Equity Pathways Policy, and when your Board offered an opinion on that, that neither the advisory opinions, your opinions mentioned the topic of subject to appropriations.

But I would posit that the fact that you didn't mention it does not mean that that is not proper. If they had read that opinion, they would have noticed a mention of Hessey, which was mentioned earlier. And Hessey defines a measure.

It says that a measure is deemed to
appropriate funds if we would if we would intrude
upon the discretion of the Council to allocate
District government revenues in the budget
process.

This ballot initiative does not do
that. In fact, it expressly gives, it expressly
states that that power still remains with the
Council.

So I would posit that this, this
ballot initiative is a proper subject matter.
And to refer to what you've been saying, it is
actually true that the Council passes bills all
the time.

One in particular is the language
access for Education Amendment Act of 2028. If
passed in 2028, it was not funded for two Council
periods and automatically repealed.

So here's an example of one, and
actually I think an argument can be made that
this ballot, if it passes, will be automatically
repealed after two separate. But that's a
subject for another day and another argument
and --

CHAIR THOMPSON: Now I see why your hands shot up when that came up earlier.

MR. AMINE: Yes. So thank you very much for this opportunity and please find this proper subject matter valid.

CHAIR THOMPSON: Yes, thank you.

MR. AMINE: Thank you.

CHAIR THOMPSON: Yes, thank you and thank you for focusing on putting it in the language of Hessey.

MR. AMINE: Yes. Late in access, you are required to but the D.C. Council is not because they passed the law and didn't fund it. Thank you.

CHAIR THOMPSON: Okay, thank you. Okay, everybody. I think we have about 30, maybe 35 minutes of additional testimony in opposition or anyone else who would like to speak. But I think we need like about a five or call it an eight minute break for the restroom, et cetera. But we're going to power through
without a lunch break and, you know, finish at
around 1:00 something if that's, you know, if
anybody wants to really take a long break.

So we'll break. We'll adjourn, move
to adjourn. Do I have to move to adjourn? I
move to adjourn for a seven minute break. All in
favor? All right. Seven minutes.

(Whereupon, the above-entitled matter
went off the record at 12:35 p.m. and resumed at
12:44 p.m.)

CHAIR THOMPSON: All right, thank you
so much everybody. We are back on the record.
There are two sides to every issue. And indeed,
we have a number of citizens signed up to state
their opposition.

We've in fact received a number of
written comments for the record. I would note
that, of course, we received the opinion letter
from the General Counsel of the Council of the
District of Columbia.

We've also received written comments
in opposition from Ms. Renee Bowser, from Deirdre

So, we've read all those carefully. And on the opposition's side, I would like to start with Nicole Streeter or perhaps somebody else from the Office of General Counsel of the D.C. Council if they happen to be here.

So just if you are raise your hand and we'll call upon you. And not seeing anyone present, which is -- which is fine, we thank you for your opinion that we obviously read carefully.

So next, I'm going to turn to Charles Wilson of the D.C. Democrats. Yes, And then we're going to go with, after Mr. Wilson, Robert King, Renee Bowser, Brandaun Dean, Deirdre Brown, Anita Shelton, Keith Towery, Dorothy Brizill in that order. So we'll start with Mr. Wilson.

Thank you so much for being here.

MR. WILSON: Thank you.

CHAIR THOMPSON: And please take five
minutes if you need it.

MR. WILSON: Thank you. Good morning or good afternoon, good morning still, District of Columbia Board of Election members. My name is Charles Wilson.

I am also a former ANC commissioner in Ward 8. Civic Association, former Civic Association founder and president in Anacostia. And I'm also a parent. But I'm also chair of the D.C. Democratic Party.

I'm here today to express my opposition to the proposed Make All Votes Count Act of 2024 ballot initiative on behalf of the Democratic Party of the District of Columbia.

The Democratic Party is charged with selecting Democrats as our candidates. I believe that implementing open primaries and ranked choice voting in the District of Columbia conflicts with or seeks to amend Title IV of the D.C. Home Rule Act.

It conflicts with the U.S. Constitution, authorizes discrimination and
violation of the D.C. Human Rights Act, and has a
negative fiscal impact on the D.C. -- District's
budget.

Consequently, the initiative does not
meet the threshold requirements for qualifying
for the ballot, as set forth in the public notice
hearing that was sent. I also firmly believe
that having open primaries and implementing
ranked choice voting would negatively affect the
District's electoral system.

I would like to present the following
arguments. Number one, the ballot initiative
will conflict with the D.C. -- with the Home Rule
charter. The basis for this opposition to the
initiative regarding ranked choice voting and
open primaries lies in the provisions of the
District charter.

The District charter strongly supports
the establishment of political parties and the
selection of candidates by the party.
Consequently, decisions regarding these issues
are the prerogative of the parties.
The Democratic Party has also taken a position on ranked choice voting. The Democratic Party believes ranked choice voting is not right for the District. Our position can be found on our website. And it is actually in line with the Washington Post article that came out yesterday regarding the officials in Arlington, Virginia.

Open primaries would undermine the partisan nature of elections and dilute the voices of the party members in the election process. Allowing those who do not identify with a political party to participate in partisan elections directly conflicts with provisions of the District charter.

Title IV, Subpart -- Part A, Subpart 1 of the District charter specifically states that the Council of the District of Columbia and its members shall be elected by the registered qualified electors in the District.

Section B1 explicitly states that these members shall be elected on a partisan basis. The same is true for candidates for the
Mayor of the District of Columbia.

This means that the intention behind the District charter was to have partisan political parties nominate their candidates in the election and subsequent general election. Subsequently, the District charter included partisan elections for the newly created Attorney General's position as well.

Moreover, the District charter limits the number of at-large Council members from the same political party and directs that the political party of an at-large Council member vacating his or her position be filled by the political party of the Council member vacating the position.

Other elected officials are elected on a nonpartisan basis. For example, Advisory Neighborhood Commissioners, ANCs, are elected on a nonpartisan basis. State Board of Education candidates are elected on a nonpartisan basis.

All of this demonstrates that the drafters of the charter intentionally
differentiated between partisan and non-partisan
elections and left the method for determining
partisan elections up to the parties.

Open primaries would be in direct
violation of the D.C. Home Rule charter.
Allowing non-affiliated voters to participate in
partisan elections would undermine the intent of
the charter and dilute the votes of the party
members who seek to nominate their party
candidates to stand in subsequent general
elections. It is crucial that we respect and
uphold the provisions of the Home Rule charter to
maintain the integrity of our election system.

CHAIR THOMPSON: Thank you so much,
and for your written comments. When I read your
written comments and those of Renee Bowser, it
just kind of stopped me in my tracks and made me
realize this is a real issue that we have to
really think through.

And I guess what you're arguing, in so
many words, is that the language of our charter
itself, although it's not expressed, in effect,
it requires there to be a closed primary?

MR. WILSON: Yes.

CHAIR THOMPSON: So let me just sort of sound out the argument on the other side and see what -- I'm curious to see what your response is. The way it works currently is anybody who registers can affiliate with any party they want. It's sort of self-selecting.

And I'm guessing a lot, some people who maybe aren't -- don't identify with the Democratic Party's platform or values, nevertheless check that box because they decide well, you know, I'd rather vote in the primary.

It seems to be outcome determinative in certain races. And, indeed, even if you're a registered Republican, I think you can make that switch up to 21 days prior.

So there's already a system where those who vote in the Democratic primary may not be Democrats. And so the argument here is that with respect to unaffiliated voters, up until the day of the election, and we have same-day
registration, if they choose, if they select in that moment to vote in the Democratic primary, they are in fact affiliating, choosing to affiliate at least at that moment in time with the Democratic Party for purposes of participating in the primary.

There's some pretty intricate case law on this starting with the Supreme Court Jones case, but there's case law to suggest -- that suggests that, yeah, that -- that's fine.

That does not, at least with respect to the Constitutional arguments that having a semi, what I heard somebody say, a semi open primary or partially open primary as perhaps envisioned by this initiative, that that passes muster under the First Amendment.

It does not unduly interfere with the associational rights of a political party in this respect. And nor does the charter expressly say whether they're -- what type of primary there has to be. So that's kind of also what the Attorney General has opined.
And so I'm just sort of summarizing all that kind of out loud mostly for myself, just to sort of articulate it. How do you, how do you respond to that?

Why is it that you think that, no, that having a semi open primary like this would, in fact, unduly interfere with the rights of the Democratic Party here in D.C. to conduct a closed primary?

MR. WILSON: Sure, so I -- Chairman Thompson, I think it goes back to your earlier statement in that every resident has a free choice to register or not, to participate in the political party.

No one is forcing anybody to register as a Democrat, Republican, or not register. You have a choice. If you choose not to register in our -- as a member of our party, that is your choice.

But we believe that those who do make a conscious choice to register as Democrats may not all believe in the same principle, may not be
in agreement on every issue. But we do believe that as Democrats, we have the right to choose our nominee. And if you want to be able to participate in the process, just register as a Democrat. It's that simple for us.

CHAIR THOMPSON: And, but you're okay with the concept that at least up to 21 days before an election somebody who was unaffiliated or even registered as a Republican can cross over and choose that Democrat box instead and vote in the Democratic primary?

MR. WILSON: I really, I would have to take some time to think about that. But as it stands right now, you have to be a registered member of the party in order to participate.

CHAIR THOMPSON: Okay, all right. No, I really appreciate your argument. I've been reading the cases and thinking a lot about this. And you're right to point out some of the language in the charter, and it doesn't just say partisan basis. It actually says political parties may nominate a candidate of their
choosing.

MR. WILSON: And, again, it specifically states that if you want to run for school Board or ANC, you're elected in the general election and on a nonpartisan basis.

CHAIR THOMPSON: Okay.

MR. WILSON: It's very clear.

CHAIR THOMPSON: Okay, all right.

Thanks very much.

MR. WILSON: I wasn't done.

CHAIR THOMPSON: Keep going, sorry.

MR. WILSON: Yes, all right.

CHAIR THOMPSON: Yes, please take another minute.

MR. WILSON: The ballot initiative would conflict with -- may conflict with the U.S. Constitution. There are legitimate concerns regarding ranked choice voting. It violates the equal protection clause of the Constitution.

And since I only have another minute, you have my testimony, I want to go to, there's been this argument about the Council having the
ability to pass legislation for it to be funded
or not funded by the next Council. They have
that liberty.

We have rules based on what you guys
sent that a ballot initiative cannot appropriate
funds. We cannot just change the language just
to circumvent the process.

So implementing ranked choice voting
and open primaries will require the Board of
Elections to commit a significant financial
obligation that has neither been agreed to or
appropriated by the D.C. Council. The Courts
have ruled that a ballot cannot make an
affirmative effort to appropriate funds.

New costs associated with the
initiative would include developing voter
education materials, purchasing new voting
machines and software, significantly redesigning
the ballot in all elections and general
primaries, creating a system that would allow
independents to vote in a political party's
primary, maintaining separate ballots for those
participating, hiring additional staff to implement the measure, and securing the services of community non-profits to even educate the public.

This could potentially negate or limit a budgetary act of the D.C. Council and force a new budget line item. The level of funding appropriated by the District agencies can only be determined annually by the local legislation of the D.C. Council.

In conclusion, I urge the Board of Elections to carefully consider these concerns regarding the Make All Votes Count Act '24. The proposed open primaries and ranked choice voting system will conflict with the District charter, potentially violate the U.S. Constitution, the D.C. Human Rights Act, and could significantly affect the District's budget.

It is crucial that we preserve the integrity of our electoral process while ensuring equal representation and fairness to all voters. Because the initiative does not meet the
threshold requirements for qualifying for the ballot, it should be denied. Thank you.

CHAIR THOMPSON: Well, thank you. We really appreciate you being here and thank you for all your written and in-person comments. All right. Okay, next is Robert or Bob King.

MR. KING: Bob King. Good afternoon, Mr. Chairman, and members of the Board. My name is Robert Bob King, former ANC Commissioner for Fort Lincoln for over 32 years, 10 years as the civic association president for a total of 43 years, and I chair the Ward 5 Dems Senior COVID-19 Commission.

The proposed ballot initiative would authorize great discrimination, which is in direct violation of the Home Rule, of the Human Rights Act under trait four which is address -- disabilities and prohibited under Chapter 14 Title II of the D.C. official code, disability.

A disability is defined as a physical or mental impairment substantially limiting one or more life activities. Physical can include
auditory, speech, visual, neurological impairment, mental, and include cognitive and learning impairments.

According to the 2020 census, there are 689,544 residents in the District of Columbia, and according to the audio interference), 17 percent or 116,418 of these residents are seniors over the age of 60.

They live behind door number nine (phonetic) and they are the elders of the village. 89,855 resides in Wards 1 through 6. Seniors reside in public housing, public, private housing, nursing home, group homes, home bound, assisted living, homeowners, renters, rooming houses, hospitals, and correctional facilities.

They are one of our most vulnerable yet the most reliable and stable voting blocs not only in the city, but in the country. Here's some critical statistics to give evidence that we must provide a ballot initiative assessment to ensure seniors in D.C. are ready for this monumental initiative petition.
A preponderance of seniors suffer from the following: blind, visually impaired, physical limitations, functionally illiterate, language barriers, homebound, registered require the use of a cane, wheelchairs, scooters.

A substantial number of these seniors have to depend on Metro and other forms of public transportation. 15,000 seniors live before the federal -- below the federal poverty level. And they only comprise 17 percent of the D.C. population.

Senior health issues diabetes, heart disease, lung disease, hypertension, dementia, mental health, mental illness, and have the most limited form of insurance, Medicaid and Medicare.

The disability status of D.C. 25.9 percent of the senior population have disabilities. 18.5 of seniors 65 to 69 have a disability.

65 percent of older black adults have a disability compared to 30.3 older white adults. Veterans comprise of 44 percent over 65. 17.1
percent of veterans have at least a connected disability.

62.5 percent of senior blacks compared to 45 percent of all of the D.C. residents. 58.6 percent older adults are unmarried. 54 percent of seniors live alone, 14 percent higher than the national level. Washington, D.C. has been deemed the loneliest city in America.

D.C. has the highest rate of food insecurity in the country. Seniors live on, 70 percent of seniors live on fixed income. 20 percent of black residents live below the federal level compared to 9 percent of white residents.

65.5 percent of seniors are homeowners. 28 percent are renters. Seniors on the SNAP program have an average of $23 a month. If the District would be a state, it would, the seniors would have the highest poverty rate in the country.

Wards 3 and 4, Mr. Boggs and you, Chairman, have the largest number of seniors over 85 and older. Ward 3, Mr. Boggs, and Ward 4, Mr.
Boggs, you have in Ward 4 19,362 seniors over the age of 60.

Mr. Thompson, Ms. Greenfield, you have 17,587 over the age of 60. In my ward, I have 53,033. I have 68,084 for a total of 53,033 seniors that -- part of that 116,000.

CHAIR THOMPSON: So if you can wrap it up? Yeah.

MR. KING: Yes, the issue, the ballot initiative is the backdoor attack to achieve ranked choice voting. Ranked choice voting turns checkers into chess and upends our traditional democracy in favor of a system that few understand and virtually no one can explain, especially seniors.

I would be totally remiss, Mr. Chairman, if I didn't recognize Ms. -- if I didn't recognize Ms. Monica Evans, Executive Director, former Chairman Bennett, Melissa Alexander who have been promoted, Alice Miller, senior policy advisor, LaDawne White, the manager of Education and Outreach Division and Cecily
Collier for Finance.

The reason I point that out,

Mr. Chairman, I've been working with Ms. Monica for the past, since '20, going out to those senior complexes.

What we are doing now revolutionize how seniors are voting. We have containers and not drop boxes that were purchased by the Chair -- prior Chairman.

We go to the building at the Board of Elections and do education and registration, come back with those containers, and go and pick up those ballots.

I maintain, Mr. Chairman, that the only public transportation is the elevator. They can get on the elevator, come down and get the sticker that say I voted.

Failure to support this, you would go down in the history as their greatest suppression and modernization since the Voting Rights Act of 1965.

In the words of Spike Lee, Mr.
Chairman, do the right thing. And in the words of James Brown, please, please and let congressman, please, this is good trouble. Thank you.

CHAIR THOMPSON: All right. Thank you so much. I was going to call time, but if you start complimenting the BOE staff, you can just go on and on and on.

(Simultaneous speaking.)

MR. KING: -- Patrick Mahomes on what you did with the Board of Elections.

CHAIR THOMPSON: I very much appreciate that.

MR. KING: And I hope you get a chance, before you vote, for the four of us to meet and talk about all them people you've got up in your ward.

CHAIR THOMPSON: Yeah. Thank you, sir. Soon enough, I'll be one of them seniors, myself. So Renee Bowser?

MR. KING: Thank you for being an ANC Commissioner for eight years. And you've chaired
your ANC for four years. Chevy Chase, my hat
goes off to you.

CHAIR THOMPSON: While you're still
complimenting me, you can go, you can continue.

Thank you so much, sir.

MR. KING: I only waited till the
other 20 people.

CHAIR THOMPSON: All right.

Ms. Bowser, I think you're on by Zoom. I see you
there. Yeah.

MS. BOWSER: Good afternoon.

CHAIR THOMPSON: Good afternoon.

MS. BOWSER: How many minutes do I
have?

CHAIR THOMPSON: Three, please.

MS. BOWSER: Okay. All right, I'll
read fast. Good day members of the D.C. Board of
Elections. My name is Renee Bowser, and I'm a
Ward 4 resident and Ward 4 Committeewoman of the
D.C. Democratic State Committee. Also former ANC
Commissioner for 14 years.

I'm testifying today in opposition to
the open primary provision contained in the proposed initiative. My testimony will show that the provision as written is not suitable subject for the ballot in the initiative process.

Specifically, the open primary provision of Make All Votes Count violates the Home Rule Act and severely burdens the First and Fifth Amendment rights of the D.C. Democratic Party members and voters under the U.S. Constitution.

Initially, I want to say the summary statement also of the Make All Votes Count Act has been improperly filed because it's misleading and inaccurate.

Although the ranked choice voting system proposed in the initiative would result in a preferential majority for the winner, the winner does not receive an actual majority of all votes counts. Therefore, the summary statement is misleading and should be stricken. And I cite the one study, but there are several studies that talk about that.
Secondly, and more importantly, the initiative open primary provision openly violates the District of Columbia Home Rule Act as it guts the Home Rule Act's requirement that the Mayor, D.C. Council, and Attorney General be elected on a partisan basis. Under the D.C. Code, it defines the term partisan stating that when used as an adjective means related to a political party.

Further, under another provision of the D.C. Code, it provides that a partisan political group means any committee club or organization that is regulated by the District and that is affiliated with a political party or candidate for public office in a partisan election or organized for a partisan purpose or which engages in partisan political activity.

Therefore the Mayor, D.C. Council, and Attorney General to be elected on a partisan basis, the Democratic Party must be able to elect its own standard bearers to espouse the party's values.
Contrary to the Home Rule Act's mandate of partisanship, the open primary provision states a duly elected voter who is not registered as affiliated with any political party shall be permitted to vote in the primary election held by a single political party of that voter's choice.

This would allow -- conservative voters would be able to cast ballots for the Democratic primary and thereby skew the platform in the Democratic primary and nominee selected for the general election because the general election standard bearer of the Democratic Party is selected in the primary.

So we would have to go with the most conservative people for our candidate, and that will thereby skew our voice. The third and most fundamental problem with the Make All Votes Count initiative is the open primary provision violates the D.C. Democratic Party's members and voters rights to freedom of association.

U.S. Supreme Court precedent provides
that the First Amendment protects the freedom to
join in furtherance of common political beliefs,
which necessarily presupposes a freedom to
identify those who constitute the association and
to limit association to those people only.

As a corollary, the Court precedent
provides that freedom of association would prove
an empty guarantee if associations could not
limit control over their decisions to those who
share the interests and persuasions that underlie
the association's being.

Like D.C. law, the California law
considered in Jones provided that political
parties can only nominate their candidates
through primaries. The Court concluded that the
initiative considered in that case imposed a
substantial intrusion into the associational
freedom of members to allow non-party members to
participate in the selection of the nominee in
violation of Democratic Party rules.

Nor did the proposed initiative serve
a compelling state interest because it was not
narrowly tailored.

CHAIR THOMPSON: Yeah, if you summarize. Go ahead.

MS. BOWSER: Okay, in contrast to the D.C. Home Rule Act's mandate of partisan elections, a state law that was considered in Democratic Party of Ohio v. Nago that provides for an open primary and the state law provides for an open primary and does not provide for partisan registration and prohibits declaration of party preference or nonpartisanship would not be facially unconstitutional as a violation of associational rights.

And I want to say that the Fourth Circuit in Miller v. Brown held that the Virginia law unconstitutional as applied because it burdened parties' associational rights, even though Virginia allowed nomination of candidates by primary and other methods.

The Court held that the state's interest in encouraging broad voter participation cannot overcome the severe burden placed upon a
political party when it is forced to associate
with those who may not share its views. Thank
you.

CHAIR THOMPSON: All right, thank you
so much. I really appreciate all of that, and I
very much appreciate your written comments. When
I sat down to read everything over the weekend
this one really stopped me in my tracks, as I
said.

I spent a lot of time reading
everything you cited, all of the cases including
Miller v. Brown from your footnote four. It's a
difficult issue that we're going to have to
wrestle with. So I very much appreciate your
comments. So thank you. Okay, turning then to
Brandaun Dean. Thank you for being here.

MR. DEAN: Thank you. Brandaun Dean
representing Campaign X Policy. My name is
Brandaun Dean. My street name is Poda
(phonetic). I am a voter and a civically active
citizen of the Douglass Commonwealth.

I serve as director of the Southern
Christian Movement for Reparations, and as principal of Campaign X Policy, which unofficially operates and is based out of the Martin Luther King, Jr. Memorial Library at 9th and G.

Since 2017, Campaign X Policy, CXP, has investigated more than 276 measures, proposals, initiatives, and referendum on the issue of democratic system protections, election security, and ballot justice.

Pay extraordinarily close attention to the merits of the testimonies by my colleagues, Anita Shelton and Renee Bowser, who spoke so ably about the threats that this particular initiative poses to our system, or the progress thereof.

The U.S. Supreme Court's 1964 decision in Reynolds v. Sims established the principle of one person, one vote, OPOV, a doctrine which requires every state legislative district to contain roughly the same number of people.

When each representative has the same number of constituents, people are equally
represented in their votes, have an equal
opportunity to influence policies in their state.

Section 110018A, ranked choice voting,
notwithstanding any provision of this Act
beginning with the June 2026 primary election and
all subsequent elections thereafter, ranked
choice voting shall be used for each primary
special and general election involving three or
more qualified candidates, for electors for
President and Vice President of the United
States, mayor, Attorney General, Chairman of the
Council, Delegate to the U.S. House of
Representatives, members of Council, members of
the State Board of Education, U.S. senator, U.S.
Representative Advisory Neighborhood
Commissioner, and any other elected office or
official as defined in this section.

The ADA requires election officials
conducting any elections at the federal, state,
and local level to provide communication with
voters with disabilities that is as effective as
that provided to others.
To ensure that voters with disabilities can fully participate in election processes, officials must provide appropriate auxiliary aids and services at each stage of the process for registering to vote or casting a ballot.

Only if providing an aid or service will result in a fundamental operation -- alteration or undue financial and administrative burden is a jurisdiction not required to provide the aid or service. I ask the question as a Baptist living in the District and my --

CHAIR THOMPSON: Yes, take a few -- let's wrap it up though.

MR. DEAN: What does the Lord require of me but to do justice? And to love kindness and it comes not as a surprise that some constituencies are turning to changes in voting procedures on the theory that if elections were run better, elected officials would better mirror the preferences of voters.

When asked, are you familiar with the
MAVCA Act and will you sign my petition to support it, are you familiar with ranked choice voting and its practices, do you understand the open primary systems, overwhelmingly, residents were unaware. The design and methodology of the current population census and surveys includes a description of the data collection process. This data, which is critical to the apportionment and resource distribution, cannot be isolated in a scenario where voters are compounded by deep participation by a over-represented population.

CHAIR THOMPSON: All right, thank you.

MR. DEAN: Sorry, are we on the three minutes or five?

CHAIR THOMPSON: You've taken four but yeah.

MR. DEAN: I'm on the five minute because I'm representing an organization, Mr. Chair.

CHAIR THOMPSON: Okay. Yeah, but if you can --

MR. DEAN: Ranked choice and instant
primary is unequal and breaks from the tradition
of basing election outcomes on whole numbers.
Basing election outcomes on unnatural data,
integers, and fractions becomes problematic when
we evaluate the over-representation of non-
disenfranchised racial -- racial, ability, and
gender identities.

Say that there are five candidates
running, but the voter ranks only three, all
three of those eliminated prior to the last
round. As a result, none of those votes would
have gone to a winning candidate, or the runner
up. In effect, their ballots don't figure into
the outcome.

The threats: prison gerrymandering,
malapportionment, uncompetitive election, and
instant primaries representing electoral
genrification.

CHAIR THOMPSON: So now we're on five
minutes. Now, if you could wrap it up.

MR. DEAN: Yes, sir. Again, asking
the question as a Baptist living in the District,
what does the Lord require of me but to do justice and love kindness?

I posit to this committee of three that this initiative is neither just nor kind for Douglass Commonwealth citizens who are voting while black, while differently abled, while poor or underliterate. Thank you, Mr. Chairman.

CHAIR THOMPSON: Thank you so much. All right, we appreciate you being here. Okay, Deirdre Brown. Deirdre Brown from Voters Protections Collaborative may be on my Zoom. You can raise your hand or I'll certainly take a minute or two at the very end and make sure we're not missing anybody. If we could go ahead with Anita Shelton. Anita Shelton?

MS. SHELTON: Yes?

CHAIR THOMPSON: Yes. Go ahead.

MS. SHELTON: Thank you very much. First of all, I'd like to correct the record. I had noticed that you did not include my information which I sent to you, on the record, written information. So I would like to check
with staff. And if for some reason it didn't go through, I'd like to make that available to you.

CHAIR THOMPSON: Yeah, we're happy to receive that. Thank you.

MS. SHELTON: Thank you. I'm Anita Bellamy Shelton, a super voter, and chairperson of D.C. Women in Politics, which is a nonpartisan, non-profit, diverse group for over ten years working on behalf of women, educating and advocacy.

Commissioners Thomas, Boggs, and Greenfield, I potentially understand the dilemma in which you have now been placed. One, you must provide an opportunity for citizens to express themselves, to change laws, and to modify laws, even if they go to the sacred right of vote.

On the other hand, you must provide us also an opportunity to be heard, and also to be presented with content information from which we can make intelligent votes. So we recognize the nature of your responsibility.

And therefore, D.C. Women in Politics
will not take this time to talk about the merits of the vote -- of the initiative, but to focus your particular attention on some areas of concern. First of all, we are concerned about the title.

The title, which says Make All Votes Count is at best incomplete, deceiving, and may be unintentionally fraudulent. We therefore look at your regulations, which outline the responsibilities in the initiative.

It talked about brevity, it talks about completeness, et cetera, et cetera. Therefore, we determined after a careful review of the title, and after -- and taking the stance that we'd like to do, and that is what would a reasonable person do if presented with this title?

And we have concluded that a reasonable person would probably vote not knowing what they were voting for. We therefore recommend --

CHAIR THOMPSON: If you could wrap it
up.

MS. SHELTON: Pardon me, sir?

CHAIR THOMPSON: It's been three
minutes if you could just wrap it up.

MS. SHELTON: I have five minutes.

D.C. Women in Politics, correct?

CHAIR THOMPSON: Yeah, I don't have
you listed as speaking for a group. But if you
could just, you know, wrap it up in about a
minute, that would be great.

MS. SHELTON: Well, I will, I will
wrap it up. I want to recommend to the Board
that you decline the title of this initiative,
and that you have the power to do so. That you
can either decline it or send it back for
revision, or you can present, according to your
rules, a revised title.

The only appeal that the group would
have is to take us, take you and the citizen into
court. My final opportunity is to address the
question of appropriated funds.

You have heard many arguments on that
regard that I'd like to talk about a little novel approach. We are not talking about future expenditures. We're talking about expenditures in this fiscal year.

We contend that there is a need for the Board to expend funds if you're going to protect the integrity. One, you need to engage in a voters guide that talks about the initiative.

You need to assist in developing cost analysis, certain things which are not covered in the current budget. So we're not talking about future expenditures.

We're talking about current, the need for current expenditures in this particular fiscal year. So therefore, the question of whether or not it applies is moot because we're talking about the future here.

The Board therefore has no other alternative but to reject or decline this application for cause. The cause being that you do not have the resources to do the job. Thank
you very much for the opportunity to participate.

And we look forward to working closely
with you as you ponder this revolutionary thought
of whether or not an initiative can violate the
Constitution, can violate the Home Rule Act, and
can be dealt in a way that is not appropriate to
the interests of the voters. Thank you very
much.

MS. BRIZILL: Good afternoon. My name
is Dorothy Brizill, and I'm the Executive
Director of D.C. Watch, a good government
organization.

I would like to ask two procedural
questions before I give my testimony. First, can
you tell me when the record will close and
whether or not submissions can be submitted to
the Board before it makes its decision?

CHAIR THOMPSON: My mic wasn't on. If
you'd like to submit additional written
testimony, please do. The prior speaker is going
to submit some; you're welcome to also.

MS. BRIZILL: My second procedural
question is will you make available the witness list so that people can see the individuals as well as their organization affiliations that are testified today since it was not available during the course of this hearing?

CHAIR THOMPSON: Yes.

MS. BRIZILL: That's not a complete witness list, what I was handed. This is not a complete witness list.

CHAIR THOMPSON: Okay. Well, yes, obviously as you can see, some witnesses are appearing today and for the first time, to our knowledge, and we'll certainly --

MS. BRIZILL: The reason I ask this is because you were asked to sign up by four o'clock last Thursday. So you have to go online and do it. So I know there is a record, and you have been reading from a list.

CHAIR THOMPSON: The Chair's prerogative is to permit witnesses to testify up until the day of the hearing, and I permitted people to testify today.
And I'm going to ask at the end, after you're finished, if there's anybody else who wants to testify. We'll amend the witness list when this is concluded and certainly make it available.

MS. BRIZILL: I'm not addressing the issue of the chairman's prerogative. I'm asking the chairman, in terms of making available on the website, or by email, a copy of the witness list so people can see who testified and what organizations were represented today.

It's not your -- it's not a question of your prerogative as chairman, if you want to go there. It's a question of whether or not you're going to make this information available to the public.

CHAIR THOMPSON: I think I just said that I -- that we would, yes.

MS. BRIZILL: Okay, but this is not it. Again, my name is Dorothy Brizill. I'm the Executive Director of D.C. Watch. For more than 20 years, I have attended monthly Board meetings
of the Board of Elections.

I am quite familiar with the issue of initiatives and referendum. The issues that have been discussed by and large today are not really relevant.

The issue before the Board today is whether or not the Board can approve this initiative as a proper subject for an initiative. As you know, there are seven issues by which -- matters by which you cannot propose an initiative.

The sixth and the seventh one refer to the measure cannot -- the measure cannot be approved if it would negate or limit a budgetary act of the D.C. Council, or the measure would appropriate funds.

The proponents of this initiative have come up with a unique solution to the appropriation question. They have added a Section 5 from the original version of the initiative to essentially say the matter would be subject to appropriations.
I have never heard that used -- phrase be used before. Nor has it been relied upon over the many years by anybody who has proposed an initiative before the Council, before this body.

I would like to submit for the record testimony that Monica Evans, our Executive Director on the Board of Elections, gave on November 18, 2021, regarding the Voter Ownership, Integrity, Choice, and Equity Amendment Act of 2021.

It's a virtual carbon copy of the initiative that's before you today. In it, Monica Evans goes into detail about the cost of implementing ranked choice vote.

As you also know, the experience of -- recent experience of Arlington when they did not have sufficient funds or use sufficient funds to do a voter education campaign.

So first and foremost will be the need for a very costly, very costly, voter education campaign. The need to modify our ballot design, the need possibly for new voting equipment, and
certainly for new software. Moreover, the tabulation of the vote will go through multiple rounds, calling upon additional personnel to do so.

I would like to close by commenting on something in the OAG's Memorandum to the Board. I find it interesting, ironic, and almost comical that he would say -- he would say that the issue is moot as regards the appropriation of funds. And he uses this logic.

The Board is already charged with administering the underlying elections. It is possible that the proposed initiative would not impose any additional costs. It is also possible, however, that the proposed initiative will propose additional costs. What is it?

Any person who knows how elections are conducted in the District of Columbia, as has Ms. Evans in her testimony a couple of years ago indicated, there will be substantial, substantial additional costs in doing ranked choice voting. Thank you.
CHAIR THOMPSON:  Thank you, Ms. Brizill. We appreciate your testimony. Okay, I've gone through all the names on the sign-up list. I've passed over a few. So let me make sure everybody has the opportunity. Let me start with people in the room here in person. Is there anybody else who would like to testify? Here comes a gentleman.

If there's anybody else, if you could take the other chair? At this point, good afternoon, and just tell us your name and take three minutes, please.

MR. MEADOWS:  Good afternoon. My name is David Meadows, a D.C. resident and longtime voter, a member of the D.C. Democratic Party, and I'm here to not speak in favor or against ranked choice voting.

What I am here is to speak to the provisions that the Board must consider when they are accepting or rejecting an initiative. And basically, you have those provisions.

I think that this initiative violates
the provision of the U.S. Constitution. As it's been discussed earlier, we already have spoken about the Home Rule charter, about the establishment of our federal district, Article One, Section Eight of the U.S. Constitution, which imposes Congress the rights to exercise authority over the District and territory.

And so basically, the Home Rule, Home Rule Act was passed in 1974. And so they set the precedents on how our elections would be conducted.

And so that needs to be upheld. To do so would go against Congress, would go against the Constitution, exactly like the U.S. Supreme Court of the year 2000.

That is the Democratic Party of California v. Jones, and they upheld seven to two the right of the U.S. First Amendment, the right to assemble and to join together. They upheld that that blanket primary that was proposed for California was unconstitutional.

So when you look at those two
revisions, this initiative proposal should be rejected. Also, I would argue that it discriminates against those that are elderly, are seniors, those that have second language, that English is their second language, and those that have disabilities.

Ranked choice voting studies, and I will, before your deadline, I will send you some studies that have shown how negatively it affects elderly, those with disabilities to rank the votes properly.

So not only does it violate one of your statutes for the Constitution, it violates a statute, in my opinion, against those with disabilities.

And others have spoken to the effect of the funding and the appropriation. And to follow up earlier, you were asking about the D.C. Council's appropriations. The city Council, they passed many, many pieces of legislation that have not been funded.

And then when the budget comes around,
if they fund it, they do. But there is a list at
dccouncilbudget.com. And it will have a list of
all the laws that our Council passes that are not
funded. And so therefore, they're not enacted
into law. Thank you.

CHAIR THOMPSON: Thank you, Mr. Meadows. I appreciate that. Seeing nobody else
here that would like to testify, is there anybody
on by Zoom who would like to take a minute or two
to also testify regarding our subject matter.
And you would probably have to raise a Zoom hand
to let us know.

We have 66 participants by Zoom.
Thank you, everybody, for being here. We
appreciate you sticking with us. We know this is
an important issue to a lot of people and to
everybody in D.C. Okay, well seeing no hands
raised, I want to first thank everybody.

Hold on. We've already heard from Ms.
Bowser. So it -- I don't know if it --

MS. BOWSER: I have a brief question,
if I may?
CHAIR THOMPSON: Okay, go ahead. Yes.

MS. BOWSER: Will you in your decision address point by point the cases that I cited and even more with regard to the issue of the right of association and the encroachment upon that right?

Not just in generalities, but very specifically, because I really believe that the D.C. Home Rule Act and the provisions I -- defining what partisan political party means, you know, we just can't throw that aside.

And so I really -- I heard some people earlier basically saying oh, well, that doesn't mean anything that there's supposed to be partisan political parties.

But I think you really need to give some detailed analysis as to why the Home Rule Act and the U.S. Constitution don't prevent this initiative as far as the open primary.

CHAIR THOMPSON: Yeah, thank you for that. We certainly will address every issue that's been raised, including the issue of
whether the proposed semi-open primary system
would violate the Constitution or the Home Rule
Act.

Every issue that's been raised in all
the written comments, we will address it. I
can't promise we'll discuss every case that's
been cited, but we'll probably discuss many of
the cases. In that regard, I would imagine we'll
certainly make mention of the Supreme Court's
decision in Jones. So, but we don't know yet.

And so, also, again, I wanted to thank
everybody for all your testimony, written and
live. It's been really, really informative.

And I think what we've all absorbed
here today is we still have a lot of work to do
to get our heads around all of these issues and
issue a proper and thorough ruling, as Ms. Bowser
just suggested. So we just need more time. So
what I'm going to do is make a motion that we go
into Executive Session.

My motion is under the D.C. Code, 1-
275(b)(13), which allows us to go into executive
session to deliberate on a decision and
adjudication action or proceeding by a public
body exercising quasi-judicial function.

So Executive Session, that just means
we sit in a conference room and hash it out until
we come to a conclusion. And we, sometimes -- or
frequently, we go into Executive Session right
away, spend about a half an hour to maybe two
hours, make our decision, come back and issue it.

But I think we need more time. And a
lot -- we have to read a bit more as well. So as
I mentioned, my motion includes leaving our
record open until Friday at noon.

We will be in Executive Session at
some point between now and Friday afternoon. And
I'm not sure if we'll come back on the record
Friday afternoon.

But it -- that's my aspiration, I
can't, I won't promise it but around two or three
or four o'clock, perhaps we'll come back on the
record. And you'll hear our decision.

We'll certainly provide public notice
in advance of that date, of that time as we become more certain. We might need -- we may need the weekend into next week, I'm not sure. So we'll make sure everybody knows that by public notice. So with that, which would also include adjourning this meeting otherwise.

Or let me, let me, let me just with respect to the proper subject matter issue that's before us. On that issue, I'm going to move we go into Executive Session. Assuming it passes, we'll table it, and we'll come back for additional public comment presenting.

MR. BOGGS: I second.

CHAIR THOMPSON: All in favor?

(Chorus of aye.)

CHAIR THOMPSON: The motion passes. And before we all stand up, we generally in our regular meetings just have open, basically open mic for public comment about what's happening. We certainly have heard everything I think we need to hear about the proposed voters initiative.
So at this time, is there anybody who would like to take a few moments to speak about something else? Yes, Ms. Rice, if you'd like to come to the mic?

MS. RICE: Thank you. I want to thank everyone in front of me. I also want to thank all the witnesses supporting and against this initiative.

This is about democracy and this is how democracy works. So I'm very happy to have heard from people on all sides of the issue today. And I'm very, very excited for what's going to happen next. And thank you so much.

CHAIR THOMPSON: Thank you. I really appreciate that. Anybody on Zoom? Just scroll down. Let's see if we're missing any hands. And seeing none, I will -- see, that's what we're doing right now, yes. We have one last witness.

MS. BRIZILL: Again, my name is Dorothy Brizill. I'm Executive Director of D.C. Watch. I have a matter that I'm bringing to the Board meeting because it's perhaps the only way
I'll get an answer. I would like to ask the chairman and Monica Evans, the Executive Director of the Board, how are personnel vacancies filled by the Board?

MS. EVANS: We have a director of human resources that works with the Board that is on staff, and she works with DCHR. And so we are responsible for developing the PD. And once we develop the PD, we work with --

MS. BRIZILL: What's the PD?

MS. EVANS: The Program Description for the position. So, yeah, the position description for whatever the vacancy is.

MS. BRIZILL: And you work with the Department of Human Resources to fill the position?

MS. EVANS: Yes, we send that and they actually post, so our positions are posted on DCHR website. And then we also use other venues such as NASED, National Association for State Election Directors, and Election Center and -- to make sure that we're trying to cast a wide net
with our vacancy announcements.

MS. BRIZILL: Approximately three
weeks ago, you gave testimony before the Council
in which you indicated that one position you were
seeking to fill for the Board of Elections was
Communications Director.

MS. EVANS: Yes, ma'am.

MS. BRIZILL: I not only went on the
website of the Department of Human Resources, but
I also called and spoke to an associate of the
director there.

That position had never been posted
over there, okay? And indeed, there were no
positions for the Board of Elections posted on
the Board -- on the website of the Department of
Human Resources.

Can you tell me how long you believe
you have been posting positions with the
Department of Human Resources? And if you're not
posting them, where are you posting them?

MS. EVANS: Well, we are. I'm not
exactly sure I can speak to the information you
were given. But I can provide the information that we sent to DCHR.

And I can work with my director and get that to you. But we have been sending and individuals have been finding those positions and applying. So I'm not exactly sure what the disconnect is.

MS. BRIZILL: So you are looking for a Communications Director?

MS. EVANS: Yes, ma'am.

MS. BRIZILL: If you go on the website of the Department of Human Resources, it's not posted now at all.

MS. EVANS: Well, it is currently closed. And so we're in the interview process right now. But it was posted, and we are looking, so we're currently in the interview process for that position.

CHAIR THOMPSON: Thank you so much. Mr. Schiller, something other than the Voters Initiative?

MR. SCHILLER: Procedural. So the
witness testimony that was required to be submitted, there was a deadline of last Thursday?

    CHAIR THOMPSON: Yeah.

    MR. SCHILLER: And so you have decided to extend the testimony? There shall be another --

    CHAIR THOMPSON: Yes.

    MR. SCHILLER: -- public hearing, or the executive session will be rendered in private -- or the decision will be rendered in private, will be made public?

    CHAIR THOMPSON: No, you or anyone else can submit additional written testimony through Friday at noon.

    MR. SCHILLER: Okay.

    CHAIR THOMPSON: We will deliberate in private, and then hopefully on Friday afternoon, we'll come back on the record and simply, essentially, announce our decision.

    MR. SCHILLER: In a public forum?

    CHAIR THOMPSON: Yeah. Oh, yeah.

    MR. SCHILLER: Okay, so they'll be
another hearing similar to this one?

CHAIR THOMPSON: But there won't be testimony.

MR. SCHILLER: Right, right, right.

CHAIR THOMPSON: It'll just be we'll come out of Executive Session. Somebody will make a motion.

MR. SCHILLER: There will be a memorandum issued on --

(Simultaneous speaking.)

CHAIR THOMPSON: -- a written opinion. Yeah, we don't rule in the Executive Session. We rule formally --

MR. SCHILLER: This is the first time in subject matter determination hearings that it's been extended. It's usually the witness --

CHAIR THOMPSON: Right.

MR. SCHILLER: -- everything is provided. You go into Executive Session. We take a break. You come back and render the decision. So this is a new procedure?

CHAIR THOMPSON: Yes, we just need
some time.

MR. SCHILLER: Thank you.

CHAIR THOMPSON: Thank you. With that, I'd move we adjourn. All in favor?

(Chorus of aye.)

CHAIR THOMPSON: Thank you, everybody.

(Whereupon, the above-entitled matter went off the record at 1:45 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Board Meeting

Before: DC BOE

Date: 07-18-23

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