To: Members of the Council of the District of Columbia

From: Mary M. Cheh, Chairperson
Committee on Government Operations and the Environment

Date: September 25, 2009

Subject: Bill 18-345, the “Omnibus Election Reform Act of 2009”

The Committee on Government Operations and the Environment, to which Bill 18-345, the “Omnibus Election Reform Act of 2009” was referred, reports favorably on the legislation and recommends its adoption by the Council of the District of Columbia.

CONTENTS

Statement of Purpose and Effect .................................................. Page 2
Legislative History ................................................................. Page 2
Background and Committee Reasoning ...................................... Page 3
Section-by-Section Analysis ....................................................... Page 8
Summary of Public Hearing ....................................................... Page 8
Fiscal Impact ............................................................................ Page 9
Analysis of Impact on Existing Law ............................................ Page 9
Committee Action .................................................................... Page 9
List of Attachments ................................................................. Page 9
STATEMENT OF PURPOSE AND EFFECT

The purpose of B18-345, the “Omnibus Election Reform Act of 2009” is to modernize the administration of the District’s elections.

LEGISLATIVE HISTORY

June 16, 2009  Introduction of B18-345
June 16, 2009  Referral of B18-345 to the Committee on Government Oversight and the Environment
June 26, 2009  Notice of Intent to Act on B18-345 is published in the District of Columbia Register
June 26, 2009  Notice of Public Hearing on B18-345 is published in the District of Columbia Register
July 13, 2009  Public Hearing on B18-345 held by the Committee on Government Operations and the Environment
September 25, 2009  Consideration and vote on B18-345 by the Committee on Government Operations and the Environment

BACKGROUND AND COMMITTEE REASONING

The right to vote is one of the most important aspects of modern democracy. Particularly in the District—the seat of our nation’s capital and where the importance of representative democracy is a rallying cry for self-governance—the government has a responsibility to ensure that elections are accessible, accurate, transparent, and efficient.

For more than a decade, the District has administered elections without much fanfare or notice.¹ During the historic 2008 election season, though, the District faced several well-documented missteps, chief among them were problems with the District’s voting machines and insufficient numbers of ballots. In the aftermath of those missteps, the need for meaningful and comprehensive election reform became abundantly clear. The Omnibus Election Reform Act of 2009 is the product of what one witness has called the “first time in some 20 years that the District of Columbia’s election laws have been opened up for amendment to this degree.”² The proposed legislation reflects best practices from other jurisdictions, innovations consistent with the District’s experiences, and recommendations from advocates, officials, and the public. Through enactment of this legislation, the District will take a major step forward toward modernizing and professionalizing the administration of elections.

¹ There certainly has been controversy surrounding the Board’s governance and activities—including controversies about petition signatures, employee compensation, and staffing, to name a few—but little public scrutiny has been placed on the actual administration of elections.
² Testimony of William O’Field, Certified Elections/Registration Administrator.
A. Board governance

The District of Columbia Board of Elections and Ethics ("Board"), an independent agency established by the Home Rule Act, is responsible for administering elections in the District. The Board is composed of three members, who are appointed by the Mayor with the advice and consent of the Council and who serve three-year terms.

1. Member qualifications

Under current law, in order to be appointed to the Board, a person must qualify as an elector (though the person need not actually be a registered voter), be a District resident for at least three years, and "hold no other paid office or employment" in either District or federal government.3 Once a Board member, a person may not engage in certain activities such as campaigning for public officer or contribute to political campaigns in the District.4 The Board is intended to be nonpartisan; no more than two of the members may be of the same political party.

The proposed legislation would add substantive qualifications to Board nominees. Although some members of the Board have benefited from varying degrees of experience in elections administration, many have no experience in elections. Given the importance of elections in the District and the need for independent judgment about matters related to elections and government ethics, statutory qualifications for Board membership ensure that future members are qualified. Under the proposed legislation, the Mayor and Council would be required to consider whether a potential Board member "possesses demonstrated integrity, independence, and public credibility, and whether the individual has particular knowledge, training, or experience in government ethics or in elections law and procedure." Additionally, the legislation would require that a nominee to the Board actually be a registered voter. These requirements would increase the public’s confidence in the Board’s actions and likely improve the quality and independence of the Board’s decision-making.

Some have argued that the imposition of qualifications would substantially reduce the pool of potentially qualified nominees. The Committee rejects this argument. Because of its status as the nation’s capital, the District enjoys an abundance of qualified potential nominees. Moreover, in the District, there are several other Boards, Directors, and

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3 D.C. Official Code § 1-1001.04(a).
4 D.C. Official Code § 1-1001.04(b).
5 See, e.g., D.C. Official Code § 1-605.01(b) ("The Mayor shall select members of [the Public Employee Relations Board] from persons who through their experience have demonstrated an expert knowledge of the field of labor relations and who possess the integrity and impartiality necessary to protect the public interest and the interests of the District of Columbia government and its employees.").
6 For example, the Chief Procurement Officer and the Inspector General must have more than seven years of substantive experience in their respective fields. See D.C. Official Code § 2-301.05e(d) ("The CPO shall have not less than 7 years of senior-level experience in procurement and shall have demonstrated, through his or her knowledge and experience, the ability to administer a public procurement system of the size and complexity of the program established by this chapter.") and D.C. Official Code § 2-302.08 (D), (D-i) (The Inspector General must have, among other things, “a minimum of 7 years of supervisory and management
Commissions\textsuperscript{7} that have substantive qualification requirements. Additionally, jurisdictions such as Illinois\textsuperscript{8} and New Hampshire,\textsuperscript{9} as well as the federal Election Assistance Commission,\textsuperscript{10} all require substantive qualifications for elections officials.

In order to avoid potential separation-of-powers problems related to the removal power,\textsuperscript{11} the proposed legislation makes it clear that these amendments do not apply to sitting Board members.

The proposed legislation would also prohibit Board members from serving as an officer or a director of an organization receiving District funds, or as an employee of an organization receiving District funds with managerial or discretionary responsibilities with respect to those funds. Insofar as the Board addresses issues ranging from conflicts-of-interest and other politically sensitive matters, the need for independence and integrity of Board members is paramount. Protecting against potential influence of a Board member from either the promise of or the withholding of District funds and provides an additional safeguard against potential threats to the Board’s independence.

Together, these provisions will provide the public with greater levels of confidence that the Board of Elections and Ethics will act competently and in the public interest. The provisions also underscore the importance of professionally managed elections and of ethics in District government.

2. Open meetings and election observers

Although the Board is structurally designed to be politically independent, it is nonetheless critical that it act as a politically accountable body. In order to be truly accountable, the Board must conduct its activities in a transparent manner.

Currently, while the Board is subject to the District’s open-meeting requirements, there is no statutory guidance about the number of times that a Board must meet, the amount of notice that must be given about a meeting, or the manner by which such notice be given. The legislation addresses that concern and also statutorily resolves a long-standing concern about the lack of transparency of the Board’s practices. In the past, for instance, the Board failed to post its agenda or minutes on the website, or otherwise give notice of the purpose of its meetings. The proposed legislation would require the Board to...
hold monthly meetings according to a regular schedule, require that the Board publish a proposed agenda on its website at least 48 hours before the meeting, and require the Board to publish the minutes of each Board meeting on its website. The legislation also would prohibit the Board from meeting outside of the public purview except when it enters executive session, and provides statutory authority to enter into executive session in specific circumstances.

Furthermore, the proposed legislation would require that the Board provide election observers with “uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early and absentee voting, and vote tabulation.” The legislation also demands that the Board promulgate rules for granting and denying requests for access; by establishing clear rules, the Board can protect the integrity of the electoral process from disruption or crowding while still ensuring fairness of access.

3. Reporting requirements

In order to further enhance the transparency and accountability of the Board, the Committee proposes the establishment of a reporting requirement following the administration of an election in the District.

The proposed legislation outlines specific information to be included in such an after-action report. For example, the legislation would require the Board to provide data about: “[t]he total number of votes cast, broken down by type of ballot, and including the number of spoiled ballots and special ballots that were not counted”; voter registration data; and polling place worker data. This information will help residents of the District evaluate the administration of the elections in the District. Additionally, the compilation of such quantitative data will help the Board and Council make better assessments about needed reforms and changes that can be implemented in future elections.

B. Voter qualifications

In 2008, the Council enacted the Student Voter Registration Amendment Act of 2008, D.C. Law 17-236, which allowed 17 year olds to “pre-register” to vote. That bill aimed to encourage students to register to vote, though it only permitted persons 18 and older to vote in any election. The proposed legislation would also permit a person who is 17 years old to vote in a primary election if he or she will be 18 years old by the time of the general election.

According to testimony presented before the Committee, almost half of the states have moved toward allowing such a policy because it “gives voting-age young people a voice in who appears on the general election ballot [and] encourages young people to vote in the first election for which they are eligible, which has been shown to promote lifelong political participation.”

12 Testimony of Adam Vogel, Right to Vote Director, FairVote.
The proposed legislation would reduce the age of pre-registration to 16 years old. This change would have the important effect of allowing all persons who register for a driver’s license to register to vote, and would likely increase voter registration in the District.

C. Voter registration

One of the most critical aspects of the elections process is the maintenance of a voter registration list. Under current law, the District requires new voters to register no later than 30 days before the date of an election. Although this practice provides some administrative benefit for the Board (e.g., it helps administrators predict how many ballots to print off), closing the election registry ultimately leads to bureaucratic disenfranchisement of otherwise-eligible voters, results in lower voter turnout, and may reduce administrative burdens on election officials during the most critical phase of election planning—during the days immediately preceding the election.

In order to modernize the District’s voter registration system, the Committee recommends that the District adopt same-day registration for the 2010 election and take preliminary steps toward the eventual adoption of an “automatic voter registration” system. In addition, the Committee recommends that the District expand registration opportunities at the Department of Corrections and the Department of Youth Rehabilitative Services.

1. Same-day registration

Same-day registration (sometimes called Election-Day Registration) allows a voter to register to vote and cast a ballot on the same day. It is used in nine other jurisdictions throughout the United States: Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin, and Wyoming. There are several advantages to same-day registration. Perhaps the most significant of these advantages is the increase in voter participation. Jurisdictions using same-day registration experience higher voter turnout rates than in other jurisdictions.

Same-day registration also has the important effect of ensuring that voters who attempted to register, but were either incorrectly entered into the registry or were not entered at all, can vote. In the most recent election in the District, 3,172 special ballots were rejected because the voter had not been properly registered. Although it is impossible to know how many of these voters had attempted to properly register, the Committee received testimony suggesting that disenfranchisement by “bureaucratic snafu” occurred.13

Implementing same-day registration would also reduce the use of special ballots (also called provisional ballots) in the District. In the November 2008 General Election,

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13 See, e.g., Testimony of Susannah Goodman, Director of Election Reform Programs, Common Cause and Testimony of Eric Marshall, Campaign Manager, National Campaign for Fair Elections, Voting Rights Project, Lawyers’ Committee for Civil Rights Under Law.
almost 15,000 special ballots were cast. With same-day registration, the need for special ballots reduces significantly. As the testimony provided to the Committee describes it:

Provisional balloting can be a frustrating experience for elections officials and voters alike. Elections workers are often hard-pressed to comb their voter registration records in the hectic days after each election looking for evidence of the prior registration of provisional voters, whose names could not be found on the voter rolls on Election Day. Voters are upset that poll workers can not find their names on poll books and bridle at casting provisional ballots. Many are later disillusioned by learning that their provisional ballots were ultimately rejected, and never vote again.14

Or, as one witness—an election administrator familiar with the implementation of same-day registration—described the economic advantages of same-day registration: “Rather than having to staff election offices with personnel who are trained and certified to mass enter registrations into the statewide voter registration database on duty for weeks prior to Election Day, we add inspectors on Election Day for voter registration purposes.”15 In other words, same-day registration shifts the focus of election officials to actually registering voters rather than rejecting them.

Although critics of same-day registration have argued that allowing voters to register and vote on the same day can open the door to voter fraud, the Committee finds this argument unpersuasive for several reasons.16 First, and foremost, the claims that same-day registration can lead to higher levels of voter fraud have not been empirically demonstrated. Indeed, according to testimony presented to the Committee, evidence suggests that same-day registration has a minimal effect on voter fraud rates.17 Similarly, a study by Barnard College professor Lorraine Minnite found that “data on voter fraud in the states with the most convenient registration rules suggest that liberalized registration procedures on their own do not cause voter fraud, nor do they compromise voter roll security.”18 In fact, the study concluded that: “Administered effectively, Election Day Registration may actually provide more security for the ballot, not less. As the Secretary of State of Minnesota recently put it, ‘EDR is much more secure because you have the person right in front of you—not a postcard in the mail. That is a no-brainer. We have 33 years of experience with this.’”19

14 Testimony of Steven Carbó, Senior Program Director, Demos.
15 Testimony of Sandra A. Wesolowski, Director of Clerk Services, City of Franklin, WI.
16 At least one witness argued that the District’s past experience with voter fraud militates against the implementation of same-day registration. Specifically, the witness cited the fact that, in 1998, the Board found approximately 261 instances of voters casting ballots in both the District and Prince George’s County. Vanessa Williams, D.C. Finds 3,639 Voters on Rolls in Pr. George’s, Wash. Post (Mar. 5, 1998). This incident, however, indicates that voter fraud, to the extent it occurs, can occur with or without same-day registration. It does not indicate that same-day registration would contribute or otherwise facilitate fraud. Moreover, the procedural safeguard of publishing the list of voters who registered on Election Day would provide the Board with an excellent starting place for analysis of potential voter fraud claims.
17 Testimony of Steven Carbó, Demos.
19 Id. (emphasis added).
Second, procedural safeguards can be built into the system to thwart potential voter fraud. For instance, the proposed legislation would require that the Board keep records of voters who register on Election Day in order to track trends and to mail new voters non-forwardable confirmation postcards to confirm the voter’s residence. Similarly, the proposed legislation also requires the Board to maintain a list of new registrants, and to make that list available for public inspection, which would allow “watchdog” organizations or individuals to provide an additional check on the integrity of same-day voter registration.

Third, other jurisdictions have used same-day registration for more than three decades without major incident. Although the District is unquestionably unique in its electoral patterns, it stands to reason that the District’s experience will be relatively similar to those other jurisdictions experienced around the country. Moreover, the Committee believes that if the Board conducts a comprehensive review of the voter registry—perhaps through an independent audit—and takes all legally permissible steps to ensure that it is as accurate as possible, same-day registration will provide even further opportunities to make sure that the District’s registry will be accurate. Given the use of electronic poll books and other strategies the risk of “double voting” is minimal.

In response to recommendations made during the public hearing, the Committee has modified the introduced version to: (1) require that a new registrant present identification that meets the requirements for registration set forth under federal law; and (2) prohibit previously registered voters from switching party affiliation using same-day registration in order to preserve the integrity of the District’s closed-primary system. These changes are aimed at increasing voter accessibility while limiting the opportunity for fraud and at maintaining the integrity of the District’s primary election process.

2. Automatic-voter-registration study

The proposed legislation also recommends that the Board conduct a study of the feasibility of implementing an automatic-voter-registration (AVR) system in the District. Unlike the current registration system, which relies heavily on voters to register to vote, an AVR system would place the burden of creating a voter registry on the Board. AVR is an exciting possibility for the District and the Board should thoroughly investigate what would be necessary to implement it here.

The problems with a voter-initiated voter registration system are well-documented:

When voters are required to register themselves, they may make mistakes, including unnecessarily submitting multiple forms. They may not

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20 During markup, the Committee approved an amendment to the committee print that would, in essence, create a two-tier structure for proof of residence at the polling place. As amended, the legislation would allow an individual who fails to show a government-issued and valid photo identification card to register on the same day and cast his or her vote by special ballot.
understand how to complete the forms or inadvertently leave off information. They may use a different form of their name than appears in motor vehicle or Social Security databases, making it more difficult to verify their information. They may submit new registration forms when they move instead of filing changes of address. They may believe that they need to re-register for each election. Correcting these mistakes adds time to the official processing of forms; refusing to make corrections – or to allow registrants to make them – bars the voter from the polls for errors that have nothing to do with eligibility.

Leaving registration up to individual voters also makes it harder to keep the lists current. Voters rarely cancel their registration when they move. The names of voters who are no longer qualified to vote in a particular location remain on the list, along with those of voters who have died. Although federal law recognizes the need to clean registration rolls, officials first must complete procedures designed to ensure that they do not delete eligible voters from the rolls. In the meantime, bloated rolls fuel fear-mongering about the potential for fraud, which in turn serves as an excuse for voter suppressive legislation or unlawful purges of the voter rolls.21

Thus, voter-initiated voter registration systems impose administrative costs, leave room for government error, and reduce voter participation. When combined with same-day registration, AVR offers the District with an opportunity to radically improve the quality of its voter registry, while at the same time realizing cost savings achieved through the reduction of administrative burdens that are associated with voter-initiated registration.

Although no jurisdiction in the nation uses an AVR system, the United States is actually “an outlier in having a self-initiated opt-in system of voter registration. In most other democracies, the government shares the responsibility of maintaining full and accurate voter rolls.”22 The Committee is optimistic that AVR could be implemented as early as the 2012 elections, but believes that the issue needs to be studied—due in part to the fact that it is unprecedented in the United States—to ensure that the Board has the up-front necessary resources to implement such a system and to ensure that the legal framework for such a system is adequately considered.

3. National Voter Registration Act

Under section 7 of the National Voter Registration Act (NVRA), the District is required to designate certain agencies as “voter registration agencies.” 42 U.S.C. § 1973gg-5. These voter registration agencies must distribute mail-voter registration application forms, give assistance to applicants in completing voter registration application forms unless the applicant refuses such assistance, and accept completed voter registration application forms for transmittal to the Board. Id.

21 Wendy Weiser et al., Voter Registration Modernization 6 (2009).
22 Testimony of Adam Vogel, Fair Vote.
By law, the District must designate agencies that provide public assistance and agencies that provide District-funded programs “primarily engaged in providing services to persons with disabilities” to be voter registration agencies. *Id.* The District has also designated the Office of Aging and the Department of Parks and Recreation to be voter registration agencies.

The Committee recommends that the Department of Corrections and the Department of Youth and Rehabilitative Services be added to the list of voter registration agencies. These agencies, which serve individuals involved in the criminal-justice system, can serve a vital role in prisoner re-entry and societal reintegration through inclusion in the elections process.

Moreover, although the legislation does not provide for additional measures taken by the Board, the Committee recommends that the Executive take action (perhaps through Executive Order) to increase awareness, involvement, and training in voter registration agencies in order to help register traditionally disenfranchised populations in the District.

**D. Polling place workers**

One key, though often overlooked, aspect of election administration involves the recruitment, training, and retention of quality polling place workers. In the District, more than 2,000 polling place workers are needed for each election.23 Polling place workers are the front line of an election—often, they are the only election officials who voters will ever encounter—and therefore it is imperative that the District retain the most highly qualified people to work at the polls.

Despite the importance of having highly trained polling place workers, the District does not maintain any quantifiable assessment of the quality of polling place workers. The proposed legislation would require the Board to measure past performance of polling place workers. The need to measure all aspects of polling place worker programs cannot be overstated. For instance, the Board should attempt to measure the effectiveness of recruitment campaigns, the quality of training, the actual performance of the workers based on objective criteria, voter satisfaction, and attrition and retention rates.

In addition, the Committee finds that it is essential that the Board should establish minimum standards for polling place workers. The proposed legislation would require that all polling place workers have at least four hours of training and meet those minimum standards. By establishing these minimum standards, the public can have greater levels of confidence that polling place workers are qualified to work the polls, the Board can have greater levels of assurance that its agents are performing as expected, and taxpayers can have greater certainty that the money spent on polling place workers is being wisely used.

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23 In the November 2008 general election, the Board recruited and trained 3,388 polling place workers.
The proposed legislation also provides three recruitment strategies for the District. First, it would allow the Board to recruit District residents, not just electors. This would allow the Board to tap into large pools of otherwise excellent polling place workers (such as District government employees, college students, and federal employees who maintain permanent residences in other states). Although the Committee is sensitive to arguments that polling place workers should be voters themselves, the Committee is persuaded by successes seen in programs such as the youth pollworker program and the College Poll Worker Program sponsored by the League of Women Voters and by the Center for Democracy and Election Management and the Pollworker Institute, respectively, that non-voter residents can play an important role in the administration of elections.

In addition, under the proposed legislation, voter registration forms would include a check-off for voters to signal their interest in being a polling place worker. This small change could have significant effects in polling place worker recruitment. Finally, the proposed legislation would allow District government employees to take leave to work as a polling place workers in the same manner as a District employee would take leave for jury duty. In a government with approximately 33,000 employees, most of whom are District residents, allowing paid leave could create a pool of thousands of potential polling place workers.

E. Voting machines

In the aftermath of the heavily disputed 2000 Presidential election, Congress enacted the Help America Vote Act of 2002 in an effort to implement computerized, statewide election registration systems and to phase out the use of punch-card voting systems that were in wide use throughout the United States in favor of electronic voting systems.24 The District, like many jurisdictions around the country, migrated its voting systems toward one that used a combination of paper ballots through the use of “precinct-count optical scan” machines and of touch-screen voting through the use of “direct-recording electronic” (DRE) machines.

In the September 2008 primary elections, however, the District experienced an unusual voting anomaly. In particular, one precinct reported 4,759 votes, despite the fact that the precinct had a registered voting population of only 2,388.25 Though the problem was later resolved, the very existence of the anomaly created doubt in the reliability of the District’s voting systems. Particularly with regard to DREs, where there is no permanent record of the vote, there is significant reason to be concerned that election outcomes can be influenced either through technical failure or through outright voting-machine attacks. Nonetheless, as the Council Board of Elections and Ethics Investigation Special Committee explained, there are procedural safeguards that can be implemented to

protect the integrity of the elections. Many of these procedural safeguards will be discussed in the section below.

Some states, including Maryland and Virginia, have taken bold steps toward requiring that voting machines create a “voter verifiable record” (VVR). VVRs ensure that an election can be effectively audited or subjected to a recount, and therefore that election results can be verified as the true and accurate outcome of the election. The Committee proposes following the lead of these jurisdictions, and recommends creating a similar requirement that all voting systems used in the District after January 1, 2012, be capable of producing a permanent, voter-verifiable record that is capable of being inspected for the purpose of audits and recounts.

As a practical matter, the Committee appreciates that voting systems have not reached a state where meaningful alternatives to paper ballots exist. However, because the Committee is wary of unnecessarily limiting the District’s ability to exploit new technologies as they become available, the Committee emphasizes that the law does not require a voter-verifiable record to be a paper ballot.

Finally, the proposed legislation would also require that the District use negotiated procurement practices to ensure that the District receives best value for its voting systems. Given the District’s experience, the benefits of entering into a sole-source contract with a particular vendor are dubious. Moreover, the legislation provides that any request for proposal or similar solicitation must include specific terms that will protect the District’s investment in voting systems, such as a warranty provision, a “most-favored jurisdiction” provision, a “modularity” provision, and a source-code escrow requirement. According to testimony received by the Committee, the experience in other jurisdictions has been that inclusion of such requirements does not lead to any significant cost increases for the system.

The nation’s experience in the 2000 elections taught that a jurisdiction’s choices about voting technology can have profound effects on the public’s confidence in the reliability of the outcome of an election. The District’s experience in the September 2008 primary election teaches that there are ways to enhance the integrity of election results, and to promote public confidence in their accuracy, without substantial additional costs. This proposed legislation seeks to capitalize on these lessons, and to guarantee that the District’s voting systems are accessible and reliable.

F. Absentee voting, early voting, special ballots, and military voters

The traditional manner by which an individual may vote is to arrive at his or her designated polling place on Election Day and cast a ballot. Though this is by far the most

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26 Id. at 13 (“Through the immediate implementation of sound ballot accounting practices, post-election audits, and clearly defined processes, the Board can make substantial progress toward that goal. In addition, voters should be encouraged to use paper ballots and optical-scan voting machines on Election Day. This may help to speed the movement of voters through the polls, but, as importantly, will provide a paper trail of votes. Finally, the Board should build in redundancies in the vote tabulation process, and should establish clear processes for the release of election results.”).
common way to vote, there exist alternatives to voting that improve accessibility of the polls. Chief among them is the use of absentee voting, which allows a voter to cast a vote by mail or in person before Election Day. The proposed legislation proposes expanding voters’ opportunities to vote absentee and to take advantage of “early voting” and vote centers. Additionally, the proposed legislation contemplates increasing voter accessibility at polling places if a voter casts a special ballot in the wrong precinct. Finally, the proposed legislation gives the Board greater tools to provide military and overseas voters with access to vote in federal elections.

1. No-fault absentee voting

In the last election, 27,955 voters cast their vote by absentee ballot, representing 10.48% of the total number of votes.27 Current law permits a voter to cast an absentee vote if the voter “may be absent from the District on election day, or, who, as a condition of his or her employment with the Board on any election day, is required to be absent from the voting precinct in which he or she is registered to vote, or who because of his or her physical condition, is unable to vote in person at the polling place in his or her voting precinct on election day.”28 In other words, under current law, a voter must have a specific reason to vote by absentee ballot. The Committee recommends changing the law to allow a registered voter to vote absentee for any reason. This change will increase convenience to voters, reduce lines on Election Day, and would align the District with a majority of states that already allow no-fault absentee voting.

2. Early voting

One aspect of the proposed legislation that could profoundly affect the District’s elections is the prospect of implementing “early voting.” Early voting, as it is traditionally understood, is a “a process by which voters cast their ballots before Election Day at precinct-like polling stations throughout a jurisdiction.”29 While early voting is unquestionably more convenient for voters, it does impose administrative burdens on election administrators. As the Election Assistance Commission describes it, “[e]arly voting . . . comes with a high cost, because personnel and facilities must be coordinated for many days in addition to Election Day.”30 Moreover, in the District, which has 143 precincts, it is simply impracticable to implement true early voting at each precinct.

One suggestion that has promise is to utilize early voting concepts in conjunction with the use of “vote centers,” which allow voters to “choose to vote in any one of larger, strategically located polling sites throughout the [jurisdiction] on Election Day.”31 Indeed, under current law, voters are already permitted to request and cast an “in-person absentee vote” (IPAV) at the Board’s headquarters at One Judiciary Square. Thus, the use of a variant of early voting and vote centers has already been used in the District; in the

27 After Action Report 1.
28 D.C. Official Code § 1-1001.09(b)(2).
30 Id.
31 Id. at 53.
most recent election, more than 12,000 voters took advantage of the ability to vote by IPAV.

If the proposed legislation regarding no-fault absentee voting were to be adopted, then the ability to cast an IPAV would essentially become a “purer” form of early voting. Moreover, by eliminating the requirement that IPAV be conducted at the Board’s headquarters, the Board would have substantially more flexibility to expand early voting through the use of “early voting centers.”

Some have advocated for an early voting center in every Ward. Undoubtedly, having multiple early voting centers would increase turnout and convenience for voters. The lack of empirical data, though, makes it difficult to project the relative costs and benefits of early voting centers, as well as the likely effort on turnout.

The Committee therefore recommends that, in addition to allowing individuals to cast in-person absentee ballots at the Board’s office, the Board should offer early voting for up to 7 days before the election at 4 early voting centers in the 2010 Primary and General Elections. Following the election, the Board should study the effectiveness of using additional early vote centers in the District, and consider whether the expanded use of early voting centers could permit for precinct consolidation32 or other methods of cost savings. Beyond the 2010 election cycle, the use of early voting centers will be subject to appropriation.

3. Special ballots for out-of-precinct ballots

The proposed legislation also aims to reduce disenfranchisement by requiring the Board to count a vote cast by special ballots in a contest that the voter would be eligible to participate in, even if the voter casts his or her ballot in the incorrect precinct.

Currently, District law provides that “the vote of a person who is a registered qualified elector of the District shall be valid only if the vote is cast in the voting precinct that serves his or her current residence address.”33 Section 302 of HAVA provides, however, that a voter must be able to cast a special ballot if the individual “declares that [he or she] is a registered voter in the jurisdiction in which [he or she] desires to vote” and that he or she is “eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that [he or she] is not eligible to vote.”34 Thus, some have argued that § 302 actually requires that the Board count out-of-precinct votes for contests in which the voter would be eligible. Nonetheless, the Committee believes that counting special ballots in District-wide races, even when cast in the wrong precinct, serves the interest of ensuring greater voter accessibility. The Committee also recommends that the

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32 Precinct consolidation may be appropriate if early voting turnout numbers are substantial. If early voting turnout leads to a significant decrease on turnout at the precincts on Election Day, there may be less of a need for the 143 precincts currently used.
33 D.C. Official Code § 1-1001.09(b)(1) (emphasis added).
34 42 U.S.C. § 15482(a) (emphasis added).
Board consider the feasibility of counting votes for all races in which a voter would be eligible. To the extent that it is feasible, the Board should promulgate regulations describing the process that would be used to count such votes.

4. Military voters

Under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), states are required to allow members of the military and certain overseas voters to register and to vote by absentee ballot for federal elections. In the November 2008 General Election, 1,390 votes were cast by federal absentee ballot pursuant to UOCAVA. According to a recent report by the Pew Center on the States (PCS), though, the District and sixteen other states fail to provide adequate time to military voters who vote overseas to register and vote. Under the current practices, the District’s voting process takes approximately 13 days longer than the time to vote provided under law.

One reform recommended by PCS that would address this problem would be to allow the Board to deliver a blank ballot to military voters and overseas ballot by fax, email, or other electronic means. As of the time of the report, eighteen states allowed for the electronic transmission of blank ballots to voters. This step would eliminate almost 18 days of delay attributable to military mail review, and therefore would provide enough time for military and overseas voters to cast their ballots.

G. Election Procedures

1. Extend polling place hours

Under current District law, the polls must be open from 7 am to 8 pm, but the time of voting may be extended by order of court or by “any other order.” The law does not delineate, however, the circumstances that would warrant an extension of time. The proposed legislation would clarify that the Board may extend the time of voting in emergency circumstances. Such a provision is “one way to offset the loss of access that may result from the major problems and emergencies that cause disruption to the smooth conduct of an election.”

2. Posting of election results summary

Another practice that increases the transparency of the elections process and protects the integrity of the vote is to require precinct captains to post “summary counts” of the election results at polling places on election night. This practice is followed in

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35 No Time to Vote: Challenges Facing America’s Overseas Military Voters, Pew Center on the States (Jan. 2009).
36 Id. at 8-9.
37 D.C. Official Code § 1-1001.10(b)(1) (“In all elections held pursuant to this subchapter, the polls shall be open from 7:00 a.m. to 8:00 p.m., except in instances when the time established for closing the polls is extended pursuant to a federal or District court order or any other order.”).
38 Testimony of Kristen Clarke, Co-Director of the Political Participation Group, NAACP Legal Defense and Educational Fund, Inc.
several states, including Colorado and Nevada,\(^39\) and can provide an independent check on the validity of the election results. The proposed legislation requires that summary counts be posted in “a conspicuous place that can be seen from the outside of the precinct immediately upon completion of voting.”

H. **Reconciliation of vote records, post-election audits, and recounts**

After the controversy surrounding the September 2008 Primary Election, the Council—through the Special Committee—sought ways to ensure that election results accurately reflect the intention of voters. But, as discussed above, because there is no way to ensure that voting machines perform with 100% accuracy, the Special Committee recommended that the Board implement procedural safeguards that give greater confidence in the election results. Two key safeguards are the adoption of sound ballot accounting practices and the use of comprehensive post-election audits. Although the Board has taken substantial steps toward the use of these safeguards, the Committee recommends going even further to ensure the integrity in the election results and to enshrine those principles in law.

1. **Accounting and reconciliation**

Ballot accounting and reconciliation is an important component to ensuring the accuracy of election results. By simply comparing the summary results against an accounting of the total number of votes cast, election officials will be able to more readily confirm the reliability of the voting machines. Specifically, as the Special Committee noted in its October 2008 report:

> Before the polls open, the precinct captain should count the total number of ballots. At the close of the polls, the precinct captain should be required to count the total number of voters, the total number of paper ballots cast, the number of special ballots cast, the number of spoiled ballots, and the number of unused ballots. The precinct captain should communicate those numbers to the Board on election night, and the Board should evaluate those numbers and compare them to the report generated by the voting database before releasing the information to the public. While these numbers may not be identical due to the potential for undervotes, this will provide a manual “sanity check” of the vote totals.

The proposed legislation would require precinct captains to track the following information: the total number of votes cast in a polling place, the total number of persons who have signed in, the number of voter-verifiable records that arrived at the polling place before the polls opened, the number of used voter-verifiable records, and the number of unused voter-verifiable records. By tracking this information, the Board will be in a position of checking—in real time—whether the election results on election night are accurate. In addition, the information will help the Board determine whether to conduct an audit on a particular precinct if there appear to be discrepancies between the

summary log prepared by the precinct captain and the summary tape generated by a voting machine.

2. Post-election auditing

Another best practice that has been adopted by several jurisdictions over the past several years is the use of post-election audits. Post-election audits help ensure that voting machines are accurate and promote confidence in the reliability of election results. To its credit, after both the September 2008 Primary Election and the November 2008 General Election, the Board conducted audits of several precincts. The Committee believes, however, that codifying post-election auditing procedures will further support public confidence in the District’s elections.

In the proposed legislation, the post-election audit procedures require the Board to manually audit at least 5% of the precincts, selected at random, and 5% of the votes that are centrally tabulated (i.e., absentee ballots and special ballots). In addition, the procedures specify that the Board shall audit at least one District-wide contest, two Ward-wide contests, and one additional contest selected by the Board. The District-wide and Ward-wide races would be selected at random as well. The procedures also provide for transparency in the audit selection, the audit itself, and the results of the audit. Another principle included in the proposed bill is the use of automatic escalation of audits. If a discrepancy is found in the audit, then the Board shall audit additional precincts. Finally, the proposed legislation makes it clear that the results of the audit will be considered the true and correct results of the election contests, without regard to automatic recount provisions.

The proposed legislation also requires a voting-system vendor to furnish a bond of $10,000 to the Board so as to ensure that, if the voting system fails to accurately count the votes, the District is reimbursed for the costs of conducting an expanded post-election audit and for any costs directly attributable to the failure of the voting system to accurately record votes.

These procedures, which reflect best practices in post-election audits will go far in ensuring the integrity of the District’s elections.

3. Recounts

After an election is certified by the Board, a candidate for office may petition the Board to recount the votes. Currently, in order to request a recount, a candidate must deposit $50 per precinct. In the case where a recount changes the outcome of an election, the deposit is returned to the candidate. Where a recount does not change the outcome of an election, the deposit is forfeited. In many instances, though, the actual costs of conducting a recount incurred by the District far exceed the $50 deposit fee. The Committee recommends that the District follow the practice used in both Maryland and

[40 District law also provides for an automatic recount in some contests if the margin of victory is less than one percent of the total votes cast. D.C. Official Code § 1-1001.11(a)(2).]
Virginia—namely that the requester of a recount be responsible for paying the actual costs of a recount. This would balance the interest of not deterring valid recount requests, while preventing a situation where the Board bears undue costs of conducting a recount. The Committee notes that these changes will not affect the costs associated with automatic recounts.

I. Additional Provisions

1. Recall timing

Under § 17 of the Elections Code, any registered qualified elector may initiate the recall process of elected officials. The proposed legislation would adjust the recall process to provide a more definite timeframe in which to circulate recall petitions; under the proposed change, the window of time would start from the point at which the proposer receives the petition from the Board.

2. False advertising provision repealed

In order to place an initiative or referendum measure on the ballot in the District, a proposer must circulate petitions in order to secure signatures from at least 5 percent of the registered electors. Under D.C. Official Code § 1-1001.16(h), each petition sheet must contain a signed affidavit with information about the circulator’s identity—including name, address, and age—the authenticity of the signature, and the dates of circulation of the petition. Beyond these statutory requirements, the Board imposes two additional requirements: a “false signing” certification and a “false advertising” certification. The proposed legislation would eliminate the latter requirement, the false advertising certification, i.e., that a person certify that he or she did not make any false statements to a signatory of the petition.

The Committee recommends eliminating this provision for two reasons. First, the Committee has some doubts that the additional requirement is permissible as a matter of administrative law because it is beyond the limitations set forth in the organic statute. More importantly, though, the Committee believes that the requirement presents significant First Amendment concerns. Although the Committee supports the intent of the requirement—namely that signatories to a petition be presented with accurate information—the Committee does not believe that the Board should be in the business of regulating political speech. Inviting inquiries into the content of statements made to signatories threatens intrusion into the core of political speech protected by the First Amendment, and therefore the requirement should be eliminated.

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41 D.C. Official Code § 1-1001.17(a).
42 The false signing certification is a “statement that the circulator has not made any false statements to the Board of Elections and Ethics regarding the initiative or referendum.” 3 D.C.M.R. § 1003.6(h). The false advertising certification is a “statement that the circulator has not made any false statements regarding the initiative or referendum to anyone whose signature is appended to the petition.” Id. at § 1003.6(i).
SECTION-BY-SECTION ANALYSIS

Section 1 provides the long and short title of Bill 18-345.

Section 2 contains a provision allowing District employees to take leave to work as a polling place worker.

Section 3(a) would amend the District of Columbia Election Code to expand the franchise to persons that are 17 but will be 18 at the time of the general election. It also defines the term “election observers” to include nonpartisan domestic and international observers.

Section 3(b) provides for substantive qualifications for nominees to the Board and places restrictions on Board Member activities.

Section 3(c)(1) creates establishes standards for Board meeting notices, establishes an open meetings requirement, and clarifies when the Board can enter executive session.

Section 3(c)(2) allows the Board to recruit polling place workers who are residents of the District, provides for minimum training requirements, and requires the Board to measure past performance of polling place workers.

Section 3(c)(3) requires the Board to generate an “after-action” report within 90 days of a primary or general election.

Section 3(d) provides for the release of funds used for the purpose of implementing this Act.

Section 3(e)(1) provides that persons who are 16 years old may pre-register to vote.

Section 3(e)(2) creates a check-off on voter-registration forms for voters to indicate an interest in volunteering to work as a polling place worker.

Section 3(e)(3) adds the Department of Corrections and the Department of Youth Rehabilitative Services as voter registration agencies under the National Voter Registration Act.

Section 3(e)(4) provides for same-day registration in the District.

Section 3(e)(5) requires the Board to submit an automatic-voter-registration feasibility study by May 1, 2010.

Section 3(f)(1) allows for no-fault absentee voting.
Section 3(f)(2) requires the Board to allow voters to cast votes at no fewer than 4 early voting centers in the District for up to 7 days preceding the election in the 2010 Primary and General Elections.

Section 3(f)(3) provides the Board with the authority to fax, mail, or send by other electronic means a blank ballot to overseas and uniformed services voters in federal contests.

Section 3(f)(4) requires the Board to promulgate regulations to allow election observers with non-discriminatory access to the District’s elections process.

Section 3(f)(5) extends the retention time for voter-verifiable records from 12 months to 22 months.

Section 3(f)(6) requires the Board to post summary election results at the polling place on election night.

Section 3(f)(7) provides for a ballot reconciliation and accounting requirement.

Section 3(f)(8) provides that the Board must use voting systems that have voter-verifiable records in all District elections taking place after January 1, 2012.

Section 3(f)(9) provides that the Board must purchase a voting system through use of a competitive contracting process for new voting systems.

Section 3(g) establishes post-election audit procedures.

Section 3(h) authorizes the Board to extend voting hours in emergencies.

Section 3(i) provides for the assessment of costs for manual recounts.

Section 3(j) clarifies the timing in the recall process.

Section 4 contains a provision clarifying that vote data is a public record.

Section 5 repeals the “false advertising” provision, 3 DCMR § 1003.6;

Section 6 contains applicability dates for sections 3(b)(1) and (f)(2).

Section 7 contains the fiscal impact statement.

Section 8 contains the effective date of the Act.

SUMMARY OF PUBLIC HEARING

Chairperson of the Committee, called the hearing to order at 11:08 a.m. in Room 120 of the John A. Wilson Building. The following witnesses testified before the Committee:

- **Craig Engle**, Legal Counsel, DC Republican Committee.
- **William O’Field**, Certified Elections/Registration Administrator, United States Electoral Specialist, indicated that he supports
  - **Dan Wedderburn**, DC for Democracy,
  - **Dorothy Brizill**, Executive Director, DCWatch

- **Steven Block**, Legislative Counsel, American Civil Liberties Union of the National Capital Area

  - **Nelson Rimensnyder**, Public Witness
  - **Eric Marshall**, Campaign Manager, National Campaign for Fair Elections, Lawyers’ Committee for Civil Rights under Law
  - **Will Frey**, Public Witness

- **Oliver Hall**, Center for Competitive Democracy
- **Adam Fogel**, FairVote
- **Steve Carbo**, Senior Program Director, Demos
- **Sandra L. Wesolowski**, Director of Clerk Services, City of Franklin, WI

- **Philip Pannell**, Ward 8 Democrats
- **Bob Richards**, ANC Commissioner 7B-07
- **Timothy A. Jones**, ANC Commissioner 4C-08
- **John Price**, Public Witness

- **Shelley Tomkin**, 1st Vice Chair, Ward Three Democratic Committee
- **Susannah Goodman**, Common Cause
- **Kristin Clarke**, NAACP Legal Defense Fund
- **Elinor Hart**, DC League of Women Voters

- **Bill Redpath**, National Chair, Libertarian Party
- **Brent McMillan**, Executive Director of the Green Party
- **Albrette “Gigi” Ransom**, Commissioner ANC 5C-12
- **Kenlee Ray**, Captain, Precinct 141

- **Mike Silverstein**, Chairman, Dupont Circle ANC
- **Karen Rose**, DC for Democracy
- **Sarah Peterson**, American Association of People with Disabilities
- **Robert Vinson Brannum**, Public Witness

- **Gottlieb Simon**, Executive Director, Office of Advisory Neighborhood Commissions
- **Rokey Suleman**, Executive Director, D.C. Board of Elections and Ethics
Chairperson Cheh thanked the witnesses for their testimony and called the hearing to a close at 2:26 p.m.

**FISCAL IMPACT**

The Committee on Government Operations and the Environment finds that approval of Bill 18-345 will have no fiscal impact. A fiscal impact statement, prepared by the Chief Financial Officer and dated September 25, 2009, is attached to this report.

**IMPACT ON EXISTING LAW**

This bill will have a minimal impact on District law outside of the context of administration of elections. The bill does amend the District of Columbia Merit Personnel Act to allow public employees to take paid leave in order to work as a polling place worker and the Administrative Procedures Act to clarify that vote data are public records. The impact on the District of Columbia Elections Code involves changes in the Board governance, in voter qualifications, polling place workers, voter registration, alternatives to voting at the precincts, election-day management, voting machines, and on post-election audits.

**COMMITTEE ACTION**

The Committee on Government Operations and the Environment met September 25, 2009, to consider Bill 18-345. Present and voting were Chairperson Cheh and Councilmembers Catania, Thomas, and Wells.

Chairperson Cheh opened the discussion with background about the importance of modernizing the District’s elections system and described some of the major provisions of the proposed legislation. Chairperson Cheh offered two amendments to the committee print. The first would provide the Board with the flexibility to purchase voting systems that either meet the standards set forth Help America Vote Act of 2002 or that are federally certified. The second made the in-person absentee voting provision at the Board subject to appropriation beyond the 2010 election season. Both amendments were accepted as friendly amendments, without objection.

Chairperson Cheh then offered the Committee Print for discussion.

Councilmember Wells offered an amendment to the committee print that would allow an individual who does not show a government-issued identification card to register on the same day by special ballot. Councilmember Catania objected to the provision, arguing that photo identification should be required. Councilmember Wells agreed to recast his amendment to allow an individual who does not show a government-issued and valid photo identification card to register on the same day and cast a vote by special ballot. Councilmember Cheh accepted the amendment as a friendly amendment.
Councilmember Catania moved four amendments to the committee print.\textsuperscript{43} The first amendment would have stricken section 2, which allows District employees to take leave to work as a polling place worker. After debate, the amendment failed by a 2-1 vote, with Councilmember Catania voting yes, Chairperson Cheh and Councilmember Thomas voting no, and Councilmember Wells abstaining.

The second amendment would have required that polling place workers be registered qualified electors rather than District residents. After debate, the amendment failed by a 3-1 vote, with Councilmember Catania voting yes and Chairperson Cheh and Councilmembers Thomas and Wells voting no.

The third amendment would have allowed an individual to change his or her party affiliation at the time of registration. After debate, the amendment failed by a 3-1 vote, with Councilmember Catania voting yes and Chairperson Cheh and Councilmembers Thomas and Wells voting no.

The fourth amendment would have allowed individuals to vote in a primary election held by a political party of which the elector is not a member, provided that the party adopted a party rule permitting unaffiliated voters to vote in its primary. After debate, the amendment failed by a 3-1 vote, with Councilmember Catania voting yes and Chairperson Cheh and Councilmembers Thomas and Wells voting no.

Chairperson Cheh then moved for approval of the Committee Print of Bill 18-345, as amended. The Committee approved the Committee Print, as amended, by a 3-1 vote, with Chairperson Cheh and Councilmembers Thomas and Wells voting yes and Councilmember Catania voting no.

Chairperson Cheh then moved for approval of the Committee Report on Bill 18-345. The Committee voted unanimously to approve the Committee Report by a 3-1 vote, with Chairperson Cheh and Councilmembers Thomas and Wells voting yes and Councilmember Catania voting no.

LIST OF ATTACHMENTS

- (A) Bill 18-345, as introduced
- (B) Committee Print of Bill 18-345
- (C) Notice of Intent to Act, published in the District of Columbia Register
- (D) Public Hearing Notice, published in the District of Columbia Register
- (E) Public Hearing Agenda and Witness List
- (F) Written Testimony Provided to the Committee
- (G) Fiscal Impact Statement for Bill 18-345

\textsuperscript{43} Councilmember Catania introduced a fifth amendment concerning the early voting measure but subsequently withdrew the amendment.
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Election Code to include Board member qualifications and restrictions on Board Member activities, to impose an open meetings requirement, to establish an Elections Advisory Committee to assist the Board in carrying out its duties, to require the Board to establish regulations allowing elections observers uniform and nondiscriminatory access to the election process, to establish reporting requirements following elections, to expand the franchise to persons that are 17 but will be 18 at the time of the general election, to allow for pre-registration of persons 16 years or older, to permit same-day registration, to require the Board to submit an automatic-voter-registration study, to add the Department of Corrections and the Department of Youth Rehabilitative Services to agencies covered under the National Voter Registration Act, to expand the pool of eligible polling place workers, to require training and certification of polling place workers, to require performance management of polling place workers, to allow public employees to take paid leave in order to work as a polling place worker, to establish a polling place worker check-off on voter registration forms, to require a voting system with a voter-verifiable voter record, to require a competitive contracting process for new voting systems, to allow for no-fault absentee ballots, to allow persons to cast special ballots for federal elections in out-of-precinct votes, to allow for early voting and vote centers, to authorize the Board to extend voting hours in emergency situations, to require the posting of summary counts of votes at the precincts, to move Advisory Neighborhood Commissioner elections to the primary elections, to establish ballot auditing standards, to allow the Board to establish filing fees for candidates for elected office, to adjust the number of signatures needed for Advisory Neighborhood Commission nomination petitions, to allow for passive electioneering at the polls, to prohibit defacing campaign posters and other campaign materials during an election period, and to repeal the “false statements” provisions in the Board’s initiative regulations.
BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Omnibus Election Reform Act of 2009”.

TITLE I. BOARD GOVERNANCE.

Sec. 101. Board member qualifications.

(a) Section 4 of the District of Columbia Election Code of 1955, approved Aug. 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.4), is amended to read as follows:

(1) Subsection (a) is amended to read as follows:

“(a) Board Member Qualifications. No person shall be a member of the Board unless he or she:

“(1) Qualifies as an elector and resides in the District;

“(2) Has resided in the District continuously since the beginning of the 3-year period ending on the day he or she is appointed;

“(3) Holds no other paid office or employment in the District government and shall hold no active office, position or employment in the federal government;

“(4) Possesses demonstrated integrity, independence, and public credibility; and

“(5) Has particular knowledge, training, or experience in government ethics or in elections law and procedure.”.

(2) Subsection (b) is amended as follows:

(1) Paragraph (4) is amended by striking the phrase “of the Board; or” and inserting the phrase “of the Board” in its place.

(2) Paragraph (5) is amended by striking the phrase “in the District of Columbia.” and inserting the phrase “in the District; or”
(3) A new paragraph (6) is added to read as follows:

“(6) Be an officer, director, or employee of an organization receiving District funds.”.

(b) This section shall not apply to any members of the Board who are sitting at the time of the effective date of this Act.

Sec. 102. Open meetings.

(a) The Board shall hold regular monthly meetings in accordance with a schedule to be established by the Board, and additional meetings may be called as needed by the Board.

(b) The Board shall make available for public inspection and post on its website a proposed agenda for each Board meeting at least 24 hours before a meeting. Copies of the agenda shall be available to the public at the meeting. The Board may, according to its rules, amend the agenda at the meeting.

(c) All meetings of the Board shall be open to the public, unless the members vote to enter into Executive Session. The Board may not vote, make resolutions or rulings, or take any actions of any kind during executive session, except those that:

(1) Relate solely to the internal personnel rules or practices of the Board;

(2) Would result in the disclose matters specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters to be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(3) Would result in the disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;
(5) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Would result in the disclosure of investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would

(A) Interfere with enforcement proceedings,

(B) Deprive a person of a right to a fair trial or an impartial adjudication,

(C) Constitute an unwarranted invasion of personal privacy,

(D) Disclose investigative techniques and procedures; or

(7) Specifically concern the Board’s issuance of a subpoena, or the Board’s participation in a civil action or proceeding, or disposition by the Board of a particular matter involving a determination on the record after opportunity for a hearing.

(d) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board’s website, as soon as practicable but in all cases before the next regularly scheduled meeting.

Sec. 103. Elections advisory committee.

(a) There is established an Elections Advisory Committee (Advisory Committee) that shall provide advice to and otherwise assist the Board in carrying out its duties.

(b) The Advisory Committee shall be comprised of:

(1) Two members selected by the Mayor;

(2) One member selected by the Chairman of the Council;
(3) One member selected by the Chairman of the Council committee with oversight of the Board;

(4) One member selected by the Chairman of the Board of Elections and Ethics.

(c) No person shall be a member of the Advisory Committee unless he or she:

(1) Possesses expertise in matters of voting technology and systems;

(2) Is an attorney knowledgeable in matters of election law; or

(3) Is a member of a voting-rights organization, an organization whose mission is to defend citizens’ civil rights, an organization whose mission is to defend the rights of people with disabilities, or an organization whose mission is to promote civic participation and expand voting to all eligible voters.

(d) Public participation.

(1) The Advisory Committee shall ensure that each meeting of the Advisory Committee is open to the public and provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) The Board shall provide to the public timely notice of each meeting of the Advisory Committee.

(3) The Board shall keep the minutes of each meeting of the Advisory Committee and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board’s website.

Sec. 104. Election observers.

(a) Section 2 of the District of Columbia Election Code of 1955, approved Aug. 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.2) is amended to add a new paragraph (10-A) to read as follows:
“(10-A) The term “election observers” means nonpartisan domestic and international
observers, including, but not limited to voting rights organizations, civil rights organizations, and
civic organizations.”.

(b) Section 9 of the District of Columbia Election Code of 1955, approved Aug. 12, 1955
(69 Stat. 699; D.C. Official Code § 1-1001.9) is amended by adding a new subsection (c-1) to
read as follows:

“(c-1) The Board shall issue regulations for granting access to the electoral process,
including access to polling places, ballot-tabulation centers, and other similar locations, to
observers. Such regulations shall take into account the need to avoid disruption and crowding in
polling places as well as the need to ensure that all questions posed by observers should be
answered fully, accurately, and cooperatively. Observers shall be allowed uniform and
nondiscriminatory access to all stages of the election process, including the certification of
election technologies, early and absentee voting, and vote tabulation. The Board shall issue a
public notice with respect to any denial of a request by any observer for access to any polling
place for purposes of observing an election. Such notice shall be issued not later than 24 hours
after such denial.”.

Sec. 105. Reporting requirements.

(a) Within 90 days following a general election, the Board shall publish an after-action
report. The report shall include the following information:

(1) The total number of votes cast, broken down by type of ballot, and including
the number of spoiled ballots and special ballots that were not counted;

(2) The number of persons registered:

(A) more than 30 days preceding the election;
(B) between 30 days preceding the election and the date of the election; and

(C) on the date of the election.

(3) The number of polling place workers, by precinct;

(4) Copies of any unofficial summary reports generated by the Board on election night;

(5) A synopsis of any issues identified in precinct captain or area representative logs;

(6) Performance measurement data of polling place workers;

(7) A description of any irregularities experienced on Election Day; and

(8) Any other information deemed relevant by the Board.

(b) The Board shall transmit a copy of the after-action report to the Council, and shall post the report on the Board’s website.

**TITLE II. VOTER QUALIFICATIONS.**

Sec. 201. Voter qualifications.

(a) Section 2 of the District of Columbia Election Code of 1955, approved Aug. 12, 1955

(69 Stat. 699; D.C. Official Code § 1-1001.2(2)), is amended by striking paragraph (2) in its entirety and inserting in its place the following:

“(2) The term “qualified elector” means a person who:

“(A) Is at least 17 years old and who will be 18 years old on or before the next general election;

“(B) Is a citizen of the United States;
“(C) Has maintained a residence in the District for at least 30 days preceding the next election, and who does not claim voting residence or right to vote in any state or territory;

“(D) Is not incarcerated for a crime that is a felony in the District; and

“(E) Has not been found by a court of law to be legally incompetent to vote.”.

(b) Section 7(a-2) of the District of Columbia Election Code of 1955, approved Aug. 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.7(a-2)), is amended by:

(1) Striking the phrase “17th” and inserting the phrase “16th” in its place;

(2) Striking the phrase “may vote in any election occurring on or after that person’s 18th birthday, but under no circumstances before the person’s 18th birthday” and inserting the phrase “may vote in any election occurring on or after that person’s 17th birthday, provided that the person is at least 18 years old on or before the next general election” in its place.

(c) Section 7(b)(4) of the District of Columbia Election Code of 1955, approved Aug. 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.7(b)(4)), is repealed.

TITLE III. VOTER REGISTRATION.

Sec. 301. Same-day registration.

(a) Section 7 of the District of Columbia Election Code of 1955, approved Aug. 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.7), is amended by striking subsection (g) in its entirety and inserting the following in its place:

“(g)(1) At any time except during the 30 day period preceding any regularly scheduled election, a qualified elector or any individual who will be a qualified elector at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application, and submitting it in person at the Board’s office or by
mail. A registration that is received no later than 5:00 p.m. on the 31st day preceding any election shall be accepted.

“(2) The Board shall process mailed voter registration applications and registration, update notifications received postmarked by not later than the 30th day preceding any election, and timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the 23rd day preceding any election.

“(3) The Board shall process faxed postcard applications from persons eligible to vote absentee in federal elections in the District of Columbia pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C.S. § 1973ff et seq.), which are faxed not later than the 30th day preceding any election.

“(4) After the 30th day preceding election, a qualified elector may register to vote in the precinct in which the voter maintains residence by completing a voter registration application, and submitting it in person at the Board’s office.

“(5) A qualified elector may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a voter registration application, making an oath in the form prescribed by the Board, and providing proof of residence. An individual may prove residence for purposes of registering by presenting:

“(A) A valid driver’s license or identification card issued by the District; or

“(B) A military identification that shows the voter’s name; or

“(C) Any other document approved by the Board as proper identification.”.

(b) The precinct captain shall keep a record of the number of individuals who attempt to register on Election Day but who cannot provide proof of residence as required by this section. The record shall be forwarded to the Board with the election returns for that precinct.
Sec. 302. Automatic-voter-registration study.

The Board shall submit, no later than May 1, 2010, a report indicating the feasibility of implementing automatic voter registration in the District.

Sec. 303. Department of corrections.

Section 7(14)(A) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.07(14)(A)), is amended by striking the phrase “the Metropolitan Police Department, and” and inserting “the Metropolitan Police Department, the Department of Corrections, the Department of Youth and” in its place.

TITLE IV. POLLING PLACE WORKERS.

Sec. 401. Polling place worker residency requirement eliminated.

Section 5(e)(4) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.05(e)(4)), is amended by striking the phrase “Polling place workers shall be qualified registered electors in the District of Columbia, except that the Board may also appoint as polling place workers individuals who are 16 or 17 years of age on the day that they are working in this capacity, who reside in the District of Columbia, and who are enrolled in or have graduated from a public or private secondary school or an institution of higher education.”.

Sec. 402. Polling place worker training, certification, and oath.

Any polling place worker appointed pursuant to section 5(e)(4) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.05(e)(4)), shall be required to:

(1) Complete at least 4 hours of training;
(2) Receive certification as a polling place worker under standards that the Board shall promulgate; and

(3) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

Sec. 403. Polling place worker performance management.

The Board shall establish standards to measure the performance of polling place workers. The Board shall consider past performance of a polling place worker before appointing him or her to work as a polling place worker in a subsequent election.

Sec. 404. Leave from employment.

(a) Section 1203 of the Comprehensive Merit Personnel Act of 1978, effective Mar. 3, 1979 (D.C. Law 2-139, D.C. Official Code § 1-612.03), is amended by adding a new subsection (l-1), to read as follows:

“(l-1) An employee is entitled to leave, without loss of pay, leave, or credit for time of service, during a period of absence in which he or she is serving as a polling place worker.”.

(b) Any polling place worker who is employed by the District and who elects to take leave pursuant to subsection (a) shall not be entitled to receive compensation from the Board.”.

Sec. 405. Poll worker check-off on voter registration forms.

Section 7(b) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.07(b)), is amended by adding a new paragraph (5) to read as follows:

“(5) The Board shall provide a field on voter registration forms to allow an applicant to indicate his or her interest in working as a polling place worker during the next election.”.

TITLE V. VOTING MACHINES.
Sec. 501. Voter-verifiable record.

(a) Section 9(k) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.09(k)), is amended to read as follows:

“(k) Each voting system used in an election in the District shall:

“(1) Meet or exceed the voting system standards set forth in the Help America Vote Act of 2002;

“(2) Be capable of creating a voter-verifiable record of all votes cast in order that an audit trail is available in the event of a recount, including a manual recount. A voter-verifiable record need not be a paper ballot. Examples of a satisfactory voter-verifiable record include:

“(A) a paper ballot prepared by the voter for the purpose of being read by a precinct–based optical scanner;

“(B) a paper ballot prepared by the voter to be mailed, whether mailed from a domestic or an overseas location; and

“(C) a paper ballot created through the use of a ballot marking device.

“(3) Meet any additional standards established by the Board, provided that such standards do not conflict with those set forth in the Help America Vote Act of 2002.”.

(b) In the event that the voting system presently used by the Board does not meet the standard set forth in subsection (a), the Board shall retrofit any equipment necessary to meet the standard to the extent that such a retrofit is possible.

(c) The Board shall adopt voting system standards and review such standards on a biennial basis.

Sec. 502. Contract required.
(a) The Board must purchase voting system equipment under a competitively bid contract that with the following conditions:

(1) A perpetual license for the Board to use and modify the software;

(2) A provision to place a copy of the software source code for the voting system, and related documents, in escrow with an independent third-party evaluator selected by the vendor and the Board; and

(3) A warranty provision that requires that the vendor:

   (A) promptly and fully disclose any flaw, defect, or vulnerability in the voting system of which the vendor is aware or becomes aware; and

   (B) (i) remedy any flaw, defect, or vulnerability in the voting system identified in subparagraph (A) of this paragraph at no cost to the District; or

   (ii) recall the voting system or the affected part of the voting system if the flaw, defect, or vulnerability in the voting system cannot be remedied, and either replace the voting system or the affected part of the voting system or provide an equivalent voting system at no cost to the District, or reimburse the District for the full purchase price of the voting system or for the value of the affected part of the voting system, plus any costs incurred by the state as a result of the flaw, defect, or vulnerability.

(4) A most-favored customer provision that ensures that the District receive pricing terms that are at least as favorable as those received by any other customer except for the federal government during the term of the contract and during any extensions or renewals of the contract.

(b) The Board should consult the Elections Advisory Committee in the preparation of a request for proposal, or similar
TITLE VI. ABSENTEE AND SPECIAL BALLOTS.

Sec. 601. No-fault absentee ballots.

Section 9(b)(2) of the District of Columbia Election Code, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.09(b)(2)), is amended to read as follows:

“(2) The Board shall permit any duly registered voter to vote by absentee ballot, for any reason, under such regulations as the Board shall promulgate.”

Sec. 602. Special ballots for out-of-precinct votes.

Section 9(b) of the District of Columbia Election Code, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.09(b)), is amended as follows:

(a) A new paragraph (3) is added to read as follows:

“(3) If a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal election contests.”.

(b) Paragraph (1) is amended by striking the phrase “in paragraph (2)” and inserting the phrase “in paragraphs (2) and (3)” in its place.

Sec. 603. Vote centers and early voting.

The Board shall permit a voter to request and cast an absentee ballot at the Board’s office, or at any other place designated by the Board.

TITLE VII. ELECTION PROCEDURES.

Sec. 701. Extending voting hours.

The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage
of ballots, excessive wait times, bomb threats, or similar unforeseen event warrants it, extend the
polling hours for that precinct until the emergency situation has been resolved.

Sec. 702. Posting of election results.

Upon the conclusion of voting at any precinct, the Board shall post a summary count of
votes cast at the precinct. The summary shall be posted in a conspicuous place that can be seen
from the outside of the precinct immediately upon completion of voting, and shall not be
removed at any time until after 48 hours following the election.

Sec. 703. Advisory neighborhood commissioner elections.

(a) Subsection (a) of the D.C. Code § 1-309.06 is amended by striking the clause “1st
Tuesday after the 1st Monday in November of each even-numbered calendar year” and replacing
it with “1st Tuesday after the 1st Monday in September of each even-numbered calendar year.”.

(b) Applicability. This section shall not apply until after December 1, 2010.

TITLE VIII. BALLOT AUDITING REQUIREMENTS.

Sec. 801. Ballot auditing.

(a) Generally. After each Primary, General, and Special Election, the Board shall conduct
a public manual audit of the paper ballots tabulated by the Board.

(b) Scope. The Board shall audit:

(1) At least 5 percent of the precincts with precinct-level vote-tabulation machines
during the election;

(2) At least 3 percent of the ballots that are tabulated centrally, including absentee
ballots and special ballots. The Board shall also conduct a manual audit of:

(3) The paper ballots cast in each contest that would be subject to an automatic
recount; and
(4) The paper ballots cast in precincts where the difference between the number of voters (as indicated by the results tape) and the number of ballots cast (as indicated by the precinct ballot accounting form) is greater than the margin of victory in a particular contest.

(c) Random selection. The precincts audited shall be selected on an entirely random basis such that each precinct in the election shall have an equal chance of being selected. The date of the random-precinct selection event shall be announced no later than 3 business days after the election, but more than 3 business days in advance of the event and conducted in public view. The Board shall also publicly announce the method by which it intends to randomly select precincts, and conduct the random selection in such a way as to ensure that the selection is random.

(d) Date. The date of the audit shall be announced no later than 3 business days after the election, but more than three 3 business days in advance of the event; and

(e) Public view. The audit shall be conducted in public view such that members of the public are able to verify the tally, but are unable either to touch ballots and other official materials or to interfere in any way with the manual audit process.

(f) Individuals performing the manual audit shall:

(1) Not be assigned to tally the results from a precinct in which that individual served as a polling place worker; and

(2) Not at any time before or during the manual audit be informed of the corresponding machine tally results.

(g) Escalation of audit.
(1) If an audit initially reveals a discrepancy between the machine result and the
tally from the manual audit that yields an error rate greater than ½ percent, and such discrepancy
is not attributed to marking errors, a second audit shall be conducted.

(2) If the second audit confirms the discrepancy described in paragraph (1), the
Board shall also audit the precinct that is next higher in number within the ward.

(3) If the additional precinct audit described in paragraph (2) also yields an error
rate greater than ½ percent, the Board shall audit all precincts within the ward where the precinct
is located.

(h) Finality. The results derived from the manual audits shall be considered the true and
correct results of the election contests at issue.

(i) Reporting of audit results. The Board shall publish on its website and make available
for public inspection a report of results of the manual audit before certification of the official
election results. Such report shall:

(1) Identify any discrepancies between the machine count and the manual tally,
and

(2) Include a description of how each of these discrepancies was resolved.

Sec. 802. Retention of ballots.

Section 9(j) of the District of Columbia Election Code, approved August 12, 1955 (69
Stat. 699, ch. 862, D.C. Official Code § 1-1001.09(j)), is amended by striking the phrase “12
months” wherever it appears and inserting the phrase “22 months” in its place.

TITLE IX. MISCELLANEOUS PROVISIONS.

Sec. 901. Filing fees.
(a) The Board may assess any candidate for elected office a reasonable filing fee according to a schedule established by regulation.

(b) The Board shall not assess any filing fees before the General Election in November 2010.

(c) The proceeds of the filing fees shall be deposited in the Board of Elections and Ethics Special Purpose Revenue Fund, to be used for the sole purpose of administering elections in the District.

Sec. 902. Advisory neighborhood commission nominating petitions.

Section 6(b)(1)(B) of the Advisory Neighborhood Commissions Act of 1975, effective Oct. 10, 1975 (D.C. Law 1-21, D.C. Official Code 1-309.05(b)(1)(B) is amended by striking the phrase “by not less than 25” and inserting the phrase “no fewer than 25, or 1%, whichever is less,” in its place.

Sec. 903. Electioneering.

Section 10(b)(2) of the District of Columbia Election Code, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.10(b)(2)), is amended by adding a new paragraph (A-i) to read as follows:

“(A-i) This section should not be construed to prohibit passive electioneering, which includes wearing tee shirts, clothing or buttons with a candidate’s or political party’s name, picture, or emblem on it.”.

Sec. 904. Recall timing.

Section 17(g) of the District of Columbia Election Code, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.17(g)), is amended to read as follows:
“(g) The proposer of a recall shall have 180 days, or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the proponent of the recall formally adopts the original petition form as his or her own form pursuant to subsection (e) of this section, to circulate the recall petition and file such petition with the Board.”.

Sec. 905. Defacing campaign posters and other campaign materials during an election period.

Section 14 of the District of Columbia Election Code, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.14) is amended by adding a new subsection (b-1) to read as follows:

“(b-1)(1) Any person who, during the period beginning 45 days before and ending 4 days after any general or special election, intentionally removes, defaces, damages or destroys any lawfully placed billboard, poster, sign, or other material relating to any candidate for election or relating to any issue that is to be submitted to the electors is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars.

“(2) In determining the amount of the time for a violation of this subsection, the court shall consider the frequency, nature, and extent of the proscribed conduct.

“(3) This subsection shall not apply to (i) the owner of such material or persons authorized and acting on his or her behalf, (ii) the owner of the premises on which such material is located or persons authorized acting on his or her behalf or (iii) any person charged with enforcement of any law of the District of Columbia acting within the scope of his or her authority.”.

Sec. 906. “False statements” provision repealed.
Section 1003.6(i) of Title 3 of the District of Columbia Municipal Regulations (3 DCMR § 1003.6(i)) is repealed.
Bill 18-345
Committee on Government Operations and the Environment
September 25, 2009
COMMITTEE PRINT

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Merit Personnel Act to allow public employees to
take paid leave in order to work as a polling place worker; to amend the District
of Columbia Election Code to expand the franchise to persons that are 17 but will
be 18 at the time of the general election, to establish Board member qualifications
and restrictions on Board Member activities, to impose an open meetings
requirement, to expand the pool of eligible polling place workers, to establish
training and certification of polling place workers and to require performance
management of polling place workers, to establish reporting requirements
following elections, to allow for pre-registration of persons 16 years older, to
establish a polling place worker check-off on voter registration forms, to add the
Department of Corrections and the Department of Youth Rehabilitative Services
to agencies covered under the National Voter Registration Act, to permit same-
day registration, to require the Board to submit an automatic-voter-registration
feasibility study, to allow for no-fault absentee voting, to require the use of early
voting centers, to allow out-of-precinct voters to cast special ballots for federal
and District-wide elections, to allow the Board to provide blank ballots to
uniformed and overseas voters in federal elections, to require the Board to
establish regulations allowing elections observers uniform and nondiscriminatory
access to the election process, to extend the time for retention of voter-verifiable
records, to require the posting of summary counts of votes at the precincts, to
require summary logs for voter-verifiable record accounting and reconciliation, to
require a voting system with a voter-verifiable voter record, to require a
competitive contracting process for new voting systems, to establish post-election
audit procedures, to authorize the Board to extend voting hours in emergencies, to
provide for the assessment of costs for manual recounts, to clarify the timing in
the recall process; to amend the District of Columbia Administrative Procedure
Act to clarify that vote data are public records; and to repeal the “false
advertising” provision in the Board’s initiative regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Omnibus Election Reform Amendment Act of 2009”.

1
Sec. 2. Section 1203 of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-612.03), is amended by adding a new subsection (l-1), to read as follows:

“(l-1) An employee is entitled to leave, without loss of pay, leave, or credit for time of service, during a period of absence in which he or she is serving as a polling place worker; provided, that any polling place worker who is employed by the District and who elects to take leave shall not be entitled to receive compensation from the Board.”.

Sec. 3. The District of Columbia Election Code of 1955, approved Aug. 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 et seq.), is amended as follows:

(a) Section 2 (D.C. Official Code § 1-1001.02) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

“(2) The term “qualified elector” means a person who:

“(A) Is at least 17 years of age and who will be 18 years of age on or before the next general election;

“(B) Is a citizen of the United States;

“(C) Has maintained a residence in the District for at least 30 days preceding the next election and does not claim voting residence or right to vote in any state or territory;

“(D) Is not incarcerated for a crime that is a felony in the District; and

“(E) Has not been found by a court of law to be legally incompetent to vote.”.

(2) Subparagraph (7) is amended to read as follows:
“(7) The term “felony” includes any crime committed in the District of Columbia referred to in § 1-1001.14 or § 1-1105.07 or § 1-1107.01.”.

(3) A new paragraph (25) is added to read as follows:

“(25) “Election observers” means persons who witness the administration of elections, including individuals representing nonpartisan domestic and international organizations, including voting rights organizations, civil rights organizations, and civic organizations.”.

(b) Section 4 (D.C. Official Code § 1-1001.04) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a) When appointing a member of the Board, the Mayor and Council shall consider whether the individual possesses demonstrated integrity, independence, and public credibility and whether the individual has particular knowledge, training, or experience in government ethics or in elections law and procedure. A person shall not be a member of the Board unless he or she:

“(1) Is a duly registered voter;

“(2) Has resided in the District continuously since the beginning of the 3-year period ending on the day he or she is appointed; and

“(3) Holds no other paid office or employment in the District government and no active office, position, or employment in the federal government.”.

(2) Subsection (b) is amended as follows by adding a new paragraph (3A) to read as follows:
“(3A) Be an officer or a director of an organization receiving District
funds, or an employee of an organization receiving District funds, who has managerial or
discretionary responsibilities with respect to those funds;”.

(c) Section 5 (D.C. Official Code § 1-1001.05) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) The Board shall hold regular monthly meetings in accordance
with a schedule to be established by the Board. Additional meetings may be called as
needed by the Board. Except in the case of an emergency, the Board shall provide at least
48 hours notice of any additional meeting.

“(2) The Board shall make available for public inspection and post
on its website a proposed agenda for each Board meeting as soon as practicable, but in
any event at least 24 hours before a meeting. Copies of the agenda shall be available to
the public at the meeting. The Board may, according to its rules, amend the agenda at the
meeting.

“(3) All meetings of the Board shall be open to the public, unless
the members vote to enter into executive session. The Board shall not vote, make
resolutions or rulings, or take any actions of any kind during executive session, except
those that:

“(A) Relate solely to the internal personnel rules or
practices of the Board;

“(B) Would result in the disclosure of matters specifically
exempted from disclosure by statute; provided, that such statute:
“(i) Requires that the matters to be withheld from
the public in such a manner as to leave no discretion on the issue; or
“(ii) Establishes particular criteria for withholding
or refers to particular types of matters to be withheld;
“(C) Would result in the disclosure of trade secrets and
commercial or financial information obtained from a person and privileged or
confidential;
“(D) Involve accusing any person of a crime or formally
censuring any person;
“(E) Would result in the disclosure of information of a
personal nature where disclosure would constitute a clearly unwarranted invasion of
personal privacy;
“(F) Would result in the disclosure of investigatory records
compiled for law enforcement purposes or information which, if written, would be
contained in such records, but only to the extent that the production of such records or
information would:
“(i) Interfere with enforcement proceedings;
“(ii) Deprive a person of a right to a fair trial or an
impartial adjudication;
“(iii) Constitute an unwarranted invasion of
personal privacy;
“(iv) Disclose investigative techniques and
procedures; or
“(G) Specifically concern the Board’s issuance of a subpoena, the Board’s participation in a civil action or proceeding, or disposition by the Board of a particular matter involving a determination on the record after opportunity for a hearing.

“(4) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board’s website, as soon as practicable, but in all cases before the next regularly scheduled meeting.”.

(2) Subsection (e)(4) is amended to read as follows:

“(e)(4)(A) The Board shall select, appoint, and fix the compensation of temporary election workers to operate the polling places, including precinct captains who shall oversee the operations of polling places in accordance with rules prescribed by the Board, and polling place workers who shall assist the precinct captains. Precinct captains shall be qualified registered electors in the District. Polling place workers shall be residents of the District; provided, that the Board may also appoint as polling place workers individuals who are at least 16 years of age on the day that they are working in this capacity, who reside in the District of Columbia, and who are enrolled in or have graduated from a public or private secondary school or an institution of higher education. Any polling place worker shall be required to:

“(i) Complete at least 4 hours of training;

“(ii) Receive certification as a polling place worker under standards that the Board shall promulgate; and
“(iii) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

“(B) The Board shall establish standards to measure the performance of polling place workers, including the past performance of a polling place worker, and shall consider the polling place worker’s past performance before appointing him or her to work as a polling place worker in a subsequent election.”.

(3) A new subsection (k) is added to read as follows:

“(k) Within 90 days following a general election, the Board shall publish on its website an after-action report. The report shall include the following information:

“(1) The total number of votes cast, broken down by type of ballot, and including the number of spoiled ballots and special ballots that were not counted;

“(2) The number of persons registered:  

“(A) More than 30 days preceding the election;

“(B) Between 30 days preceding the election and the date of the election; and

“(C) On the date of the election.

“(3) The number of polling place workers, by precinct;

“(4) Copies of any unofficial summary reports generated by the Board on election night;

“(5) A synopsis of any issues identified in precinct captain or area representative logs;

“(6) Performance measurement data of polling place workers;
“(7) A description of any irregularities experienced on Election Day; and

“(8) Any other information considered relevant by the Board.”.

(d) Section 6a (D.C. Official Code § 1-1001.6a) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “and shall be used solely to implement election reform initiatives to be enacted by the Council” and inserting the phrase “and shall be used for the purpose of implementing the Omnibus Election Reform Amendment Act of 2009, passed on second reading on October 20, 2009 (Enrolled version of Bill 18-345)”.

(2) Subsection (c) is repealed.

(e) Section 7 (D.C. Official Code § 1-1001.07) is amended as follows:

(1) Subsection (a-2) is amended as follows:

(A) Strike the phrase “17th” and insert the phrase “16th” in its place.

(B) Strike the phrase “may vote in any election occurring on or after that person’s 18th birthday, but under no circumstances before the person’s 18th birthday” and insert the phrase “may vote in any election occurring on or after that person’s 17th birthday; provided, that the person is at least 18 years of age on or before the next general election” in its place.

(2) Section (b)(4) is amended to read as follows:

“(4) The Board shall provide a field on voter registration forms to allow an applicant to indicate his or her interest in working as a polling place worker during the next election.”.
Section (d)(1)(B) is amended by striking the phrase “the Senior Citizens Branch of the Department of Recreation and Parks and the Office of Aging” and inserting “the Department of Parks and Recreation, the Department of Corrections, the Department of Youth and Rehabilitative Services, and the Office of Aging” in its place.

Subsection (g) is amended to read as follows:

“(g)(1) At any time except during the 30-day period preceding any regularly scheduled election, a qualified elector or any individual who will be a qualified elector at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board’s office or by mail. A registration that is received no later than 5:00 p.m. on the 31st day preceding any election shall be accepted.

“(2) The Board shall:

“(A) Process mailed voter registration applications and registration; and

“(B) Update notifications received postmarked by not later than the 30th day preceding any election and timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the 23rd day preceding any election.

“(3) The Board shall process faxed postcard applications from persons eligible to vote absentee in federal elections in the District of Columbia pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C.S. § 1973ff et seq.), which are faxed not later than the 30th day preceding any election.
“(4) After the 30th day preceding an election, a qualified elector may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board’s office. A qualified elector shall not change his or her party affiliation after the 30th day preceding an election.

“(5) A qualified elector may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence by completing a voter registration application, making an oath in the form prescribed by the Board, and providing proof of residence. An individual may prove residence for purposes of registering by presenting such identification as required under federal law; provided, however, that if the individual does not present a government-issued and valid photo identification card showing the individual’s address, the individual shall cast a special ballot, subject to the Board’s verification of residence. A qualified elector shall not change his or her party affiliation on election day.

“(6) The precinct captain shall keep a record of individuals who attempt to register on election day but who cannot provide proof of residence as required by paragraph (5) of this section. The record shall be forwarded to the Board with the election returns for that precinct.

“(7) The Board shall maintain a list, including the name and addresses, of all individuals who either (A) attempted to register but could not provide proof of residence or (B) successfully registered and voted, and shall make the list available to public inspection upon request.”.

(5) A new subsection (l) is added to read as follows:
“(l) Before May 1, 2010, the Board shall submit to the Council a report indicating the feasibility of implementing automatic voter registration in the District.”.

(f) Section 9 (D.C. Official Code § 1-1001.09) is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “in paragraph (2)” and inserting the phrase “in paragraphs (2) and (3)” in its place.

(B) Paragraph (2) is amended to read as follows:

“(2) The Board shall permit any duly registered voter to vote by absentee ballot, for any reason, under such rules as the Board shall issue.”.

(C) A new paragraph (3) is added to read as follows:

“(3) If a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal election contests and for any District-wide election contests.”.

(2)(A) A new subsection (b-1) is added to read as follows:

“(b-1)(A) For each primary and general election, the Board shall designate no fewer than 4 early voting centers, equitably distributed geographically throughout the District.

“(B) At each early voting center, the Board shall allow persons to vote in person for at least 7 days before election day.

“(C) The Office of Property Management shall assist the Board in identifying appropriate locations for use as early voting centers.
“(D) The Chief Technology Officer shall assist the Board in ensuring that each early voting center maintains a secure network environment with the Board’s office.

“(E) Before January 31, 2011, the Board shall submit a report to the Council on the effectiveness of using early voting centers, including information about:

“(i) the effect of early voting centers on turnout rates;

“(ii) whether the expanded use of early voting centers could permit for consolidation of precincts; or

“(iii) other information about cost savings opportunities for the use of polling places.

“(F) The Board shall issue rules implementing this subsection.

(B) A new subsection (b-2) is added to read as follows:

“(b-2) The Board may provide blank ballots by fax, e-mail, or other electronic means to absent uniformed services voters and overseas voters in federal elections.”.

(4) A new subsection (c-1) is added to read as follows:

“(c-1) The Board shall issue rules for granting access to the electoral process, including access to polling places, ballot-tabulation centers, and other similar locations, to election observers. The rules shall take into account the need to avoid disruption and crowding in polling places and ballot-tabulation centers and the need to ensure that all questions posed by observers should be answered as fully, accurately, and cooperatively as possible. Election observers shall be allowed uniform and
nondiscriminatory access to all stages of the election process, including the certification
of election technologies, early and absentee voting, and vote tabulation. The Board shall
issue a public notice with respect to any denial of a request by any election observer for
access to any polling place for purposes of observing an election. The notice shall be
issued not later than 24 hours after the denial.”.

(5) Subsection (j) is amended by striking the phrase “12 months” wherever
it appears and inserting the phrase “22 months” in its place.

(6) New subsections (j-1) and (j-2) are added to read as follows:
“(j-1) Upon the conclusion of voting at any precinct, the Board shall post a
summary count of votes cast at the precinct. The summary shall be posted in a
conspicuous place that can be seen from the outside of the precinct immediately upon
completion of voting.

“(j-2) Precinct captains shall prepare a summary log that indicates the
total number of votes cast in a polling place, the total number of persons who have signed
in, the number of voter-verifiable records that arrived at the polling place before the polls
opened, the number of used voter-verifiable records, and the number of unused voter-
verifiable records.”.

(8) Subsection (k) is amended to read as follows:
“(k) Each voting system used in an election in the District occurring after
January 1, 2012, shall:

“(1) Meet or exceed the voting system standards set forth in the
15301 et seq.) or be federally certified;
“(2)(A) Create a voter-verifiable record of all votes cast.

“(B) The voter-verifiable record shall be permanent and capable of being inspected for the purpose of audits and recounts. A voter-verifiable record need not be a paper ballot. A satisfactory voter-verifiable record include:

“(i) A paper ballot prepared by the voter for the purpose of being read by a precinct–based optical scanner;

“(ii) A paper ballot prepared by the voter to be mailed, whether mailed from a domestic or an overseas location; and

“(iii) A paper ballot created through the use of a ballot marking device;

“(3) Be capable without further modification of creating, storing, and exporting an anonymous separate machine record of each voter-verifiable record, showing each choice made by the voter; and

“(4)(A) Meet any additional standards established by the Board; provided, that the standards do not conflict with those set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C § 15301 et seq.);

“(B) The Board shall adopt voting system standards and review the standards on a biennial basis.”.

(9) A new subsection (l) is added to read as follows:

“(l) The Board, through the Office of Contracting and Procurement shall, purchase voting system equipment under a competitive-bidding procedure that includes the following conditions:
“(1) A provision to place a copy of the software source code for
the voting system, and related documents, in escrow with an independent third-party
evaluator selected by the vendor and the Board;

“(2) A warranty provision that requires that the vendor:

“(A) Promptly and fully disclose any flaw, defect, or
vulnerability in the voting system of which the vendor is aware or becomes aware; and

“(B) (i) Remedy any flaw, defect, or vulnerability in the
voting system identified in subparagraph (A) of this paragraph at no cost to the District;
or

“(ii) If the flaw, defect, or vulnerability in the
voting system cannot be remedied:

“(I) Replace the voting system or the
affected part of the voting system or provide an equivalent voting system at no cost to the
District; or

“(II) Reimburse the District for the full
purchase price of the voting system or for the value of the affected part of the voting
system, plus any costs incurred by the state as a result of the flaw, defect, or
vulnerability; and

“(3) A most-favored customer provision that ensures that the
District receive pricing terms that are at least as favorable as those received by any other
customer except for the federal government during the term of the contract and during
any extensions or renewals of the contract; and
“(4) A provision that incorporates the requirements of section
9a(k).”.

(g) A new section 9a is added to read as follows:

“§ 9a. Post-election audits.

“(a) For the purposes of this section, the term:

“(1) “Error rate” means the greatest change in difference between any 2 candidates’ vote totals in an audit sample, comparing the machine result and the tally from the manual audit for a contest, divided by the number of votes (including overvotes and undervotes) audited in that contest in that sample.

“(2) “Margin of victory” means the difference between the contest-wide vote totals for the apparent winning candidate with the fewest votes and the apparent losing candidate with the most votes in the machine result, divided by the number of votes cast in the entire contest (including undervotes and overvotes).

“(b) After each primary, general, and special election, the Board shall conduct a public manual audit of the voter-verifiable records tabulated by the Board.

“(c)(1) The Board shall manually audit:

“(A) At least 5% of the precincts with precinct-level vote-tabulation machines during the election;

“(B) At least 5% of the voter-verifiable records that are tabulated centrally, including absentee ballots and special ballots.

“(2) Of those voter-verifiable records audited, the Board shall examine no fewer than 3 contests, of which:

“(A) At least one shall be a District-wide contest; and
“(B) At least 2 shall be a ward-wide race.

“(3) The Board may, at its discretion, whether or not by request of a losing candidate, audit additional precincts, voter-verifiable records, or contests; provided, that the Board shall select at least one additional contest not selected pursuant to paragraph (2) of this subsection. The Board shall issue rules describing the criteria that it will use and the procedure for considering requests for additional audits. The Board may also collect such fees, set forth by rule, for additional audits conducted under this paragraph.

“(d) The precincts audited shall be selected on an entirely random basis; provided, that, within each ward, each precinct in the election shall have an equal chance of being selected. The voter-verifiable records that are tabulated centrally shall also be selected on an entirely basis. The contests audited shall be selected on an entirely random basis; provided, that, within each category, each contest in the election shall have an equal chance of being selected. The Board shall publicly announce the method by which it intends to randomly select precincts, voter-verifiable records tabulated centrally, and contests, and shall conduct the random selection in such a way as to allow the public to observe and ensure that the selection is random. The selection shall be followed by the audit as soon as is practicable.

“(e) The date of the audit shall be announced no later than 3 business days after tabulation has been completed, but no fewer than 24 hours in advance of the audit.

“(f) The audit shall be conducted in public view so that members of the public are able to verify that votes are correctly classified and tallied, but are unable to touch ballots and other official materials or to interfere in any way with the manual audit process.

“(g) Individuals performing the manual audit shall:
“(1) Not be assigned to tally the results from a precinct in which that
individual served as a polling place worker;
“(2) Not at any time before or during the manual audit be informed of the
corresponding machine tally results;
“(3) Follow the Board’s procedures for hand counting voter-verifiable
records, tallying results, noting discrepancies as well as any missing or damaged voter-
verifiable records, and interpreting ambiguous votes where the voter intent may be clear;
and
“(4) Make a record of each ambiguous vote, including the nature of the
marking error causing the ambiguity and how the vote was interpreted.
“(h)(1) If an audit initially reveals a discrepancy between the machine result and
the tally from the manual audit that yields an error rate greater than 0.25% or 20% of the
margin of victory, whichever is less, and the discrepancy is not attributed to marking
errors, a 2nd count shall be conducted.
“(2) If the 2nd count confirms the discrepancy described in paragraph (1)
of this subsection, the Board shall also audit another precinct in each ward in which the
contest appeared on the ballot, selected at random using the same method previously used
to select the precincts, and an additional 5% of all centrally tabulated ballots.
“(3) If the additional audit sample described in paragraph (2) of this
subsection also reveals a discrepancy between the machine result and the tally from the
manual audit that yields an error rate greater than 0.25% or 20% of the margin of victory,
whichever is less, the Board shall audit all precincts and centrally tabulated ballots in
which the contest was held.
“(i) The results derived from the manual audits shall be deemed the true and correct results of the election contests at issue with respect to the votes audited, and shall be used in lieu of further counting in any automatic recounts.

“(j) The Board shall publish on its website and make available for public inspection a report of results of the manual audit before certification of the official election results. The report shall:

“(1) Identify and, when possible, explain any discrepancies between the initial count and the manual tally; and

“(2) Describe further investigations to be undertaken or actions to be taken based on the observed discrepancies;

“(k)(1) A vendor providing a voting system for use in the District elections to shall furnish a bond in the amount of $10,000 to the District.

“(2) A comparison of the results compiled by the voting system with the post-election audit described in this section shall show that the results of the electronic voting system differed by no more than 0.25% from the manual count reviewed, not including discrepancies associated with missing or damaged voter-verifiable records and with ambiguous votes.

“(3) If a voting system is found to have failed to record votes accurately and in the manner set forth in paragraph (2) of this section, and that the failure is attributable to either the voting system’s design or actions of the vendor, the vendor shall forfeit the bond required by paragraph (1) and pay any costs incurred by the Board directly attributable to the failure.
“(4) The vendor shall reimburse the District for the costs of any post-election audit required under subsections (g)(2) and (3) of this section, not including any costs associated for salaried election officials. If the vendor does not reimburse the District for these costs, the vendor shall forfeit the bond required by paragraph (1) and shall be liable for the additional costs.”.

(h) Section 10(b)(1) (D.C. Official Code § 1-1001.10(b)(1)) is amended by striking the phrase “or any other order.” and inserting the phrase “or any other order. The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage of ballots, excessive wait times, bomb threats, or similar unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved.” in its place.

(i) Section 11(a)(1) (D.C. Official Code § 1-1001.11(a)(1)) is amended to read as follows:

“(a)(1) The Board shall recount the votes cast in one or more voting precincts, if, within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. Before beginning the recount, the Board shall prepare an estimate of the costs and inform the petitioner of the anticipated number of hours needed to complete the recount and the cost per hour. The costs of the recount shall not include any payments associated for salaried election officials. If the petitioner chooses to proceed with the recount, the petitioner shall deposit the amount of $50 per precinct included in the recount. If the result of the election is changed as a result of the recount,
the deposit shall be refunded. If the result is not changed, the Board shall determine the actual cost of the recount. The petitioner is liable for the actual cost of the recount and the Board may collect that cost from the deposit made with the petition.”.

(j) Section 17(g) (D.C. Official Code § 1-1001.17(g)) is amended to read as follows:

“(g) The proposer of a recall shall have 180 days or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the proponent of the recall formally adopts the original petition form as his or her own form pursuant to subsection (e) of this section, to circulate the recall petition and file the petition with the Board.”.

Sec. 4. Section 3(18) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(18)), is amended by striking the phrase “tapes, recordings,” and inserting the phrase “tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images),” in its place.

Sec. 5. Section 1003.6(i) of Title 3 of the District of Columbia Municipal Regulations (3 DCMR § 1003.6(i)), is repealed.

Sec. 6. Applicability.

(a) Section 3(b)(1) shall not apply to any individual who is a member of the Board of Elections and Ethics on the effective date of this act.

(b) For any election after December 31, 2010, sections 3(f)(1)(B) and 3(f)(2)(A) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 7. Fiscal impact statement.
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.
COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than 15 days. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Cynthia Brock-Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA
PROPOSED LEGISLATION

BILLS

B18-344 Information Sharing to Improve Services for Children and Families Act of 2009

Intro. 06-16-09 by Councilmembers Wells and Graham and referred to the Committee on Public Safety and the Judiciary with comments from the Committee on Human Services

B18-345 Omnibus Election Reform Act of 2009

Intro. 06-16-09 by Councilmembers Cheh, Thomas and Chairman Gray and referred to the Committee on Government Operations and the Environment

B18-346 Build the Dream Foundation Tax Check-off Establishment Act of 2009

Intro. 06-16-09 by Councilmember Bowser and referred to the Committee on Finance and Revenue
Council of the District of Columbia
Committee on Government Operations and the Environment
Notice of Public Hearing
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

COUNCILMEMBER MARY M. CHEH, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS AND THE ENVIRONMENT
ANNOUNCES A PUBLIC HEARING ON

Bill 18-345, the “Omnibus Election Reform Act of 2009”

July 13, 2009
11:00 AM
Room 120
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.

On Monday, July 13, 2009, Councilmember Mary M. Cheh, Chairperson of the Committee on Government Operations and the Environment, will hold a public hearing on B18-345, the “Omnibus Election Reform Act of 2009.” B18-345 would amend the District of Columbia Election Code to include Board member qualifications and restrictions on Board Member activities, to impose an open meetings requirement, to establish an Elections Advisory Committee to assist the Board in carrying out its duties, to require the Board to establish regulations allowing election observers uniform and nondiscriminatory access to the election process, to establish reporting requirements following elections, to expand the franchise to persons that are 17 but will be 18 at the time of the general election, to allow for pre-registration of persons 16 years or older, to permit same-day registration, to require the Board to submit an automatic-voter-registration study, to add the Department of Corrections and the Department of Youth Rehabilitative Services to agencies covered under the National Voter Registration Act, to expand the pool of eligible polling place workers, to require training and certification of polling place workers, to require performance management of polling place workers, to allow public employees to take paid leave in order to work as a polling place worker, to establish a polling place worker check-off on voter registration forms, to require a voting system with a voter-verifiable voter record, to require a competitive contracting process for new voting systems, to allow for no-fault absentee ballots, to allow persons to cast special ballots for federal elections in out-of-precinct votes, to allow for early voting and vote centers, to authorize the Board to extend voting hours in emergency situations, to require the posting of summary counts of votes at the precincts, to move Advisory Neighborhood Commissioner elections to the primary elections, to establish ballot auditing standards, to allow the Board to establish filing fees for candidates for elected office, to adjust the number of signatures needed for Advisory Neighborhood Commission nomination petitions, to allow for passive electioneering at the polls, to prohibit defacing campaign posters and other campaign materials during an election period, and to repeal the “false statements” provisions in the Board’s initiative regulations. The public hearing will begin at 11:00 AM in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Ave., N.W.

Anyone wishing to testify at the hearing should contact Aukima Benjamin, staff assistant to the Committee on Government Operations and the Environment, at 724-8062, or via e-mail at abenjamin@dccouncil.us. Witnesses should bring 10 copies of their written testimony and submit a copy of their testimony electronically to abenjamin@dccouncil.us. Representatives of organizations
will be allowed a maximum of five (5) minutes for oral presentation and individuals will be allowed a maximum of three (3) minutes for oral presentation.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted either to the Committee on Government Operations and the Environment or to Ms. Cynthia Brock-Smith, Secretary to the Council, Room 5, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at the end of the business day on July 27, 2009.
ATTACHMENT E
COUNCILMEMBER MARY M. CHEH, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS AND THE ENVIRONMENT

ANNOUNCES A PUBLIC HEARING ON

Bill 18-345, the “Omnibus Election Reform Act of 2009”

July 13, 2009
11:00 AM
Room 120
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.

PUBLIC WITNESSES

1. Dorothy Brizill, Executive Director, DCWatch
2. Dan Wedderburn, DC for Democracy
3. William O’Field, Certified Elections/Registration Administrator, United States Electoral Specialist
4. Craig Engle, Legal Counsel, DC Republican Committee
5. Nelson Rimensnyder, Public Witness
6. Will Frey, Public Witness
7. Eric Marshall, Campaign Manager, National Campaign for Fair Elections, Lawyers’ Committee for Civil Rights under Law
8. Steven Block, Legislative Counsel, American Civil Liberties Union of the National Capital Area
9. Sandra L. Wesolowski, Director of Clerk Services, City of Franklin, WI
10. Oliver Hall, Center for Competitive Democracy
11. Adam Fogel, FairVote
12. Steve Carbo, Senior Program Director, Demos
13. Tom Smith, Chairman of the Ward 3 Democratic Committee and ANC Commissioner
14. Ann Heuer, ANC Commissioner, 3D-06
15. Philip Pannell, Public Witness
16. Timothy A. Jones, ANC Commissioner 4C-08
17. Bob Richards, ANC Commissioner 7B-07
18. Cardell Shelton, ANC Commissioner 8C-07
19. John Price, Public Witness
20. Shelley Tomkin, 1st Vice Chair, Ward Three Democratic Committee
21. Susannah Goodman, Common Cause
22. Albrette “Gigi” Ransom, Commissioner ANC 5C-12
23. Elinor Hart, DC League of Women Voters
24. Stu Ross, Public Witness
25. Bill Redparth, National Chair, Libertarian Party
26. Brent McMillan, Executive Director of the Green Party
27. Tinlee Ray, Captain, Precinct 141
28. Kristin Clarke, NAACP Legal Defense Fund
29. Roxana Olivas, DC Latino Caucus
30. Mike Silverstein, Chairman, Dupont Circle ANC
31. George Vassiliou, Public Witness
32. Janis Hazel, Public Witness
33. Robert Vinson Brannum, Public Witness
34. David Sobelsohn, ANC 6D-02
35. Kris Hammond, Public Witness
36. Sarah Peterson, American Association of People with Disabilities

**GOVERNMENT WITNESSES**

Gottlieb Simon, Executive Director, Office of Advisory Neighborhood Commissions
Rokey Suleman, Executive Director, D.C. Board of Elections and Ethics
ATTACHMENT F
July 24, 2009

The Honorable Mary M. Cheh, Chair
Committee on Government Operations and the Environment
1350 Pennsylvania Avenue, N.W.
Washington, D.C.  20004

Re: The Omnibus Election Reform Act of 2009 – Bill 18-345

Dear Council member Cheh:

The Fair Elections Legal Network (“FELN”) submits these comments to the Committee on Government Operations and the Environment in connection with the July 13, 2009 hearing on Bill 18-345, the Omnibus Election Reform Act of 2009. We appreciate this opportunity to share our views as you and the Committee consider improvements to election administration in the District of Columbia, including the removal of barriers to voting for eligible DC residents. We commend your work to achieve the improvements embodied in Bill 18-345’s proposed reforms. Our comments are limited to provisions of the bill pertaining to same day registration, poll worker training and evaluation, no-fault absentee ballots, counting out of precinct votes and extending voting hours. FELN supports these changes because they facilitate voting for eligible individuals -- particularly those who are traditionally under represented at the polls -- and improve polling place operations.

Section 301. Same Day Registration. Section 301(g)(5) provides that

A qualified elector may register on election day
by appearing in person at the polling place for the precinct in which the individual maintains residence,… completing a voter registration
application, making an oath in the form prescribed by the Board, and
providing proof of residence….by presenting:

(A) A valid driver’s license or identification card issued by
   The District; or
(B) A military identification that shows the voter’s name; or

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1 FELN is a national, nonpartisan election reform advocacy organization working to improve election administration and remove barriers to voter participation for traditionally under-participating constituencies -- poor, elderly, minority and student voters.
(C) Any other document approved by the Board as proper identification.

FELN supports this amendment to the DC election code because if enacted it would permit eligible DC residents to simultaneously register to vote and vote or update their voter registration information at the polling place and vote. This change would minimize the potential that an eligible voter will be turned away from the polls or forced to vote anything other than a regular ballot. Same Day Registration also minimizes the need for provisional voting although Section 602, discussed below, would partially address this problem by requiring the counting of provisional ballots cast in federal elections out-of-precinct.

Eliminating the District’s 30 day voter registration deadline will remove one of the most burdensome barriers to voter participation for vulnerable constituencies -- poor, elderly, minority, disabled and student voters. The impact of this obstacle is amplified by the current foreclosure crisis, where already voters who have lost there homes are currently required to re-register in their new precinct prior to the voter registration deadline – something that may not be a top priority for those who are struggling to find housing. If enacted, section 301 will afford eligible DC residents the same kind of access to the polls enjoyed by eligible residents in SDR states. Moreover, by requiring “HAVA” ID for residency purposes and authorizing the Election Board to approve other documents for ID purposes, we believe this provision sufficiently addresses any concerns about potential voting by non-DC residents.

Nine states (Iowa, Idaho, Maine, Minnesota, Montana, New Hampshire, North Carolina, and Wisconsin) already permit some form of same day voter registration.2 There is no reason why DC should not join their ranks.

Section 402. Polling Place Worker Training, certification and oath. Section 403. Polling Place Worker Performance Management.

FELN supports both of these sections because they will minimize the potential for disenfranchisement due to poll worker error by imposing minimal training and evaluation requirements for individuals who wish to serve as poll workers.

In past elections in the District inadequate poll worker training about the legal requirements for voting, polling place procedures, and voting system training resulted in overuse of provisional ballots and voter disenfranchisement. By imposing minimum training and certification requirements before an individual can serve as a poll worker, and a performance evaluation before that person can serve as a poll worker in subsequent elections, sections 402 and 403 minimize the potential for poll worker error and disenfranchisement.

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2 Demos, Voters Win with Election Day Registration (Winter 2009),
http://www.demos.org/pubs/voterswin_09.pdf;
We recommend that the Board of Elections work with election law experts to develop the poll worker training manual and materials that will be utilized for training and evaluation purposes. We are available to provide relevant guidance and work with the Board as needed.

Section 601. No-Fault Absentee Ballots.  Section 601 would require the Election Board to “permit any duly registered voter to vote by absentee ballot, for any reason, under such regulations as the Board shall promulgate.”

FELN supports Section 601 because it will facilitate voting, particularly for voters for whom employment, family or health reasons are unable to get to the polling place to cast their ballot. There is no reason why the District of Columbia should not be among the increasing number of states that permit no fault absentee voting.

Section 602. Special Ballots for Out-of-Precinct Votes. This section provides that if a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal election contests.

FELN supports this provision because it protects against disenfranchisement by requiring that special ballots cast out of precinct be counted in federal elections. As of 2006 15 states counted provisional ballots, the HAVA-mandated equivalent of special ballots. With ongoing maintenance of voter registration databases and improved voting technology it makes little sense to refuse to count ballots of registered voters cast out of precinct. Additionally, we see no reason not to extend this protection to local elections.

Section 701. Extending voting hours.  Section 701 would authorize the Board of Elections to extend voting hours in the event of an emergency or other disruption to the polling place. We support this provision because the Board should have the ability to protect against voter disenfranchisement due to emergencies. We would recommend, however, that Section 701 be clarified so that the Board’s authority is not limited to specified past emergencies. Emergencies almost by definition are, to an extent, unforeseeable and there statutory language should reflect that.

We are available to discuss any questions you may have about the provisions we have addressed.

Respectfully submitted,

Karen L. Neuman, Legal Director
Fair Elections Legal Network
Thank you for the opportunity and privilege to share my experiences relating to Election Day Registration. I hope that you will find my opinions and insight valuable.

I am Sandi Wesolowski. I am the City Clerk and Director of Clerk Services for the City of Franklin in Milwaukee County, Wisconsin. During the past 24 years in Franklin, and for the 8 years prior to that in the City of Oak Creek, Wisconsin, I administered all aspects of elections. As municipal clerk, I have also implemented and administered countless non-election issues involving the public. All of my work requires and is accompanied by the duty to maintain the integrity of governmental processes. I am the local election official representing the State of Wisconsin upon the Election Assistance Commission Standards Board, and have served upon various election issue committees such as the Voluntary Voting System Guidelines Committee, the Wisconsin Administrative Plan, and the Statewide Voter Registration System Steering Committee and Standards Board.

My experience with Election Day Registration (EDR) began in 1976, the same year as its inception in Wisconsin. An important factor in increasing voter participation and making EDR successful in Wisconsin for the past 32 years has been that Wisconsin openly seeks input from voters, legislators, and election officials from its 1,851 local jurisdictions. As a result thereof, throughout the past 32 years, I have witnessed the process for EDR continuously evolve and improve.

I believe one advantageous difference with implementing EDR as compared to other voting or election process concepts, is that it can be accomplished by and with the government itself having complete control. There is no vendor and there is no required equipment. EDR is a process which you regulate through laws, procedures, education, and training. Training of inspectors of election, or poll workers, is vital to the process. Following procedures and making the inspectors feel comfortable with the process is a major key to successful EDR. I believe the top of the priority list for EDR administration should contain education for voters, for legislators, and for election officials. Voters need to be informed of what is required of them to assure their proper registration and the proper counting of their votes. Education across the board is essential for maintaining the integrity within and the confidence and accuracy of this element of the election process. Another advantageous difference is the encouragement of voter participation through the removal of the pre-election day registration requirement – what voters refer to as a barrier, which is proven by higher voter turnout in states with EDR over those without.
The State of Wisconsin has developed, and continuously updates, an Election Day Voter Registration Manual. On the administrative side, this is a valuable tool, a necessary tool. It provides step-by-step procedures and form samples, it is a good *best practices* manual.

In Franklin, we have developed a template for election officials and inspectors registering voters. It is a simple laminated form that is placed over a completed registration application to assure the voter and the inspector that all required answers have been provided and completed. In my experience over the years, of the last 5,000 registration forms completed on Election Day, there have been fewer than 20 forms with missing information.

Prior to the use of a registration application template, staff in my office spent weeks attempting to follow up with voters to obtain the missing information. We are continuously looking for positive ways to assist inspectors and voters to improve the election process.

Other than staffing and ballot number estimates ordering, EDR can be administered without what I refer to as equipment cost increases. Staffing costs shift from pre-election to Election Day and somewhat post-election. Rather than having to staff election offices with personnel who are trained and certified to mass enter registrations into the statewide voter registration database on duty for weeks prior to Election Day, we add inspectors on Election Day for voter registration purposes. It is more economical.

Franklin’s voting system consists of a combination of optical scan and touch screen. One challenge that some believe EDR brings is ballot ordering and supplies. In Franklin, the potential is there to have up to five different ballot styles per polling location due to aldermanic, county supervisor, and school district boundaries. With the optical scan system, ballots must be printed ahead of time. There is extra caution required and at times a greater cost incurred when anticipating voter turnout for ballot ordering. So as not to run out of ballots without having a touch screen or direct-recording electronic (DRE) voting system, calculations are based on the history of similar elections, the growth in a reporting unit, and the complexity of the ballot. I, personally, have not found this in any way to be a problem or a challenge.

In addition to Election Day registration, voter registration is conducted routinely throughout the year. Those who register in person at the clerk’s office or other designated registration location by the third Wednesday preceding an election, do not need to show proof of residence in Wisconsin and are processed as a voter who appears on our regular poll list, in alphabetical order. Those voters, during that same time period, who are first time registrants in Wisconsin and register through the mail, need to include a copy of their proof of residence and their Wisconsin driver’s license or ID number, or Social Security number if they do not have a valid Wisconsin driver’s license or ID. Their names also appear on our regular poll list. If they fail to include a copy of their proof of residence, a notation appears on the poll list that they need to show proof of residence to the inspectors on Election Day before receiving a ballot. If they do not, they receive a provisional ballot and can provide that proof either by returning to their polling location on Election Day or appearing at the clerk’s office prior to 4:00 p.m. the day after the election for their provisional ballot to be counted. An advantage of EDR towards the goal of enabling all those entitled to vote to actually cast a valid ballot, is provided where
the voter who is marked in the poll list as having to provide proof of residence but for some reason is unable to do so at the time, may nonetheless register on Election Day if accompanied by a corroborating witness (which is a person who lives in the municipality who can provide proof of residence and vouches for the statements of the registering voter). Franklin has yet to have a provisional ballot where a voter did not return to the polls on Election Day to provide the required information. Historically, all potential provisional ballots were processed and counted on Election Day. We all know that provisional ballots allow more people to vote, and it is even more important that those who vote and who are entitled to vote have their votes count.

To put all of the foregoing in perspective, the City of Franklin’s current registered voter total is 25,500. During the first two weeks of October 2008, Franklin registered 416 people. Then, there are those who registered from the third Wednesday prior to the election through the day before Election Day. They are considered late registrations. Between October 15 and November 3, 2008, Franklin registered 2,587 people. Those voters received a Certificate of Registration from the municipal clerk and their names appeared on a supplemental list. A duplicate copy of the Certificate of Registration was also provided to the inspectors of election along with their poll lists. As a recommended best practice, in Franklin we go one step further and make sure that all late registered voters who receive a Certificate are also included on the supplemental list provided to the poll locations. On Election Day, November 4, 2008, Franklin registered 1,835 people. This experience provides that the timing of the voter registrations is spread out, and I believe this is attributed to voter education. Again, I have found that it is more cost efficient to add an extra inspector at the polls on Election Day for registration purposes, than it is to significantly increase the staff in the clerk’s office for several weeks or months prior to an election.

The process we follow on Election Day directs a voter to a separate registration area at the poll, if they have not pre-registered. The voter then completes a registration application and presents it to an inspector, along with one documentary proof of residence. Wisconsin law does provide for challenging a voter. Inspectors are provided that Wisconsin law and written procedures, detailing the registration process and requirements, including statements of the penalties for its violation. Upon verification of the information (comparing it to the proof of residence) and verification that the voter is in the correct polling location and following a check against an ineligible felon voter listing, the inspector writes the voter’s name, address, and ballot style on a list and proceeds to issue the correct ballot to the voter. A consecutive number is assigned to each voter who is issued a ballot and that number is placed on the poll list or list of Election Day registrations. The list of Election Day registrations is an extension of the prepared poll list. The list of Election Day registrations must match all completed Election Day registration applications after the fact. This required match is verified in the clerk’s office following an election and by our Board of Canvassers during a recount.

EDR processing continues after Election Day with the processing of Election Day registrants, including HAVA checks, and a verification post card is sent to the newly registered voter. If the verification card is returned to the local jurisdiction by the post
office, the municipal clerk verifies the accuracy on the card with the Election Day registration form. Apparent errors are corrected and the registration is re-processed, or in some cases, the clerk contacts the voter to determine the reason for the undeliverable verification card. Sometimes it is a data entry error, sometimes it is an error on the part of the voter completing the form, and sometimes it is a delivery error by the post office. In rare cases of a returned verification card, the information is forwarded to the District Attorney’s office for further investigation. I am unaware of the statewide statistics; however, in Franklin we have yet to refer any returned postcards for investigation beyond our office, as all have upon follow up been found to be related to a bona fide vote under the law.

As far as the possibility of voting by felons, the State of Wisconsin Department of Corrections provides each local municipal jurisdiction with a list of State and Federal convicted felons having residential addresses within such jurisdiction. Prior to Election Day, the clerk’s office checks the ineligible felon voter list against the municipality’s registered voter database. If there is a match, it is marked “Inactive-Felon Match” and that name does not appear on the poll list. On Election Day, inspectors check those who register against the ineligible felon voter list and if there is a match, the person is told they are ineligible to vote for such reason and the person is not allowed to vote. Following Election Day, when processing Election Day registered voters, each registration requires a HAVA check before proceeding to the next registration.

Of note, in Franklin, we have the Milwaukee County House of Correction, a unique form of a state/county prison with work-release privileges for some inmates. For those inmates who wish to register and vote absentee, I work with the Sheriff’s Department to determine who is a qualified elector based on their convicted felon status, as Wisconsin law generally upon the application of listed factors considers those inmates to be Franklin residents, unless they decide to vote absentee from the jurisdiction they resided in at the time of their sentencing. Typically, we have less than 50 qualified electors registering to vote and voting absentee from the population at this facility of approximately 2,000. In Franklin, there has not been a case of voter fraud or of a convicted felon voting in my experience with the Milwaukee County House of Correction, and I believe that result is due to the integrity controls and process failsafes in place.

I believe Wisconsin’s election experience has demonstrated successful Election Day registration by encouraging voter participation, while maintaining the accuracy and integrity of the voting process.

Thank you again for this opportunity to share my thoughts. I look forward to addressing any questions or comments.
Testimony for DC City Council Committee on Government Operations and the Environment

Delivered by Sarah Peterson of the American Association of People with Disabilities (AAPD)
July 13, 2009

Chairperson Cheh and Committee members I want to thank you on behalf of the members of the American Association of People with Disabilities for the opportunity to submit this testimony today on Bill 18-345, the "Omnibus Election Reform Act of 2009". I am Sarah Peterson, Grassroots Organizer and e-Advocacy Coordinator at the American Association of People with Disabilities. AAPD is the largest national cross-disability member organization in the United States, dedicated to increasing the economic and political power of people with disabilities. For the past ten years we have been actively involved in the city’s efforts to ensure private and independent elections for its citizens with disabilities. AAPD works in coalition with other state and local disability organizations for the full implementation and enforcement of disability nondiscrimination laws, particularly the Help America Vote Act, the National Voter Registration Act, the Americans with Disabilities Act (ADA) of 1990, and the Rehabilitation Act of 1973.

I am here to represent DC voters with disabilities and express our gratitude for and support of the Omnibus Election Reform Act of 2009. Chairperson Cheh has done a real service to the District with this legislation which includes provisions for early voting and same-day registration, identifies additional service agencies as voter registration sites, and creates significant opportunity for increasing the number and quality of poll workers. The opportunity for voters to register at their precinct the day of the election and to vote early and absentee easily and without constraints will be of great benefit to the citizens with disabilities in the District of Columbia; we know from our work that one of the largest reasons people with disabilities do not vote is that they are not registered. Furthermore, these changes will undoubtedly increase turnout and participation by all citizens, with and without disabilities.

Just as it makes voter registration and participation easier, this bill streamlines the process for becoming a poll worker by having poll worker check offs on voter registration forms and allowing city employees to serve at the polls without losing pay, leave or credit for time of service. While we think that poll workers need a FULL day of training, with time carved out for training on accessibility and disability sensitivity, rather than the four hours proposed, we are supportive of the new measures for poll worker performance standards and evaluation. In fact, we urge the committee to consider using evaluation tools at the end of poll worker training in order to evaluate the effectiveness of the training process. The vast majority of Election Day problems that people with disabilities face can be traced back to insufficient numbers and poor quality of poll workers, so this legislation’s improvements are quite meaningful to our community.

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Committee on Government Operations and the Environment
Bill 18-345
Page 8
However, upon review of this legislation, we observed the absence of implementation timelines and would like to suggest that some dates be included. Specifically, we suggest that, given the time it takes to create processes, prepare materials and train workers, the same day registration provisions of this bill not be enacted before the 2012 elections. This will ensure ample time for preparation which will lead to a seamless transition to this new function for election staff.

Furthermore, we are pleased to see that the voter verifiable record requirements have no implementation schedule since there does not currently exist any fully accessible voter verifiable system. Innovative, new, verifiable and accessible technologies will be available in the coming years, but we have no way of knowing when. We appreciate this bill’s reinforcement of the primacy of compliance with the Help America Vote Act standards and its assertion that verifiable methods need not be a paper ballot. However, we caution you against implementing this portion of the bill until you are able to meet the high standards for both accessibility and verifiability, and we oppose retrofitting the current system “to the extent ... possible” in the intervening time. The only retrofit available for the District’s current equipment is not accessible. In these hard financial times, spending money on an inaccessible retrofit does not make sense when the District will be replacing the entire system as accessible and verifiable options become available.

Overall, this is very good legislation and contains a lots of important fixes. Something that is missing is an adjusted primary date. The primary date should be at least 6 months before the general election. The current primary, held in September, does not allow enough time for the Board of Elections and Ethics to create and disseminate sample ballots and other voter education materials—an important part of running accessible elections.

Ted Selker, former director of the CalTech-MIT Election Project, now with Carnegie Mellon, has studied the importance of sample ballots. (See attached press release) His studies have shown that, while there is no such thing as a perfect voting system, every voting system’s usability and efficacy can be significantly improved by widespread dissemination of sample ballots. Additionally, sample ballots reduce the amount of time that each voter takes in the voting booth. More ballots would be counted and wait times would be reduced if we had enough time before an election to properly educate and prepare voters.

Thank you for this opportunity to submit testimony. I am happy to provide any assistance to the City Council and the Committee on Government Operations and the Environment toward barrier-free voting for all District citizens.
I submit my written testimony on this bill as a private citizen in the District of Columbia. I am an ANC Commissioner in Mount Pleasant, but my views do not represent those of ANC-1D or my fellow Commissioners.

In general, I applaud the intent of this Bill to encourage and facilitate voting in elections in the District of Columbia. Active participation in a democracy by its citizens is required if it is to live up to the ideals that underlie it. However, practical considerations with regard to fraud and fairness to all parties must be given their due as well. Often times, these considerations put reasonable restraints on our ability to streamline processes and establish greater convenience.

Let me first address areas of this bill that I support:

- **Early Voting** - We have seen in other states such as Tennessee, Washington, and West Virginia that establishing several locations where voters may cast their ballots prior to election day increases participation rates. While I have concerns that our compressed election calendar may not easily accommodate wide-spread early voting, I do agree that this is a good idea. However, I think we should legislatively establish guidelines that restrict the number of these early voting centers so that they are evenly distributed across the city and are as practicably, uniformly convenient to access.

- **The Establishment of a voter-verifiable voter record** is also a valuable reform. As a technologist by profession, I have a certain faith that we can use electronic voting systems to aid our electoral process, but there must be checks and balances built into the system not only to prevent fraud, but also to guard against error and disaster.

- **Establishment of Filing Fees** - While I think it is important to be judicious in the establishment of barriers to the electoral process, a filing fee can often be indicative of the seriousness of a person’s campaign. These fees should be set relatively low, or there should be an ability to waive the fee if there is a sufficiently large number of signatures on a petition.

I am sure the Committee has heard a great deal of testimony on practically every aspect of this bill, but I want to share with you the items that I think are most problematic.

- **Allowing government workers paid time off as poll workers** - Often times, government workers are invested in maintaining the incumbency of the legislators. I think that this creates a problematic incentive for these workers to take time off and perhaps engage in influencing other poll workers or voters.

- **Same Day Registration** - If the District of Columbia’s electoral machinery had a better track record of working flawlessly, I would be more inclined to accept this as a provision in the bill. However, in several of the past elections there have been questions as to the accuracy of the count. I am concerned that allowing Same Day Registration creates an opportunity for abuse that our electoral process might not be able to guard against.

- **Shifting ANC Elections to Primary Voting Day (ie early September)** - I have read in news reports that the impetus for moving the ANC election is to allow the Board of Elections greater flexibility and time to create ballots. The large number of ANC races throughout the city creates a substantial logistical burden on the Board of Elections. In my mind, the answer to this problem is not to shift the day of decision earlier in the process when many voters might not attend the polls due to a lack of contest higher on the ballot, but to shift the requirements for getting on the ballot to earlier in the process. It would not be unreasonable to have the nominating petitions completed by early July with the contest period running through August.
In my mind, there are two compelling reasons for keeping the ANC elections in November:
  o ANC Commissioners play an important role in DC’s democracy. There is a certain prestige in being on the same ballot as all other city and district races that would be undermined by removing it from the November ballot.
  o Advisory Neighborhood Commissions are almost entirely voluntary in their composition and function. In order to be effective, it is important for as many voters as possible to know who their Commissioners are and have an opportunity to vote for them. Our city often does not have contested primaries in parties other than the Democratic Party, and since it is a closed primary there is no reason for voters to show up. Having only one non-partisan race that is typically at the “Bottom of the ballot” on the primary day that isn’t a primary is confusing to voters, limits participation in the race.

- Expansion of the franchise to 17-year olds – We set minimum standard for participation based upon age. I have no doubt that every teenager in America is convinced that they are capable of doing things they are not yet technically old enough to do. Our city’s teenagers are no doubt very convincing in making the argument that someone who would be 18 in the General Election should not be prevented from participating in the Primary Election. But, they still do not meet the requirements for participating in an election. Why are we making special exceptions based upon age? Should we also extend the franchise to those who have not lived here for 30 days, but will have lived here for 30 days on the day of the General Election?
Testimony of Adam Fogel

Before the Washington D.C. City Council

Committee on Government Operations and the Environment

Bill 18-345, the “Omnibus Election Reform Act of 2009”

July 13, 2009

Thank you for inviting me to testify today. My name is Adam Fogel; I live in the District and am the Right to Vote Director at FairVote, a nonpartisan, nonprofit election reform and voting rights organization founded in 1992. We’re an active member of the D.C. Voting Rights Coalition and appreciate the opportunity to provide testimony on this sweeping election reform bill.

The Omnibus Election Reform Act of 2009 is a first, bold step towards modernizing Washington, D.C.’s Election System. In the short term, it will improve voter registration and give more D.C. residents a chance to vote in elections. This bill will also lay the groundwork for a 21st Century voter registration system that anticipates participation as opposed to the current 19th Century system that places hurdles along the way to the ballot box. Washington, D.C.’s voter registration and election system should show the rest of the country that this city is a beacon of democracy, one that serves as a model to others and demonstrates our commitment to securing full and equal voting rights.

I’ll focus my remarks today on four provisions of the bill and offer my recommendations on continuing to move the District’s elections forward.

The bill establishes two new policies for newly eligible voters. It sets a uniform pre-registration age of 16-years-old, which will improve the current registration system in two ways. First, it will create the space necessary to allow high schools to conduct systematic, annual voter registration drives. Students registering at 16 or 17 will have plenty of time to learn about the election process, creating more informed voters. Second, this policy will decrease the last-minute rush of registration forms the Board of Elections receives before the deadline every election cycle, because this policy makes voter registration a year-round activity. Systematically registering youth as they reach voting age will also decrease the need for third party partisan and nonpartisan groups to conduct registration drives before each election, allowing those groups to focus on get-out-the-vote campaigns and voter education.

The bill also allows 17-year-olds to vote in primary elections if they will be 18 by the general election. Nearly half of states have adopted this policy because it gives voting-age young people a voice in who appears on the general election ballot. It also encourages young people to vote in the first election for which they are eligible, which has been shown to promote lifelong political participation.
This bill also establishes a best practice that has helped bring down barriers to participation in 9 states already, Election Day Registration. According to Demos, voters in states with EDR were 7-percentage points more likely to participate in the 2008 election. In implementing EDR, it is important that poll workers across the District are properly trained so there is uniformity in how the policy is put into practice. It is also important that the Board of Elections allow a broad range of forms of identification for voters to prove their residency.

While Election Day Registration is a best practice for our current voter registration system, other options exist to modernize voter registration in more significant ways. The provision mandating a feasibility study on Automatic Voter Registration is one that should be taken seriously. Washington, DC has an opportunity to lead the nation in the percentage of eligible voters on the rolls. The United States is an outlier in having a self-initiated, opt-in system of voter registration. In most other democracies, the government shares the responsibility of maintaining full and accurate voter rolls. Through the use of existing government databases, including the DMV, the Office of Tax and Revenue and public assistance agencies, D.C. can automatically register eligible residents to vote and automatically update their registration when they move. Several states are currently debating this policy and it has the support of a broad range of national civil rights and voting rights organizations, including the Leadership Conference on Civil Rights, the Brennan Center for Justice and Common Cause.

The Omnibus Election Reform Act of 2009 is a comprehensive bill that lays the foundation for making the District’s election laws among the most progressive in the country. One factor this committee and the Council should consider after this bill is passed is how to best inform the public of these new policies. Educating the public—with a particular focus on youth—about these laws will promote greater transparency in the election process and improve the public’s perception of D.C. elections, especially after the controversy surrounding last year’s primary contests. I recommend that the City Council, in conjunction with D.C. Public Schools, make civic education and teaching the mechanics of participation a priority. Far too many young people leave high school without learning the basics of voting—including how to register to vote and what to expect on Election Day. Far too many of these students’ parents do not vote and many are intimidated by the process. With a mandate from the D.C. City Council, that can change. We can improve election laws by passing this bill, but the important work begins after this bill is passed—by registering and educating students in our schools and creating a new generation of informed, active participants in our democracy.

Thank you again for giving me the opportunity to testify today and I urge your adoption of this significant piece of legislation.
Dear District of Columbia Council Members,

We are writing in reference to a proposed requirement for new voting equipment. Within the current competitive market, we do not believe this provision would affect the costs of equipment, yet it would boost election integrity and protect opportunities for the District to explore innovative voting methods. Experience has shown that including such requirements in RFPs prior to purchase results in nominal or no increase in costs to jurisdictions, while requesting the addition of such capabilities after a purchase opens the door to substantial modification charges.

Here is the language that we are proposing be part of the new requirements:

"The equipment shall be capable without further modification of creating, storing and exporting in a non-proprietary, commonly used format an anonymous separate machine record of each voter's ballot, showing each choice made by the voter."

This requested provision relates to what is becoming an increasingly popular idea: "modularity." It would allow separation of the function of the hardware/firmware that captures the ballot information from the tallying software. With modularity you can have independent software used on the same data to make sure you get the same result. Post-election audits of machines can focus on the accuracy of the ballot records exported into a format accessible to the public.

This modularity allows for a heightened level of election integrity and transparency. The example of the Election Transparency Project of Humboldt County (CA) is instructive. As part of their audit procedure they re-scanned all ballots from the last election using commercial off-the-shelf scanners, and used form-reading software to detect voter marks on each ballot. This allows for the potential of having any "problem" ballots displayed on a screen for election judges to rule on voter intent (as humans can distinguish stray marks, etc. more reliably than computers). The Humboldt County Election Transparency Project proved its value in its first use, discovering a flaw in the Premier GEMS software used in conjunction with the county's Premier voting machines that resulted in the failure to include 197 ballots in the election results. This same model of pixel scanning of ballots will be typical in the next generation of optical scan voting machines, which will further enhance security and the ease of conducting ranked-ballot elections.

This provision also has particular significance for ranked voting methods, such as that adopted by Takoma Park, a municipality in Maryland District 20. Takoma Park voters in 2005 supported instant runoff voting with a vote of 84% and have used it in its city elections since then. Currently, it cannot run these elections on current state equipment. If state equipment had this provision, however, it could use the data generated from the system and tally the results using software used to tally instant runoff voting election in such cities as Burlington (VT) and Aspen (CO).

Furthermore, if any tallying software for instant runoff voting received federal certification, it would allow higher-level elections to consider instant runoff voting. Note that the Montgomery County League of Women Voters recently adopted a position in favor of instant runoff voting for county vacancy elections, for example.

FairVote Board of Directors: John Anderson o Edward Hailes o Hendrik Hertzberg
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Study Shows Ballot Design and Voter Preparation Could Have
Eliminated Sarasota Florida Voting Errors

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Key words: ballot design, voting, voter preparation, Sarasota

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Feb 2008
PRESS RELEASE

Study Shows Ballot Design and Voter Preparation Could Have Eliminated Sarasota Florida Voting Errors

CAMBRIDGE, February 6, 2008 –

Election results showed extremely inconsistent voting rates for two high profile races in the Florida counties of Sarasota, Charlotte, and Sumter on November 7, 2006. The expected missing selections for these races were around 1.5 percent. The second race on the ballot in Sarasota -- Congressional Race 13 for the House of Representatives CR13 -- was missing 13.7 percent of voter selections. The fourth race in Charlotte and Sumter -- Attorney General -- was missing 21 percent of selections. These races were both between only two candidates and appeared on the ballot page next to a large race that had seven candidates.

Forensic studies suggested ballot layout as the culprit (Matthew Doig and Maurice Tamman, "Analysis Points to Bad Ballot Design," The Sarasota Herald-Tribune, Dec. 5, 2006). Litigation has instead focused on the security of the software used by the Election Systems & Software Ivotronic machines in these elections. This release reports new data representing five studies showing that subjects did not miss Sarasota CR13 if they had a sample ballot to follow in the voting booth the studies found that more than 16 percent of subjects without a sample ballot in the booth missed the race (p=.013).

Members of the Caltech/MIT Voting Technology Project have run a series of studies to understand why the CR13 and AG races showed so few votes. Within a week of the November 7, 2006 election, members of the group had constructed an Adobe Flash-based simulation of the ES&S Ivotronic voting ballot which was refined to study various aspects of the ballot style that voters saw in Florida in November 2006. Four studies with these simulations found that each of the following user-interface features resulted in significant differences in errors:

- Bold-colored headlines above some races distract people from ones without them;
- Races with a small field of candidates can be overlooked when next to a race with a large field;
- Second-chance voting can indeed reduce errors.

The simulation studies lead to sample ballot experiments with the actual ES&S Ivotronic running the software from Florida. This study produced data showing how many votes were lost. Participants studied and filled out sample ballots; some participants were requested to enter the polling booth with their sample ballot, some without their ballot. A total of 16.7 percent of those without the sample ballot missed the race displayed at the top of the second page of the ballot, while none of the participants using a sample ballot missed the race. To eliminate variables such as software interference with experimental results, all data was collected by video camera and scored by two separate raters.

These studies conducted principally by MIT associate professor Ted Selker, MIT researcher Anna Pandolfo, and MIT students with subject pools taken from the Boston area show that the availability of sample ballots can explain the large voting irregularities in the November 7, 2006 Sarasota, Florida election. The studies suggest that improvements to ballot layout in general could save hundreds of thousands of votes across the country in future elections.
In experiment labeled OR, participants filled out the original Sarasota ballot and had no sample ballot. Of these subjects, 16.7% missed the race in question. In the next column, the chart shows that none of those with a sample ballot had this problem in experiment ORwb. The difference between sample ballots and no sample ballots for Congressional Race 13 across our experiments with 155 registered voters shows that the lack of a sample ballot reduces voting selections (P=.013).

The ballot MO1 case shows the undervote for CR13 when it is placed at the bottom of the first page of the ballot. Experiments MO2 and MO3 are also cases in which subjects didn’t have sample ballots, a ballot with bold headlines announcing state and federal positions on each race mitigated problems, 10% or more still missed the candidate but came back and fixed their errors. Experiment MO4 further mitigates the danger of missing the small 2 contestant race by placing it on the first page with a headline.

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July 13, 2009

Councilmember Mary M. Cheh, Chairperson
Committee on Government Operations and the Environment
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Re: Hearing on Bill 18-345, the Omnibus Election Reform Act of 2009

Dear Chairperson Cheh:

Advancement Project is pleased to accept the Committee’s invitation to submit testimony concerning today’s hearing on Bill 18-345, the Omnibus Election Reform Act of 2009. As discussed below, among other provisions, Advancement Project strongly supports Sections 402, 403, and 601-603 of Bill 18-345 and urges the Council swiftly to adopt these provisions. If enacted, these provisions will remove a wide range of barriers to voting in the District of Columbia and expand voting opportunities for the District’s eligible voters.

Advancement Project is a policy, communication and legal action civil rights organization that supports organized communities in their struggles to achieve universal opportunity and a just democracy. Voter protection is a central component of Advancement Project’s Power and Democracy program, which supports community-based efforts to increase civic participation, improve election administration, and remove structural barriers to electoral participation in low-income and minority communities. Since 2000, Advancement Project and its local community partners have been monitoring the administration of voter registration and voting in several states, including Florida, Missouri, Ohio, Pennsylvania, and Virginia; investigating barriers to voting, particularly those that impact voters of color; and advocating with state and local election officials where there have been legal lapses.

In November 2008, turnout among the District’s registered voters exceeded the levels of voter participation in the previous two presidential elections. While the high level of voter participation shows that democracy is strong, structural barriers to voting in the District of Columbia persist.
Bill 18-345 is designed to dismantle obstacles to voting and expand opportunities for the District’s eligible voters. The comments that follow focus on several of the bill’s provisions of particular concern to Advancement Project: (1) requiring the counting of special ballots (otherwise known as provisional ballots) cast in the wrong precinct with regard to federal election contests; (2) establishing no-excuse absentee voting; and (3) expanding and enhancing poll worker training to minimize disenfranchisement caused by poll worker error.

Requiring the Partial Counting of Special Ballots Cast in the Wrong Precinct

In the 2008 general election, 14,713 special ballots were cast in the District of Columbia. Of those ballots, 10,544 were counted and 4,169 were rejected. Of the 4,169 rejected ballots, 996 were rejected because they were cast in the wrong precinct and 3,172 were rejected because the voter was not registered. Other states also rejected large numbers of provisional ballots cast in the wrong precinct. In Ohio, 14,335 registered voters cast provisional ballots that were rejected because they were cast in the wrong precinct or county, and in Florida, nearly 1,300 registered voters cast provisional ballots that were rejected for the same reason.

The District’s Law Related to Special Ballots and Federal Law Related to Provisional Ballots

Under the District’s election code, a voter “who alleges that their name has been erroneously omitted from the list of registered voters, or alleges that their name, address or party affiliation is erroneously printed on the list of registered voters” shall be permitted to cast a special ballot. D.C. Official Code § 1-1001.09(d-1). The District’s code also provides that ballots cast by eligible registered voters on Election Day shall only be valid if cast in the voting precinct that serves the voter’s current residential address. Id. at § 1-1001.09(b). The District’s special ballots are similar to provisional ballots.

Federal law requires the use of provisional ballots for voters whose name does not appear on the list of registered voters or whose eligibility is otherwise suspect. Section 302(a) of the Help America Vote Act (“HAVA”) was enacted to ensure that all voters in federal elections have access to provisional voting in cases where their name does not appear on the precinct list or an election official raises some other challenge to their eligibility. 42 U.S.C. § 15482(a).

Advancement Project and other voting rights experts have argued that HAVA requires the counting of provisional ballots cast in the “wrong precinct,” at least with respect to races that are not precinct-specific. Advancement Project contends that wholesale rejection of provisional ballots cast in the wrong precinct misinterprets and violates HAVA’s provisional ballot guarantee. Nevertheless, HAVA has been construed by some courts to permit states to reject in full provisional ballots cast outside the voter’s precinct. This misinterpretation of the law has led to the disenfranchisement of voters.


voters for races that are not precinct-specific, including federal election contests. According to the U.S. Election Assistance Commission, as of 2006, 15 states counted provisional ballots cast outside the voter's precinct, while 30 states rejected them out of hand.3

Poll Worker Error May Cause Voters to Cast Special Ballots in the Wrong Precinct

Advancement Project investigated provisional ballot use and misuse in the 2006 general election in Florida and Ohio and issued a report that documents numerous instances of poll workers directing voters to the wrong voting location, or failing to direct them to the voting location assigned to their precincts, causing their provisional ballots to be rejected under state law. See Advancement Project, Provisional Voting: Fail-Safe Voting or Trap Door to Disenfranchisement? (Sept. 2008), available at http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf. (attached hereto as Ex. 1). The problems center on the process encountered by voters on Election Day, which is fraught with errors and lapses on the part of poll workers. Too often, if a voter's name is not on a precinct roster, poll workers simply issue the voter a provisional ballot without determining whether the voter is in the correct location. This problem is compounded in multi-precinct polling places. Advancement Project found that in many instances, voters whose provisional ballots were rejected as cast in the wrong precinct were actually at the right polling place, but the wrong precinct table. If poll workers had instructed these voters to walk across the room, their votes would have counted.

Urban communities, where younger voters, voters of color, and lower-income voters tend to be concentrated, are more vulnerable to disenfranchisement by the “wrong precinct” rule. Residents of those communities are more likely to rent and to change residences frequently, resulting in more frequent changes in precinct assignments. In addition, urban areas tend to have more multi-precinct polling places and numerous polls located within a neighborhood. When poll workers issue provisional ballots that can never be counted, they transform a tool intended to protect voters from disenfranchising administrative errors into a tool of disenfranchisement.

Bill 18-345’s Requirement that Special Ballots Cast in the Wrong Precinct be Partially Counted

Section 602 of Bill 18-345 eliminates disenfranchisement caused by the wrong precinct rule by requiring the partial counting of special ballots cast in the wrong precinct with regard to federal election contests. In particular, the Bill states that “if a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal election contests.” Advancement Project strongly supports this amendment to permit the partial counting of special ballots cast in the wrong precinct. Had this provision been in effect during the 2008 general election, it would have prevented the disenfranchisement of 996 voters as to their votes in federal election contests.

Establishing No-Excuse Absentee Voting, Vote Centers and Early Voting

Under the District’s election code, a voter may only vote absentee if he or she satisfies specific criteria. In particular, absentee voting is permitted if a voter: (1) “may be absent from the District on

election day”; (2) “as a condition of his or her employment with the Board on any election day, is required to be absent from the voting precinct in which he or she is registered to vote”; (3) “because of his or her physical condition, is unable to vote in person at the polling place in his or her voting precinct on election day”; or (4) by reason authorized by regulation by the Board. D.C. Official Code § 1-1001.09(b)(2). The D.C. Board of Elections and Ethics (“Board”) has promulgated regulations that provide several additional, limited circumstances under which a voter may vote by absentee ballot. See D.C. Municipal Regs. CDCCR 3-715.2 (2009). Early voting is not currently available in the District of Columbia.

Due to these restrictions on absentee voting, absentee voting did not account for a large percentage of the ballots cast in the District in the 2008 general election. 27,955 of the District’s voters cast absentee ballots, which represented only 10.48% of all ballots cast. Of those ballots, 14,201 were mail-in ballots (5.32% of all ballots cast), 12,364 were in-person absentee ballots (4.63% of all ballots cast), and 1,390 ballots were cast pursuant to the Uniform and Overseas Citizens Absentee Voting Act (.52% of all ballots cast).4

Bill 18-345’s Establishment of No-Excuse Absentee Voting, Early Voting and Vote Centers

Section 601 of Bill 18-345 establishes no-excuse absentee voting by requiring the Board to permit “any duly registered voter to vote by absentee ballot, for any reason.” Section 603 of the Bill allows the Board to permit a voter to request and cast an absentee ballot at the Board’s office “or at any other place designated by the Board.” Advancement Project strongly supports the establishment of no-excuse and early voting in the District. Permitting voters to vote through these means may enable voters for whom voting on Election Day is burdensome to participate in elections. Establishing no-excuse and early voting in the District may also reduce voter lines and ease burdens on poll workers on Election Day.

Improving the Training of and Requiring Certification of Poll Workers

The District’s election code does not currently require any training or certification of poll workers, see D.C. Official Code § 1-1001.05(e)(4). Although the Board requires some degree of training, see http://www.dcborr.org/election_info/election_day_worker/general.asp (the Board requires that election workers receive training), the Board does not evaluate the performance of poll workers.5

There are no federal minimum standards for the training of poll workers. Nor are there any federal standards for the allocation of poll workers to polling places—or for the provision of other resources, such as voting machines, paper ballots, and electronic poll lists—which leads to disparate Election Day experiences and the disenfranchisement of voters whose polling locations are inadequately supplied.

4 See After-Action Report at 1-2. States that offer early voting, by contrast, reported much larger percentages of voters who voted early rather than on Election Day. In Colorado, 71% of the ballots in the 2008 general election were cast during the early voting period; in North Carolina, 60.3%; and in Florida, 51.8%.

5 After-Action Report at 4-5.
As Advancement Project has reported, inadequate poll worker training causes numerous breakdowns in election administration, which in turn cause disenfranchisement. Poorly trained poll workers may not know their state’s identification requirements and so may demand excessive identification and thus disqualify eligible voters. Not knowing how to handle voting technologies may cause machine breakdowns, the excessive use of paper ballots, and long lines that in turn disenfranchise voters who cannot wait hours to vote. See Advancement Project, Poll Worker Training: Is Your State Complying with the Law? (Sept. 2008), available at http://www.advancementproject.org/pdfs/vpp/pollworkertrainingbrief.pdf (attached hereto as Ex. 2).

In the 2008 general election, the Board successfully recruited an abundance of poll workers to work in the election. Nevertheless, there are some signs that poll worker error may have occurred and that the training of poll workers should be strengthened. For example, the large number (996) of special ballots cast in the wrong precinct suggests that poll workers did not follow procedures to identify the correct precinct in which those voters should vote, properly direct those voters to the correct precinct, or inform voters that their special ballot would be rejected if cast in the wrong precinct.6

**Bill 18-345’s Requirement that Poll Workers Receive Training and Certification**

Section 402 of Bill 18-345 requires that all poll workers complete at least four hours of training and receive certification as a polling place worker under standards that the Board will promulgate. Section 403 of the bill requires the Board to establish standards to measure poll worker performance and to consider past performance of a poll worker in determining whether to renew appointment of a poll worker in a subsequent election. Advancement Project supports these provisions, which if enacted will likely increase the readiness of poll workers on Election Day and decrease the likelihood of poll worker error, including poll worker error that may in some instances disenfranchise voters.

Advancement Project reiterates its gratitude for the opportunity to provide the Council with testimony on Bill 18-345. We would be pleased to provide further technical advice, assistance, testimony, and consultation to the Council as it moves toward the legislative reforms that will ensure that all eligible voters in the District of Columbia have clear paths to the polls.

Sincerely yours,

/\s/ Elizabeth S. Westfall

Elizabeth S. Westfall
Director, Voter Protection Program
Email: ewestfall@advancementproject.org
Phone: (202) 728-9557, Ext. 312

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6 See id.
Sunday, July 12, 2009

COMMITTEE ON GOVERNMENT OPERATIONS & THE ENVIRONMENT
Mary M. Cheh, Chairperson
PUBLIC OVERSIGHT HEARING IN THE MATTER OF:
BILL 18-0345; the "Omnibus Election Reform Act of 2009"

Monday, July 13, 2009, 11:00 AM, Room 120, John Wilson Building

Good afternoon, Chairperson Cheh, and committee members. My name is Albrette "Gigi" Ransom. I am the advisory neighborhood commissioner for Single Member District (SMD) 5C12.

I support the Voter Qualification section of the proposed bill that allows 17 year olds to register to vote, which will be 18 years old on or before the next General Election. I would also like to see this right to also occur before next Primary Election.

As to voter-verifiable records, we need to return to giving voter a receipt of their vote, which would aid in an accurate audit trial, recounts if needed.

Yes to allowing an absentee ballot for any reason.

If I am reading it correctly, yes, to the ANC recall timing of the 60 day petition signature time period after the proper receives the original petition, inclusive of the response by the person to be recalled. I don’t know how many recall efforts have been initiated over the last 10 years, but we should also consider having a legitimate reason for a recall, such as proven malfeasance or misconduct, not unsupported allegations, or just because I can, which is what I am now going through.

For defacing campaign posters and other campaign materials, the fine should range from “not less that $1,000.00 to $5,000.00” for any primary, general or special election. The fine(s) should be more severe for a candidate that is found to have directly or indirectly encouraged, supported and/or participated in this activity. If this is not already a process, candidates should sign affidavits to that effect.

Thank you for removing the section moving the ANC elections to the primaries.

Your bill includes much needed reform in our elections process. Taking into account our status as a federal territory, with many residents, having moved to DC and lost some of their rights as citizens, and are disenfranchised, I had also hoped that this bill would include allowing Independents to be able to participate in an open primary process. Behind Democrats, with over 300,000 registered voters (76%), Independents are the next largest voting group with over 66,000 (16%). It would sure make things interesting, and Congress would take note of the increase in primary voter turnout.

Thank you for providing the opportunity to testify before you today.
July 13, 2009

Council of the District of Columbia
Committee on Government Operations
and the Environment
Mary M. Cheh, Chair
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Bill 18-345, the “Omnibus Election Reform Act of 2009”

To the Committee:

The Center for Competitive Democracy, a non-partisan, non-profit 501(c)(3) public education and legal advocacy organization in Washington, D.C., hereby submits the following comments and supporting documentation in opposition to Title 9, Section 901 of Bill 18-345, the Omnibus Election Reform Act of 2009 (“Section 901”), currently under consideration by the Committee. If adopted, the proposed language in Section 901 would authorize the District of Columbia Board of Elections and Ethics (“Board”) to “assess any candidate for public office a reasonable filing fee according to a schedule established by regulation.” The proceeds of such filing fees would “be used for the sole purpose of administering elections in the District.” The Committee should reject Section 901 in its entirety, for three important reasons.

First, the filing fees proposed under Section 901 are neither necessary nor justified. As the attached chart demonstrates, only three out of fifty states in the nation currently impose greater nomination petition signature requirements on minor party and independent candidates, measured as a percentage of the voting population, than the District of Columbia. Consequently, the District does not have a history of overcrowded or confusing ballots. On the contrary, in 2008, only one presidential candidate successfully gained access to the District’s ballot by submitting nomination petitions, while the District’s congressional delegate ran against only one other candidate. If the proposed language in Section 901 is adopted, the District will become unique among the fifty states in charging minor party and independent candidates filing fees and requiring them to submit signature petitions to gain ballot access. Yet the signature requirements already in place are plainly sufficient to protect the District’s interest in maintaining the order and integrity of its ballots. Therefore, the filing fees proposed in Section 901 are redundant, and the District has no legitimate interest in imposing them.

Second, Section 901 is very likely unconstitutional. The Supreme Court has concluded that states may not require candidates “to shoulder the costs of holding… elections” by charging them mandatory filing fees. Bullock v. Carter, 405 U.S. 134, 149 (1972). That is exactly what Section 901 proposes to do, however, by charging filing fees...
the proceeds of which will be used “for the sole purpose of administering elections in the District.” Section 901 is especially problematic because it authorizes the Board to impose such fees “according to a schedule established by regulation,” thus inviting the imposition of excessive filing fees that would be constitutionally impermissible under Bullock. Further, Section 901 plainly is not necessary to achieve the District’s interest in adequately funding its elections. See Lubin v. Panish, 415 U.S. 709, 718 (1974). It is therefore doubtful that Section 901 can withstand the exacting scrutiny applicable to legislation that imposes financial burdens on the associational rights of candidates and their voter-supporters.

Third, and finally, the District of Columbia is engaged in a long and hard-fought struggle to achieve full voting representation for its citizens in the United States Congress. The District’s license plates memorialize this struggle by protesting the “Taxation Without Representation” of its citizens. At a time when momentum and support are building for proposals that would secure full voting rights to the District’s citizens, the District should ensure that its own election code guarantees such protections. Section 901 does not merely burden minor party and independent candidates without justification, but it also burdens the voting rights of the large number of voters unaffiliated with either major party, and indeed the rights of all voters who desire to have more meaningful choices and a more competitive electoral system.

Accordingly, for the foregoing reasons, the Committee should reject Section 901 in its entirety. Thank you for your consideration of these comments.

Sincerely,

[Signature]

Oliver Hall
Founder and Legal Counsel
Center for Competitive Democracy
P.O. Box 21090
Washington, D.C. 20009
(202) 248-9345 ph.
(202) 248-9345 fx.
oliverhall@competitivedemocracy.org

Enclosure
<table>
<thead>
<tr>
<th>STATE</th>
<th>LEGAL REQUIREMENT</th>
<th>ELECTION CODE REFERENCE</th>
<th>SIGNATURES REQUIRED**</th>
<th>PERCENTAGE***</th>
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<td>CO</td>
<td>just pay $500; no petition needed</td>
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<td>NY</td>
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<td>PA</td>
<td>2% of 2007 judge winner’s vote</td>
<td>Title 25, sec. 2911</td>
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<td>TX</td>
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<td>ME</td>
<td>number stated in law</td>
<td>Title 21, sec. 494.5</td>
<td>4,000</td>
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</table>

*Data compiled by Richard Winger, Editor, Ballot Access News (www.ballot-access.org).

**Indicates the number of signatures necessary to place a new party or independent presidential candidate on the November 2008 ballot.

***Indicates the signatures required as a percentage of the number of votes cast for president in November 2008. In most states, the rules for new party and independent candidates are the same. Where the rules differ, the lesser requirement is shown. The West Virginia entry is shown as though that state's ballot access improvement bill (which passed in 2009) had been in effect in 2008. W.V. HB 2981 lowered the number of signatures required for all minor party and independent candidates from two percent of the last vote, to one percent.
## BALLOT ACCESS NEWS
### 2008 BALLOT ACCESS REQUIREMENTS FOR NEW PARTY OR INDEPENDENT PRESIDENTIAL CANDIDATES

<table>
<thead>
<tr>
<th>STATE</th>
<th>LEGAL REQUIREMENT</th>
<th>ELECTION CODE REFERENCE</th>
<th>SIGNATURES REQUIRED</th>
<th>PERCENTAGE REQUIRED</th>
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<tr>
<td>NV</td>
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<td>Title 24, sec. 293.1715</td>
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<td>SD</td>
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<td>WV</td>
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<td>GA</td>
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<td>42,489</td>
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<td>OR</td>
<td>1.5% of 2006 gub. vote</td>
<td>Title 23, sec. 249.740</td>
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<td>Election code 8400</td>
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<td>IN</td>
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<td>NC</td>
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<td>163-96(2)</td>
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<td>OK</td>
<td>3% of 2004 pres. vote</td>
<td>Title 26, sec. 10-101</td>
<td>43,913</td>
<td>3.00</td>
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</table>
TESTIMONY OF

Nelson Rimensnyder, Member
DC Republican Committee and
Director of Research, U. S. House Committee on the District of Columbia
1974-1992

July 13, 2009

On the Omnibus Election Reform Act of 2009 and Related Matters Before the Committee on Government Operations and the Environment

Hon. Mary Cheh, Chair

Hon. Kwame Brown, Hon. David Catania, Hon. Harry Thomas, Jr. and Hon. Tommy Wells, members

Nelson F. Rimensnyder
13 Sixth Street, NE
Washington, DC 20002
202-550-0794 (cell)
202-546-4668 (home)
TESTIMONY OF NELSON RIMENSNYDER ON
THE OMNIBUS ELECTION REFORM ACT OF 2009 AND RELATED
MATTERS

As a general observation, the word “Reform” should be stricken from the
title of the bill under consideration, and the word “Amendments” substituted.
Before you is a comprehensive proposal amending or changing current election
laws. During my career as a staff member of the U. S. Congress working on
District of Columbia legislation and oversight, I learned that one political faction’s
“reform” can be arguably perceived as an “abuse of power or prerogative” by
another political faction.

This bill will further enhance the domination of our local government by the
D. C. Democratic Party. One-party rule, history and current experience
demonstrate, too often breeds cronyism, corruption and a callous disregard for
minority views. The Democratic Party establishment in the District appears
comfortable with the charade of Democrats registering as “no party” and running
for at-large Council seats as “Independent Democrats.” At a minimum, this bill
should strengthen language in the election laws to protect minority party
representation on the Council.

1) The consideration of election day voter registration should be deferred
   until our elections are competently administered.

   Until “ghost voting” and other unexplained electoral phenomena that have
diminished public trust in our elections are resolved, same day voter registration
should be deferred. Let’s have at least two more complete election cycles in
2010 and 2012 before this major change in voter registration procedures is
considered by the Council.

   In 2002, I ran as a write-in candidate in the Republican Primary for the
U. S. House Shadow Representative seat. I was the only candidate to file the
required declaration papers with the Board of Elections and Ethics (BOEE). Two
weeks after the primary election, the BOEE announced that a registered
Democrat had won the Republican Party nomination. Another two weeks
elapsed before the BOEE heard my appeal for a hand count of the write-in votes
for that office. I was subsequently declared the winner, but I had lost an entire
month of campaign time.

   To add insult to injury, in 2008 I was the Republican candidate for U. S.
Shadow Senator, but my son, Captain James Rimensnyder, serving his second
tour in Iraq, could not vote for me. He had requested an absentee ballot from the
BOEE for both the Presidential and D. C. elections, but was sent only the ballot
for the national election. During his final year at West Point (2004-2005), Captain
Rimensnyder wrote his senior thesis on the struggle for D. C. voting rights.
Ironically, he was subsequently disenfranchised in his home town not by
Congress, in this instance, but by his own elected government. I am grateful for the extra efforts of some conscientious employees at the BOEE that eventually enabled my son to cast his ballot, but this is the kind of error that should never happen. Additionally, the D. C. Republican Party reported in 2008 that about 25 voters in Ward 2 were sent the wrong absentee ballots, essentially disenfranchising them.

2) **One seat on the Board of Elections and Ethics should be reserved for a Republican.**

President Barack Obama has appointed qualified members of the minority party to important positions in his administration. The Council and the Committee should withhold consent from the current nominee and advise Mayor Adrian Fenty to follow the President’s example and nominate a qualified Republican to the vacancy on the BOEE.

Since the beginning of home rule in 1975, mayors have regularly nominated a registered Republican to one of the three BOEE seats. The D. C. Republican Party has many qualified, capable members available to serve on the BOEE. One suggested potential nominee is Timothy Jenkins, an engaged citizen with outstanding credentials.

To date, I have been able to identify the following Republicans who were nominated by various mayors and served on the BOEE:

- Rockwood Foster (Mayor Walter Washington)
- Clinton W. Chapman (Mayor Walter Washington)
- Jeannine S. Clark (Mayor Marion Barry)
- Norma B. Leftwich (Mayor Sharon P. Kelly)
- Lenora Cole Alexander (Mayor Marion Barry)
- Lenora Cole Alexander (Mayor Anthony Williams)

Mayor Fente apparently wants to break the longstanding precedent of nominating a Republican to the BOEE.

3) **Election Law oversight should include consideration of run-off elections for the Office of Mayor as part of broad-based hearings on needed changes or amendments to the Home Rule Charter.**

When the Home Rule Act was being drafted by Congress in 1973, D. C. Committee Chairman Charles Diggs and the U. S. House of Representatives favored run-off elections if a candidate did not receive a majority of the votes cast. However, Senator Thomas Eagleton, Democrat of Missouri and chairman of the Senate D. C. Committee, opposed run-off votes, even if restricted to the Office of Mayor, and would not yield on this matter when in conference with the House. The effort to secure run-off elections was unsuccessful.
The D. C. Republican Party has regularly advocated run-off votes, beginning with a Congressional hearing on Home Rule as early as 1947. Ironically, Marion Barry was the only member of the D. C. Democratic Party establishment to testify on the Hill in support of run-offs if a candidate for Mayor in a primary or general election did not receive 50 percent of the vote. Barry held that elections in which a plurality prevailed would be “unfair and undemocratic.”

In the 1978 mayoral election, candidate Marion Barry received 33 percent of the Democratic Party vote, followed by Sterling Tucker with 32 percent and incumbent Walter Washington with 30 percent. If a run-off had been required in 1978, Barry might well not have been the Democratic Party’s nominee in the general election.

It is time for this Committee, or perhaps the full Council, to conduct broad hearings on the Home Rule Charter, including consideration of run-off elections. It has been 35 years since enactment of Home rule, and no comprehensive hearings have been held on charter modification proposals. In 1980, Julian Dixon, Democrat of California and Chair of the U.S. House District of Columbia Appropriations Subcommittee, proposed establishing and providing federal funds for a joint D. C. – Federal Commission to hold hearings and issue recommendations for charter amendments. At the time, council leaders protested Dixon’s proposal as “an unwarranted intrusion in home rule affairs” and said the Council would pursue the matter. Dixon withdrew his proposal, but the Council has never opened up the Home Rule Charter to serious study and public comment.
July 13, 2009

TESTIMONY OF DAN WEDDERBURN

FOR DC FOR DEMOCRACY

ON BILL 18-345, the "OMNIBUS ELECTION REFORM ACT OF 2009"

BEFORE COMMITTEE ON GOVERNMENT OPERATIONS AND THE ENVIRONMENT

COUNCILMEMBER MARY M. CHEH, CHAIRPERSON

Good morning, Chairwoman Cheh. I am Dan Wedderburn, Chairman of the Election Reform Committee of DC For Democracy. DC For Democracy's Chair, Kesh Ladduahetty, is not able to be here today. DC For Democracy is the District's largest non-aligned progressive organization. Howard Dean joined more than 100 of us recently as we celebrated our 5th Anniversary Birthday.

Ms. Cheh, you deserve high praise for developing the proposed "Omnibus Election Reform Act of 2009." The Bill is far-reaching and necessary. The District's election process stands that of many states. Key reforms in this Bill would change that and could put the District at or near the forefront.

My testimony today will focus on the provisions covering "early voting", same-day registration, and no-excuse absentee voting. DC For Democracy strongly supports adoption of these election reforms.

Most states have already adopted these kinds of reforms. Thirty-two states have adopted early voting and about one-third of all US voters cast early ballots in the November 2008 elections. Twenty-eight states allow absentee voting without having to provide an excuse. Eight states permit voters to register and vote on the same day.

These proposed reforms will make it easier for residents to vote and thereby increase voter turnout. Early voting allows voters to clear up eligibility issues when they are not listed on government registration rolls, allows election officials to test and troubleshoot voting equipment, and reduces long lines on Election Day. Same-day registration and voting allows citizens who missed the standard 30 days prior to Election Day registration deadline, to still vote. This is especially helpful for the many voters who have moved within the District but not updated an address change with the Election Board.
Interestingly, until the late 19th century voter-initiated registration did not even exist in the US. Its requirement then was intended to suppress voting by former slaves and new immigrants. Also, in most industrialized democracies, voters do not have to register, as the government is responsible for this. It is called automatic or universal voter registration. Legislation to effect this on a national basis was introduced in the last Congress by Hillary Clinton, co-sponsored by the relatively unknown Barack Obama.

We do have a key concern about the Bill, with regard to early voting. Section 603 has in its title the words "early voting". However this is the only reference at all in the Bill about this highly desirable reform. Section 603 says only: The Board shall permit a voter to request and cast an absentee ballot at the Board’s office, or at any other place designated by the Board."

It would be a mistake to lump in early voting as a component of absentee voting. The very term "absentee voting" implies and means to most voters that you do not vote in an election booth but vote by mail. Recently a new term "in-person absentee voting" has come into vogue even though the words in-person and absentee are clearly contradictory.

Early voting needs to be highlighted and separated as a clearly distinct election reform in the legislation.

Also, it is important to point out that absentee ballots are not required to be counted until 10 days after an election. Surely it is not the intention of the Bill's sponsors to delay the counting of early voting beyond the counting of votes made at the polls, which starts right after the polls close.

Finally, we recommend that early voting begin three weeks before an election, and include weekends.

DC For Democracy thanks you, Councilmember Cheh, for taking on this important reform effort and the incredible amount of time you have devoted to this. I will, with pleasure, answer any questions you may have.
THE LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA
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Testimony on Bill 18-345, the “Omnibus Election Reform Act of 2009”
Before the Committee on Government Operations and the Environment
Presented on July 13, 2009 by Elinor Hart

Good morning. My name is Elinor Hart. I am testifying on behalf of the DC
League of Women Voters. We want to commend you, Councilmember Cheh, this
Committee and the Special Committee for your vigorous efforts to improve
elections in the District of Columbia.

We are enthusiastic about the legislation because it makes it easier to vote. It
makes it possible for young people to connect to and participate in the electoral
process at earlier ages. It includes measures to ensure an accurate vote count. It
requires regulations for election observers. And it ends the tyranny of voting
machine vendors.

We do feel, however, that the legislation needs some clarification and
modification. In TITLE I, Section 101, Board Member Qualifications. Being a
‘regular voter’ should mean that a prospective Board member has the “particular
knowledge, training or experience in government ethics or in election laws and
procedure.”

We also think there should be a requirement of previous community involvement
to serve on the Board. One of the most important roles of a Board member will
be that of a member of a decision making team, and we think that there should
be evidence that people appointed to the Board can play that role effectively.

We are opposed to eliminating the residency requirement for pollworkers. It is
ture that in the past, some precincts were not adequately staffed. But this was a
management problem. We have plenty of potential pollworkers. For example,
there are 5,000 potential youth pollworkers in the regular DCPS schools alone.

We believe that TITLE V, Section 501. Voter-verifiable record, should require that
‘Each voting system used in an election in the District... Be capable of creating a
voter-verifiable, recountable record of all votes cast .... “Recountable is one of
the criteria adopted by the national League of Women Voters for voting systems.
The other criteria are secure, accurate and accessible. We think the sentence
that reads, “A voter-verifiable record need not be a paper ballot” should be
deleted.
We are puzzled by the proposal to elect ANC Commissioners at the time of the September Primary. A primary is a partisan, party election. ANC Commissioners are non-partisan elected officials. The League believes that ANC Commissioners should continue to be elected during the November elections.

We do not think that the false statement provisions for circulators of petitions for ballot measures should be repealed.

Finally, we do have a very serious concern about the legislation. Implementing it will require the Board and its staff to exponentially increase its capacity. We are not sure this increase in capacity can be achieved in the next few months. It may be necessary to phase in these reforms. You’ll recall that the reforms required by the Help America Vote Act were phased in. Implementing the reforms will also require financial resources. The League is very enthusiastic about the provisions in the legislation which will make it possible for young people to register and vote at earlier ages. Implementing these provisions will mean that all new voter registrations forms will have to be printed. It’s important that the Board have money in its budget to print these forms.

We’re also very enthusiastic about early voting and no-excuse absentee voting. Implementing early voting will require additional Board staffing which will cost money. These reforms won’t make a difference unless they are very well publicized, which will also cost money.

In closing, we again want to commend you and your Committees for this comprehensive reform package which will greatly improve elections in the District of Columbia.
Testimony of Gottlieb Simon  
Executive Director, Office of Advisory Neighborhood Commission,  
On  
Bill 18-345 ("Omnibus Election Reform Act of 2009")  
Before the  
Committee on Government Operations and the Environment  
July 13, 2009

I would like to comment on Sec. 902, which amend the signature requirement for ANC nominating petitions. Currently 25 signatures are required. The proposed change would change that to 25 signatures or 1% of the registered voters of that SMD, whichever is less. It is my understanding that the impetus for this change was the anomalous situation that developed earlier this year in SMD 3D07. A candidate to fill the vacancy in that SMD discovered that there were fewer than 25 (living) registered voters in the SMD. As a result the BOEE could not certify him to fill the vacancy, and the seat has continued to be vacant. With this change, we could fill that vacancy. While I applaud the intent behind this proposal, I believe it has several unintended consequences and is in conflict with the overall goal of streamlining and improving the administration of the elections. Here are the problems:

1. If there are fewer than 25 registered voters in an SMD, a candidate would need only one percent of the registered voters. At most this would mean obtaining one percent of 24, and this is only 0.24. This would effectively mean there would be no signature requirement at all.

2. The provision would also effectively eliminate the current 25 signature requirement for all the other SMDs, since an SMD (which is designed to have 2,000 residents) would have to have more than 2550 registered voters before 25 was less than one cent of the registered voters of that SMD.
3. In effect instead of one single requirement, i.e. 25 signatures, for all SMDS, the Bill would create 24 additional, different signature requirements, (one for each 100 RVs between 0 and 2500).

4. The BOEE would have to continuously recalculate the requirement during the petition period. As a result, the same SMD might have different signature requirements on different days. This surely would create additional challenges over whether a candidate had enough signatures at what time.

5. Education of candidates, and potential candidates, would be complicated by the need to explain that the number of signatures they have to get would be based on the registration in their SMD, rather than on a flat 25.

This added complexity would really benefit only a single SMD. 3D07 is the only SMD in the city with so few registered voters. (This SMD is principally composed of two dormitories at AU, and it is my understanding that the boundaries were drawn to promote having an AU student as a member of ANC 3D.) The numbers problem could be solved by increasing the number of registered voters through a voter registration drive. In fact the AU student body president has written me that he plans to conduct such a drive in September as part of his platform to increase coloration between students and the broader community.

Another approach to solving this problem, without altering or complicating the rules for the other 285 SMDS, would be to grant the BOEE the authority to waive the signature requirement in exceptional or extraordinary circumstances. That would be preferable, I believe, to making it harder to administer the requirement for everyone else.
Monday, July 13, 2009
John E. Price, II
303 K Street, SE
Washington, DC 20003
P: 202-422-1203

I speak here today as a concerned citizen of the District of Columbia and resident of the Sixth Ward.

Section 703 of the proposed bill changes the election of the Advisory Neighborhood Commissioners from the “1st Tuesday after the 1st Monday in November of each even-numbered calendar year” to the “1st Tuesday after the 1st Monday in September of each even-numbered calendar year.”

With this Bill, the election of the non-partisan Advisory Neighborhood Commissioners is being moved from the open General Elections in November, to the closed Primary Elections in September.

By changing a single word, Councilmember Cheh is taking it upon herself to exclude those residents of the District who do not identify with a specific party from taking part in a local election designed to serve the community’s needs. If the proposed bill does have ballots for the registered Independents, by moving this election date the City would be discouraging voter participation for ANC elections.

I hope the Council will respect the voters’ rights and reject and remove this clause from the Bill.

Thank you.
STATEMENT OF KENLEE RAY

Omnibus Election Reform Act of 2009 Bill 18-345, July 13, 2009

I am Kenlee Ray and I have been a Precinct Captain in Ward 2 since 2004. Although the bill introduces some badly needed improvements such as early voting, it also introduces several provisions that will create problems. I would like to highlight a few of them:

1. 4 Hour Training Requirement for Poll Workers

I ask the Committee to remove the 4 hour training requirement for poll workers from the bill. Let me quickly summarize why:

- What today’s poll workers need are better-designed training and supplemental materials that reflect the “best practices” one finds in high performing organizations, not longer training sessions. High performing organizations started to move away from long training sessions in the mid 90’s and replaced them with short 45 to 60 minute sessions followed by more targeted training delivered in the form of quick tips and updates. The American Society for Training and Development designed a one-hour training program for poll workers in the State of Ohio.

- After two primaries, I quickly learned that I needed to recruit my own workers from my precinct rather than rely upon the pool from the Board of Elections if I wanted a team capable of doing the job. It is very difficult to recruit poll workers in many areas of the city. Many of my workers have demanding jobs, or are independent consultants, and can’t take the time away from work for long training sessions. They also don’t need long sessions because they are used to a constant changing work environment and absorb new information quickly. Faced with a 4 hour requirement, most of them will quit.

- During this last election a lot of young adults volunteered to work at the polls. The average age of an election worker in the US is 73\(^1\). Given that the average life expectancy in the US is 77.7 years\(^2\), we need to keep the Nextgen engaged as poll workers. They act and think in different ways. Nextgen adults respond to sound bites and they want training delivered through a variety of media including podcasts, wikis, blogs, and tweets.

- High performing organizations deliver training to the individual’s desktop or other electronic devices, thus allowing the individual to fit the training sessions into his

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schedule and to his learning pace. The belief that DC poll workers must troop down to Judiciary Square to receive training is outmoded.

- “One Size Fits All” training does not work. Some workers quickly master new skills. However, several in the current pool of DC election workers have such a lack of education or basic work and life skills that they would have difficulty mastering the poll worker jobs even if they received weeks of training.
- Greater DC Cares and Serve DC supplied volunteers to work at the polls in the November election. Umbrella service groups have very effective ways of training their volunteers for particular assignments, but they need flexibility to do so, not a set hourly training requirement.

2. Section 105 “Reporting Requirements:

I recommend that you drop the word “log” from (5) synopsis of any issues identified in precinct captain or area representative logs” under proposed section 105 “Reporting Requirements.” The Captain’s Notebook or log is a cumbersome and old-fashioned way to collect cogent information. It would be useful to all involved with improving the election process in the District, especially the DC Council and the Board of Elections and Ethics (BOEE) to have a reporting/review mechanism that highlights the issues. Targeted surveys of the Captains after the elections would capture better feedback. Survey Monkey\(^3\) is an extremely, easy-to-use tool that creates clear reports and would be far cheaper than having Board staff comb through logs and compile reports.

3. I do not support Same Day Registration at this time:

Not only will it greatly increase the possibility for fraud, it will overwhelm the poll workers in much the same way that the Board’s decision to allow anyone to cast special ballots from any precinct did in last February’s primary elections. I would not consider introducing it into the District until the BOEE and the DC Council was satisfied that the Early Voting Process is working smoothly and is convinced that the database of registered voters is free of errors and current. I would also closely monitor the academic and think-tank research on those states where it has been introduced.

4. I support the introduction of Early Voting into the District.

One observation in closing: Many of the problems that this bill attempts to address would be solved if the BOEE had good general managers. “Best Management Practices” change quickly but legislation remains on the books for years and could well end up tying the hands of the BOEE management. I am somewhat concerned that this bill tries to legislate “good

\(^3\) http://www.surveymonkey.com/
management" rather than hiring good managers and letting them institute the needed changes.

Thank you.

Kenlee Ray
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202-483-2423
kenleeray@gmail.com

Note: Ms. Ray has a Masters degree in Information Science from the University of Michigan's School of Information and was named a distinguished alumnus of the school in 2008. In 1968 she started her career as a Research Assistant for the Political Data Recovery Project at the University of Michigan's Institute of Social Research where she keypunched, proofread data printouts and performed simple programming. After a stint as a law librarian, she held several information management positions at the World Bank for 24 years.
Testimony of Kristen Clarke

Co-Director, Political Participation Group
NAACP Legal Defense and Educational Fund, Inc.

Hearing on Bill 18-345: the "Omnibus Election Reform Act of 2009"

Before the

Committee on Government Operations and the Environment

July 13, 2009
Chairwoman Mary M. Cheh and distinguished Members of the Committee, I am Kristen Clarke, Co-Director of the Political Participation Group of the NAACP Legal Defense and Educational Fund, Inc. (LDF). LDF is the nation’s oldest civil rights law firm and has consistently played a major role in legislative efforts affecting minority voting rights over the last several decades. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice. As a current resident of the District of Columbia, I am honored to have the opportunity to appear before you for this important hearing which seeks to implement comprehensive reforms to help modernize and improve the election system in the District of Columbia.

Introduction

Bill 18-345, the Omnibus Election Reform Act of 2009, sets forth a comprehensive strategy for improving the integrity of and creating greater access to the electoral process in the District of Columbia. This testimony focuses on provisions of the bill that would allow for no-fault absentee ballots, extending polling hours, and adding the Department of Corrections and the Department of Youth Rehabilitative Services to agencies covered under the National Voter Registration Act. Together, these provisions will help increase voter participation and ultimately ensure that more eligible voters are able to participate in the District’s political process.

The Omnibus Election Reform Act of 2009 must also be viewed in the context of the most recent 2008 presidential election. Although 213 million voting-age citizens were eligible to vote in the 2008 Presidential election, only 186 million of them were registered to vote. Those figures mean that almost 13 percent of all eligible voters in our country remain excluded from participation in our political process. This problem is of particular concern when considering the District of Columbia itself. Of the 591,833 residents of the District of Columbia, only 411,476 are registered to vote. That means that approximately 30% of District residents are not registered voters—a figure that is roughly twice the national average.1 Reforms are needed to help ensure that a greater number of eligible voters are able to participate in future elections. Provisions contained within the Omnibus Election Reform Act of 2009 will help us achieve a more robust democracy characterized by higher levels of voter participation here in the District of Columbia.

Title VI, Section 601: No-Fault Absentee Voting

The No-Fault Absentee Voting provision contained within the Omnibus Election Reform Act would allow any registered voter to vote by absentee ballot for any reason. This provision will help provide greater access by extending the opportunity to cast an absentee ballot to all eligible voters. Absentee balloting should not be a privilege extended only to certain categories of voters.

LDF’s perspective regarding this key provision of the bill is informed by our experience with voters who were displaced throughout the Gulf region following Hurricanes Katrina and Rita. In response to the threat of large-scale disfranchisement following the hurricanes, LDF conducted extensive litigation, advocacy, public education and election monitoring to help protect the rights of voters who were displaced. We encountered significant numbers of voters who would only be able to participate in Louisiana elections by casting an absentee ballot. Eliminating barriers to absentee balloting will help ensure that more eligible citizens are able to participate in elections in the District of Columbia.

**Title VII, Section 701: Extending Voting Hours**

Bill 18-345 also contains a provision that would allow the Board of Elections to extend voting hours in the event of an unforeseen or unanticipated emergency including, but not limited to, mechanical failure of voting equipment, shortage of ballots and excessive wait times. During LDF’s monitoring of elections in a number of states around the country, we have encountered voters who were unable to cast their ballots, or encountered significant difficulty in casting their ballots, as a result of electronic machine malfunctioning, inadequate election commissioners staffing polling sites, poorly trained poll workers and premature closing of precincts. In some instances, voters were told to return later in order to give officials at the polling sites time to resolve the problems. In our experience, unforeseen problems that arise on Election Day have the potential to burden voters or deny them access to ballot box altogether. Extending poll hours is one way to offset the loss of access that may result from the major problems and emergencies that cause disruption to the smooth conduct of an election.

**Title III, Section 303: Expanding the List of Agencies Covered Under the National Voter Registration Act**

Bill 18-345 also contains a provision that would add the Department of Corrections and the Department of Youth and Rehabilitative Services to the list of agencies currently covered under the National Voter Registration Act (NVRA). The NVRA requires that states make voter registration opportunities widely available at department of motor vehicles (DMVs) and other designated agencies. Congress sought to mandate voter registration opportunities at public assistance offices to reach not only those citizens who drive, but also those citizens who are poor or disabled, and who do not drive but participate in public assistance programs. The NVRA requires entities that provide public assistance to integrate voter registration opportunities into the process during which an individual interacts with the agency (i.e., while the citizen seeks benefits or services).

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Expanding the list of agencies currently covered under the NVRA to include the Department of Corrections and the Department of Youth Rehabilitative Services will help ensure that even more eligible but not yet registered persons are provided the opportunity to register and participate. Indeed, many of the individuals serviced by these agencies may simply be unaware of their eligibility to register to vote. As we work to identify ways to capture the millions of eligible but not yet registered voters throughout the country, particular attention should be paid to those who may have a criminal conviction that does not impact eligibility to vote. This provision of the bill will play an important role in helping to ensure that those eligible voters who currently sit on the margins of our political process are also given the opportunity to avail themselves of the important benefits provided by the NVRA.

Clearly, this provision is aligned with the objectives and goals that Congress set out to achieve in its adoption of the NVRA.

**Conclusion**

The 2008 election cycle has yielded significant evidence of the ongoing problems that plague our nation's voter registration system. Given these problems, the challenge we now face is determining how to reform and repair the system in a way that will be more inclusive and provides affirmative opportunities for broad and meaningful participation. While we turn our attention to exploring the corrective action that must be taken, we must remain mindful of those who are among the most vulnerable and marginalized in our society — the poor, those incarcerated, and our nation's racial and ethnic minorities. While the Omnibus Election Reform Act of 2009 is limited in scope and does not deal with the full range of existing obstacles to political participation, this bill contains important provisions that will help provide greater and more meaningful access to voters in the District of Columbia.
July 13, 2009

Council of the District of Columbia
Committee on Government Operations and the Environment
Mary M. Cheh, Chair
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Bill 18-345, the “Omnibus Election Reform Act of 2009”

To the Committee:

The Center for Competitive Democracy, a non-partisan, non-profit 501(c)(3) public education and legal advocacy organization in Washington, D.C., hereby submits the following comments and supporting documentation in opposition to Title 9, Section 901 of Bill 18-345, the Omnibus Election Reform Act of 2009 (“Section 901”), currently under consideration by the Committee. If adopted, the proposed language in Section 901 would authorize the District of Columbia Board of Elections and Ethics (“Board”) to “assess any candidate for public office a reasonable filing fee according to a schedule established by regulation.” The proceeds of such filing fees would “be used for the sole purpose of administering elections in the District.” The Committee should reject Section 901 in its entirety, for three important reasons.

First, the filing fees proposed under Section 901 are neither necessary nor justified. As the attached chart demonstrates, only three out of fifty states in the nation currently impose greater nomination petition signature requirements on minor party and independent candidates, measured as a percentage of the voting population, than the District of Columbia. Consequently, the District does not have a history of overcrowded or confusing ballots. On the contrary, in 2008, only one presidential candidate successfully gained access to the District’s ballot by submitting nomination petitions, while the District’s congressional delegate ran against only one other candidate. If the proposed language in Section 901 is adopted, the District will become unique among the fifty states in charging minor party and independent candidates filing fees and requiring them to submit signature petitions to gain ballot access. Yet the signature requirements already in place are plainly sufficient to protect the District’s interest in maintaining the order and integrity of its ballots. Therefore, the filing fees proposed in Section 901 are redundant, and the District has no legitimate interest in imposing them.

Second, Section 901 is very likely unconstitutional. The Supreme Court has concluded that states may not require candidates “to shoulder the costs of holding... elections” by charging them mandatory filing fees. Bullock v. Carter, 405 U.S. 134, 149 (1972). That is exactly what Section 901 proposes to do, however, by charging filing fees
the proceeds of which will be used “for the sole purpose of administering elections in the District.” Section 901 is especially problematic because it authorizes the Board to impose such fees “according to a schedule established by regulation,” thus inviting the imposition of excessive filing fees that would be constitutionally impermissible under *Bullock*. Further, Section 901 plainly is not necessary to achieve the District’s interest in adequately funding its elections. *See Lubin v. Panish*, 415 U.S. 709, 718 (1974). It is therefore doubtful that Section 901 can withstand the exacting scrutiny applicable to legislation that imposes financial burdens on the associational rights of candidates and their voter-supporters.

Third, and finally, the District of Columbia is engaged in a long and hard-fought struggle to achieve full voting representation for its citizens in the United States Congress. The District’s license plates memorialize this struggle by protesting the “Taxation Without Representation” of its citizens. At a time when momentum and support are building for proposals that would secure full voting rights to the District’s citizens, the District should ensure that its own election code guarantees such protections. Section 901 does not merely burden minor party and independent candidates without justification, but it also burdens the voting rights of the large number of voters unaffiliated with either major party, and indeed the rights of all voters who desire to have more meaningful choices and a more competitive electoral system.

Accordingly, for the foregoing reasons, the Committee should reject Section 901 in its entirety. Thank you for your consideration of these comments.

Sincerely,

Oliver Hall  
Founder and Legal Counsel  
Center for Competitive Democracy  
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Enclosure
# BALLOT ACCESS NEWS

## 2008 BALLOT ACCESS REQUIREMENTS FOR NEW PARTY OR INDEPENDENT PRESIDENTIAL CANDIDATES*

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<td>number stated in law</td>
<td>23-15-359</td>
<td>1,000</td>
<td>.08</td>
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<td>OH</td>
<td>number stated in law</td>
<td>3513.257</td>
<td>5,000</td>
<td>.09</td>
</tr>
<tr>
<td>AR</td>
<td>number stated in law</td>
<td>7-8-302(5)(B)</td>
<td>1,000</td>
<td>.09</td>
</tr>
<tr>
<td>IA</td>
<td>number stated in law</td>
<td>Title 4, sec. 45.1</td>
<td>1,500</td>
<td>.10</td>
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<tr>
<td>UT</td>
<td>number stated in law</td>
<td>20-3-38</td>
<td>1,000</td>
<td>.11</td>
</tr>
<tr>
<td>HI</td>
<td>0.1% of reg. voters 2006</td>
<td>Title 2, sec. 11-62</td>
<td>663</td>
<td>.15</td>
</tr>
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<td>NY</td>
<td>number stated in law</td>
<td>Chap. 17, sec. 6-142</td>
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<td>.20</td>
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<td>RI</td>
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<td>17-14-7</td>
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<td>.21</td>
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<td>AL</td>
<td>number stated in law</td>
<td>17-19-2(a)</td>
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<td>.24</td>
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<td>KY</td>
<td>number stated in law</td>
<td>Title 10, sec. 118.315(2)</td>
<td>5,000</td>
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<td>VA</td>
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<td>24.2-543</td>
<td>10,000</td>
<td>.27</td>
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<td>VT</td>
<td>number stated in law</td>
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<td>NB</td>
<td>number stated in law</td>
<td>32-504(2)(c)</td>
<td>2,500</td>
<td>.31</td>
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<td>MA</td>
<td>number stated in law</td>
<td>Chapter 53, sec. 6</td>
<td>10,000</td>
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<td>MO</td>
<td>number stated in law</td>
<td>Title 9, sec. 115.321</td>
<td>10,000</td>
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<td>NM</td>
<td>0.5% of 2006 gub. vote</td>
<td>1-8-2 B &amp; 1-7-2,A</td>
<td>2,794</td>
<td>.34</td>
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<td>MD</td>
<td>number stated in law</td>
<td>4-102(b)(2),5-302(g)</td>
<td>10,000</td>
<td>.38</td>
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<td>KS</td>
<td>number stated in law</td>
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<td>5,000</td>
<td>.40</td>
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<td>PA</td>
<td>2% of 2007 judge winner’s vote</td>
<td>Title 25, sec. 2911</td>
<td>24,666</td>
<td>.41</td>
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<td>NH</td>
<td>number stated in law</td>
<td>Title 4, §655:42</td>
<td>3,000</td>
<td>.42</td>
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<td>IL</td>
<td>number stated in law</td>
<td>10 ILCS 5/10-2</td>
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<td>.45</td>
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<td>CT</td>
<td>number stated in law</td>
<td>9-453(d)</td>
<td>7,500</td>
<td>.46</td>
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<tr>
<td>SC</td>
<td>number stated in law</td>
<td>7-9-10</td>
<td>10,000</td>
<td>.52</td>
</tr>
<tr>
<td>TX</td>
<td>1% of 2006 gub. vote</td>
<td>Election code 181.005</td>
<td>43,991</td>
<td>.54</td>
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<tr>
<td>ME</td>
<td>number stated in law</td>
<td>Title 21, sec. 494.5</td>
<td>4,000</td>
<td>.55</td>
</tr>
</tbody>
</table>

*Data compiled by Richard Winger, Editor, Ballot Access News (www.ballot-access.org).
**Indicates the number of signatures necessary to place a new party or independent presidential candidate on the November 2008 ballot.
***Indicates the signatures required as a percentage of the number of votes cast for president in November 2008. In most states, the rules for new party and independent candidates are the same. Where the rules differ, the lesser requirement is shown. The West Virginia entry is shown as though that state’s ballot access improvement bill (which passed in 2009) had been in effect in 2008. W.V. HB 2981 lowered the number of signatures required for all minor party and independent candidates from two percent of the last vote, to one percent.
### BALLOT ACCESS NEWS

**2008 BALLOT ACCESS REQUIREMENTS FOR NEW PARTY OR INDEPENDENT PRESIDENTIAL CANDIDATES**

<table>
<thead>
<tr>
<th>STATE</th>
<th>LEGAL REQUIREMENT</th>
<th>ELECTION CODE REFERENCE</th>
<th>SIGNATURES REQUIRED</th>
<th>PERCENTAGE</th>
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</thead>
<tbody>
<tr>
<td>NV</td>
<td>1% of 2006 US House vote</td>
<td>Title 24, sec. 293.1715</td>
<td>5,746</td>
<td>.59</td>
</tr>
<tr>
<td>MI</td>
<td>number stated in law</td>
<td>168.544(f)</td>
<td>30,000</td>
<td>.60</td>
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<tr>
<td>SD</td>
<td>1% of 2006 gub. vote</td>
<td>12-7-1</td>
<td>3,356</td>
<td>.88</td>
</tr>
<tr>
<td>AZ</td>
<td>1.33% of 2006 gub. vote</td>
<td>16-802</td>
<td>20,449</td>
<td>.89</td>
</tr>
<tr>
<td>ID</td>
<td>1% of 2004 pres. vote</td>
<td>34-708A</td>
<td>5,985</td>
<td>.91</td>
</tr>
<tr>
<td>AK</td>
<td>1% of 2004 pres. vote</td>
<td>15-30.025</td>
<td>3,128</td>
<td>.96</td>
</tr>
<tr>
<td>MT</td>
<td>number stated in law</td>
<td>13-10-601</td>
<td>5,000</td>
<td>1.02</td>
</tr>
<tr>
<td>WV</td>
<td>1% of 2004 pres. vote</td>
<td>3-5-23</td>
<td>7,559</td>
<td>1.06</td>
</tr>
<tr>
<td>GA</td>
<td>1% of reg. voters as of Oct. 2004</td>
<td>21-2-170</td>
<td>42,489</td>
<td>1.08</td>
</tr>
<tr>
<td>OR</td>
<td>1.5% of 2006 gub. vote</td>
<td>Title 23, sec. 249.740</td>
<td>20,693</td>
<td>1.13</td>
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<tr>
<td>CA</td>
<td>1% of reg. voters as of Oct. 2006</td>
<td>Election code 8400</td>
<td>158,372</td>
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<tr>
<td>IN</td>
<td>2% of 2006 sec of state vote</td>
<td>3-8-6-3</td>
<td>32,742</td>
<td>1.19</td>
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<tr>
<td>ND</td>
<td>number stated in law</td>
<td>16.1-12-02</td>
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<td>1.26</td>
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<tr>
<td>DC</td>
<td>1% of reg. voters as of July 2008</td>
<td>1-1308(f)</td>
<td>3,886</td>
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<tr>
<td>WY</td>
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<td>22-4-402(d)</td>
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<td>NC</td>
<td>2% of 2004 gub. vote</td>
<td>163-96(2)</td>
<td>69,734</td>
<td>1.62</td>
</tr>
<tr>
<td>OK</td>
<td>3% of 2004 pres. vote</td>
<td>Title 26, sec. 10-101</td>
<td>43,913</td>
<td>3.00</td>
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Testimony of Philip Pannell on behalf of the Ward Eight Democrats on the “Omnibus Election Reform Act of 2009.”

July 13, 2009

Thank you, Chairwoman Cheh, for introducing election reform legislation. I am a member of the Executive Committee of the Ward Eight Democrats, Inc. (WED) and have been authorized to testify for the organization. For 25 years the WED has been on record in favor of same-day registration but with the stipulation that voters registered in a political party not be permitted to change party registration on election day as this could result in partisan mischief. If voters are permitted to change their party affiliations on election day, then they are essentially voting in an open primary, which the WED opposes.

As the ward which has the highest percentage of low income residents and with a quarter of the families in poverty, the WED has always promoted election reforms that will expand the opportunity for economically disadvantaged voters to maximize their participation in the electoral process. While the “Omnibus Election Reform Act of 2009” expands voting opportunity with the provisions for same-day registration, no-fault absentee balloting and early voting, low income voters would still encounter structural obstacles that make voting inconvenient. To this end, the WED for a quarter of a century has been on record as having all elections conducted by mail as is the case in Oregon. In a April 2001 DC Board of Elections and Ethics (BOEE) report entitled the “Mail Ballot Feasibility Study” the pros and cons of voting by mail are discussed and, while the report does not take a position on
the process, it is recommended that this method be used for a special election to test its utility.

The WED supports voting by mail because it makes the franchise more convenient, the responsibility of obtaining the ballot is not on the voter, it would enhance get-out-the-vote opportunities, it could make voting more of a communal and familial experience, it would provide an automatic paper trail, it would result in the constant updating of voter rolls and it would reduce costs (i.e. labor and site related expenses). If the City Council cannot support all elections being held by mail, then at least use this method for special elections and the presidential primaries, which are held in the winter when the chances for inclement weather are greatest.

The legislation being considered would establish an elections advisory committee with representatives appointed by the, Chair of the BOEE, the Mayor, Council Chair and the Chair of the Council committee with oversight of the BOEE. It would be beneficial to include representatives of the official organizations of the three local political parties. Also, in my opinion, the Advisory Neighborhood Commissions should have a representative on the elections advisory committee, who could be elected at a city-wide meeting of all ANC members. In addition, the legislation should mandate a minimum number of meetings for the advisory committee.

In Title VI of the legislation, which addresses absentee and special ballots, it is proposed that a voter can cast a special ballot in a precinct where he or she does not reside and the BOEE “shall count that vote for federal election contests.” I propose that in that situation the Board should count that person’s votes for at-large positions. Also, if that
voter’s address and the precinct where he or she is voting are in the same ward, the votes for ward positions should also be counted.

Apropos the section on vote centers and early voting, there should be more details and specific legislative mandates. A sincere effort should be made to involve more citizens in the discussion about these mandates. Election reform is such a salient issue that it would be advantageous for this Council committee to conduct public roundtables in every ward to give DC citizens the opportunity to participate. To date, the hearings regarding this legislation have not been held at a location and a time convenient for Ward 8 residents.

In Title IX of the legislation, there should be a section which would give the official committees of the local political parties the same statutory prerogatives as the other party committees throughout the nation have regarding ballot access for candidates running in partisan primaries. In all other states, political party organizations can place candidates on primary ballots by committee votes or conventions. The District of Columbia does not have this process: thus, rendering the local political party organizations totally powerless when it comes to ballot access.

The recommendations in my testimony are in skeletal form due to time limitations but I and other Ward Eight Democrats are prepared to discuss them in more detail. Again, thank you for proposing these electoral reforms and giving me the opportunity to testify.
Testimony of Shelley L. Tomkin

1st Vice Chair, Ward 3 Democratic Committee

Before the D.C. City Council

Committee on Government Operations and the Environment

On the Omnibus Election Reform Act of 2009

July 13, 2009

I want to express my appreciation to the Committee on Government Operations and the Environment and Chair Councilmember Mary Cheh for drafting this important legislation-- the Omnibus Election Reform Act of 2009. My name is Shelley Tomkin. I am appearing today in my capacity as 1st Vice Chair of the Ward 3 Democratic Committee, as a long-time political activist, a professor of political science, and a native Washingtonian.

A key element of the Ward 3 Democratic Committee's mission is to work to advance increased voter participation and turnout---that in some cases has declined in recent years in the District of Columbia--- and to facilitate the administration of fair and efficient elections. The Omnibus Election Reform Act of 2009 represents a far reaching effort to address these objectives. I commend the Committee on Government Operations and the Environment for the extensive work and research it has conducted in preparing this legislative proposal.
I wish to comment on just a few of the bill's provisions on behalf of the Ward 3 Democrats and to offer a couple personal observations as well. I know that other provisions of the bill have already been addressed in testimony for the record by Thomas Smith, the Chair of the Ward 3 Democratic Committee who was unable to attend this hearing and who sends his greetings.

To begin, I wish to express my enthusiastic support on behalf of the Ward 3 Democratic Committee for the provisions in this legislation dealing with early voting, election day registration, and no-excuse absentee voting. Similar provisions were approved by the Ward Three Democrats at our June 18th meeting. Those resolutions are included as an attachment to this testimony. It would appear that the over-riding purpose of these proposed provisions of this legislation is to increase voter turnout by simply making it more convenient and accessible to vote. This would particularly apply to those with disabilities, inflexible work schedules, or those who have recently moved.

A growing body of evidence exists to support the position that these measures do indeed increase voter turnout, improve the administration of elections, and that their benefits outweigh any perceived disadvantages. In recent years 32 states have adopted early voting that allows citizens to vote several weeks before election day. Early voting options have been shown to increase voter turn-out, to allow voters to clear up eligibility issues and to test voting equipment, and to reduce long lines on election day. So too,
early voting can improve the accuracy of ballot counting and improve voter satisfaction.

No excuse absentee voting in conjunction with early voting options even further enhances voter turnout rates. In a recent study conducted at Kent State University, the authors found “a consistently positive impact of early voting reforms, but only for those states which instituted no-excuse absentee balloting ‘and’ in-person early voting, and in these cases only in mid-term contests.”(1) Currently 28 states allow for no-excuse absentee voting.

Another important topic related to absentee ballots is how they are counted. All absentee ballots should be counted expeditiously starting on election day to assure inclusion in vote totals taken after the polls close. It is disheartening for absentee voters to learn that their ballots have not been counted until some period of time after an election. I believe the absentee ballots should be counted and posted quickly even if it does not appear that an election outcome is close. It is also my understanding that absentee ballots are maintained by the Board of Elections for two years after an election. The Committee might consider extending that period of time should questions arise about the outcomes of previous elections.

The 3rd resolution approved by the Ward 3 Democratic Committee endorsed a modification of election law to permit residents to register on election day and then vote—known as “same day” registration. Same day registration is also provided for in Section 301 item 5 of the legislation being
considered today. 8 states currently allow for same day registration. It permits citizens who have missed the registration deadline or have recently moved but have not updated an address to vote. Election Day registration also reduces the need for provisional ballots. In 2004, 74% of eligible voters participated in states with same day registration compared with 60% in states without same day registration. (2)

Certainly, careful consideration must be given to preventing voter fraud when first instituting same day registration. The legislation appears to have addressed this concern by specifying its requirements for identification to prove residency for those wishing to register to vote on election day. Perhaps the framers of this legislation could specify further means of proving residency in addition to those listed—(utility bills are used in certain jurisdictions) and eliminate potential confusion by deleting the clause “any other document approved by the Board as proper identification.” That would guarantee consistency in requirements for identification from year to year.

My remarks up to this point have been made in support of relevant sections of the legislation on behalf of the Ward Three Democratic Committee. I have three additional observations to make on my own behalf as a long-time political activist and native Washingtonian.
First, my review of the legislation failed to uncover any provision for public education about these changes in the election law. Publicity and voter education initiatives will be necessary to inform DC residents of the new options that allow for flexibility in voting. The need for such public education campaigns is documented in one study of the effects of no-excuse absentee voting on voter turnout that found that "no excuse absentee voting produced quantifiable increases in voter turnout only when it was coupled with significant efforts to educate potential voters and supply those individuals with absentee ballots. (3) Provision for public education concerning this important legislation should be added and funded at appropriate levels.

Second, as a native Washingtonian and advocate for DC statehood, I am concerned that the DC residency requirement for poll workers is eliminated in this legislation. For a jurisdiction seeking full voting rights, self determination, and autonomy, I think that section sends the wrong message—that we in the District of Columbia are unable to find competent poll workers. With adequate publicity, I believe that ample numbers of poll workers can be engaged particularly among groups such as retired persons and students who are also DC voters. In fact, the legislation’s provision for a "field on voter registration forms to allow the applicant to indicate his or her interest in
working as a polling place worker during the next election"-(Section 405-5)
might go far toward addressing any problems finding capable poll workers.

Third, with respect to the composition of the elections advisory committee, I
would suggest inclusion of one representative from each political party
organization (said party organization having secured a minimum threshold of
the vote in the past couple elections.) Indeed, the elections committee will be
advising on “closed” party primary elections as well as general elections.
Thus the input of those familiar with the ongoing party apparatus and its
relationship with elections processes would be extremely valuable. As long as
all of the active party organizations are represented, their membership on the
advisory board would create no conflict of interest. Political party officials have
much to offer in the way of practical “nuts and bolts” experience with the
election process that would present a different perspective from that of some of
the other members appointed from different backgrounds.

I want to thank the Committee for the opportunity to testify today
and would be happy to answer any questions you may have to the best of my
ability.
Notes

1 Paul Gronke, Eva Galanes-Rosenbaum, and Peter A. Miller, "Early Voting and Turnout" (presented in a paper, Kent State University, Columbus, Ohio, January 17, 2007.)


Attachment to Testimony

Election Reform Resolutions Approved by the Ward 3 Democratic Committee

June 18, 2009

Resolution in Support of Early Voting

Resolution: Early Voting

Whereas, in recent years 32 states have adopted early voting that allows citizens to vote several weeks before election day; and

Whereas, early voting increases turnout and allows voters to clear up eligibility issues, allows election officials to test voting equipment, and reduces long lines on election days;

Be it resolved that the Ward Three Democratic Committee urges the Mayor and the Council of the District of Columbia to approve legislation in support of early voting three weeks before the Primary and General elections at one or more voting locations in each ward or at Police District Stations.

Resolution in Support of Election Day Registration and Early Voting

Resolution: Same Day Voting and Registration

Whereas, eight states now allow same day registration and voting and North Carolina allows it during early voting period; and

Whereas, one stop registration and voting allows citizens who missed the registration deadline to vote and

Whereas, same day registration facilitates voting among voters who have recently moved but have not updated an address change,

Be it resolved that the Ward Three Democratic Committee urges the Mayor and the Council of the District of Columbia to approve legislation in support of same day registration during early voting and on election days.

Resolution in Support of No Excuse Voting By Absentee Ballot

Resolution: No Excuse Voting By Absentee Ballot

Whereas, 28 states allow no-excuse absentee voting but the District requires its voters to provide an excuse,

Be it resolved that the Ward Three Democratic Committee urges the Mayor and the Council of the District of Columbia to approve legislation in support of the elimination of the requirement for an excuse when voting by absentee ballot.
Testimony on behalf of the
American Civil Liberties Union Of the Nation's Capital

By
Stephen M. Block
Legislative Counsel

Before the
Committee on Government Operations and the Environment
of the
Council of the District of Columbia

on
Bill 18-345, the "Omnibus Election Reform Act of 2009"

July 13, 2009

The ACLU of the Nation’s Capital commends the sponsors of the “Omnibus Election Reform Act of 2009” for introducing this bill. Its enactment will facilitate participation in District elections and enhance confidence in the reported results.

The following is a review of those sections of the bill of particular importance to the ACLU. In some instances, we recommend changes to sections and suggest additional issues for inclusion in the bill.

Section 102: Open Meetings

The requirement for open meetings and limitations on the use of executive sessions will enhance the Board of Elections and Ethics’ accountability to the public. Especially important is the requirement of § 102(b) that the Board announce and post its agendas on its website at least 24 hours before a meeting. This is appropriately complemented by the requirement that Board minutes be posted “as soon as practicable” but not later than in advance of the “next regularly scheduled meeting.”¹ This will enable the public to prepare for Board meetings and to monitor its actions.

¹ Bill 18-345, § 102(d).
Section 104: Nonpartisan Election Monitors

As a member of the Organization for Security and Cooperation in Europe, the United States regularly nominates its citizens to serve as election monitors abroad. In turn, foreign persons monitor elections here. These monitors are trained to evaluate all aspects of the process from access to the media to the integrity of the voting procedures. At the conclusion of an election, the OSCE issues a report evaluating the electoral process. Elections in the District of Columbia could only benefit by the work of such outside monitors.

Section 201: Registration of 17-Year-Old Persons

This provision does not lower the voting age from 18 to 17. Rather, it facilitates the voting of persons who will be 18 on election day, but whose birthday is so close to election day as to make registration problematic. The need for this change will be reduced if § 301 authorizing same-day registration is approved, but even if that change is approved, we think this provision should be approved as well.

Section 301. Same-day Registration

The ACLU supports changes to the electoral law that facilitate voting by qualified persons. Same-day registration is one such change. “In the 2008 presidential election, voter participation numbers were highest in the states that allowed SDR [same day registration] – 69 percent compared to 62 percent.” As of June 2, 2009, there are nine states with same-day registration: Iowa, Idaho, Maine, Wisconsin, Minnesota, New Hampshire, Wyoming, Montana, and North Carolina (NC allows same-day registration during early voting, which runs until three days before the election). In addition, North Dakota doesn’t require any registration.

Skeptics have questioned whether the District would be able to administer same-day registration without promoting voter fraud. “A bi-partisan team of consultants to the Election Assistance Commission reported widespread agreement that very little evidence existed of voter impersonation at the polls.”

3 Ibid, p. 5.
There is no reason why the District could not protect against fraud in administering same day registration.

Because fake ID’s and utility bills are readily available, we recommend that the provision concerning documents to prove residence (bill, p.9, line 20) be tightened. Proposed subsection “(C)” would authorize the Board to approve “any other document” as “proper identification.” If the Committee does not consider itself qualified to limit this authority, it should, at least, require the Board to propose a regulation specifying acceptable documents, which the Council would review.

Additionally, we suggest that the Board be required to publish a list of the names and addresses of all persons who register and vote on Election Day, thereby enabling members of the public and the media to perform a “watchdog” function on this process.

Section 501: Voter-verifiable Records

We commend the requirement that District voting systems create a “voter-verifiable record of all votes cast in order that an audit trail is available in the event of a recount.” The bill recognizes that the federal Help America Vote Act mandates this.

At the same time, we oppose the inclusion of § 501(b), which reads:

In the event that the voting system presently used by the Board does not meet the standard set forth in subsection (a), the Board shall retrofit any equipment necessary to meet the standard to the extent that such a retrofit is possible.

This provision would appear to make the requirement for a voter-verifiable record illusory for the foreseeable future by allowing the continued use of the current system even if it cannot be made capable of creating a voter-verifiable record of votes cast.

If the current system cannot be retrofitted to meet the requirements of subsection (a), the Council must appropriate funds to make this possible. If it can be retrofitted, then there is no need for subsection (b).

Section 601: No-fault Absentee Ballots

Because this provision will increase voter participation, the ACLU of the Nation’s Capital supports its adoption. As of October 9, 2008, twenty-eight states

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5 Bill 18-345, § 501(a).
permit voting by absentee ballot for any reason, and there is no reason that the District of Columbia should not join their ranks.

Section 602: Special Ballots for Out-of-Precinct Votes

If a ballot is cast in the wrong precinct, there is no reason that it should not be counted for federal contests, even if it cannot be counted in the local contest. We therefore support this section. But the rationale for this section requires that it be broadened to allow for such ballots to be counted in citywide contests such as Mayor, councilmembers at-large, and the Council Chairman.

Section 701: Extending Voting Hours

The Board should have the authority to extend voting hours in the event of an emergency to ensure that no qualified voter seeking to vote is prevented from doing so.

Section 801: Ballot Auditing

Because post-election audits will enhance confidence in the process, we support the adoption of this requirement. Lacking expertise in this area, we do not comment on whether this section reflects best audit practices.

Section 901: Filing Fees

Presumably, a purpose of this proposal is partially to cover the expenses of conducting an election. A token fee would not make much difference, and a significant fee could deter persons from seeking public office, and would impose vastly different burdens on prospective candidates depending upon their personal wealth. If another purpose of this proposal is to deter “frivolous” candidates, this is a matter for the electorate to decide. The ACLU of the Nation’s Capital therefore opposes this section.

Section 903: Electioneering

We endorse this provision to allow voters to wear communicative t-shirts and pins into the polling area.

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Section 905: Defacing Campaign Posters and Materials

Defacing campaign materials impedes the democratic process; making it a misdemeanor should deter this activity. We urge the adoption of this section.

Section 906: “False” Statements

This section would repeal 3 DCMR § 1003.6(i). We strongly urge its adoption for the following reasons:

D.C. Code § 1-1001.16(h) requires every person who circulates petitions for a ballot measure to submit, with his or her petitions, an affidavit stating: (i) the circulator’s name and address, (ii) that the circulator was in the presence of each person signing the petition, (iii) that according to the best information available to the circulator each signature is genuine, (iv) that the circulator is an adult resident of the District, and (v) the dates on which signatures were obtained.

The Board of Elections has added a requirement that the affidavit also state that the circulator “has not made any false statements regarding the initiative or referendum to anyone whose signature is appended to the petition.” 3 D.C.M.R. § 1003.6(i). In our view, this addition is beyond the Board’s power, because the statute lists the required contents of the circulator’s affidavit, and the Board is not authorized to amend that list by subtraction or addition.

To be sure, the Board has the power to “[i]ssue such regulations . . . as are necessary to carry out the purposes” of the election laws. D.C. Code § 1-1001.05(14). But it is not “necessary” for the Board to commission itself as a political speech police in order to “carry out the purposes” of the election law. Nothing in the election law even hints at any purpose of regulating, and potentially punishing, election-related political discussions among citizens. And there is certainly no reason to believe that the Council intended to delegate such an extraordinary power to the Board.

More importantly, the Board’s addition to the statutory affidavit requirement is unconstitutional, because the government cannot act as an arbiter of the truthfulness of political speech. As the Supreme Court has noted:

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8 A similar provision prescribing civil penalties is included in Bill 18-151, § 201. The ACLU of the Nation’s Capital prefers § 905 of Bill 18-345 making an offense a misdemeanor, which would have greater deterrent effect than a civil fine.

9 We note a typographical error on p. 19, line 16: “time” should read “fine.”

10 To understand just how extraordinary the Board’s regulation is, one need only imagine the consequences of requiring candidates for public office to sign an affidavit stating “I have not made any false statements to voters regarding my candidacy,” and empowering the Board of Elections to punish the candidate, or to void the results of an election, upon a finding that a candidate had made a false statement to a voter.
the circulation of an [election] petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. . . . This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as "core political speech."

*Meyer v. Grant*, 486 U.S. 414, 421-22 (1988). Accordingly, such communications are at the "zenith" of First Amendment protection, *id.* at 425, and at the nadir of government regulatory power.

Because the First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people," *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (emphasis added), it follows that if we are to honor our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *id.* at 270, then a certain amount of "erroneous statement is inevitable . . . [and] must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'" *Id.* at 271-72 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

The problems inherent in attempting to police election-related speech were addressed long ago in *Edwards v. Hutchinson*, 35 P.2d 90 (Wash. 1934). The plaintiff there sought to prevent acceptance of an initiative petition on the ground that "corrupt and fraudulent practices have been indulged in pursuant to a conspiracy by the proponents of the initiative measure, by means of which they have deceived and deluded many persons into signing the petition without their knowing the nature of the proposed measure." *Id.* at 90-91.

While the court expressed sympathy, it saw "no possibility of granting the desired relief without . . . usurping political powers which have never yet been granted to or assumed by the courts." *Id.* at 91. The court explained:

Ever since popular elections were instituted, in every one held, some one, perhaps many voters, have been deceived, and so long as the political field remains free and open, as it should and must if we are to have free popular government, there is no way to prevent prejudices being appealed to, and voters to a greater or less degree will always be deceived.

Manifestly the courts cannot undertake to set aside elections or to interfere with the action of electors upon the theory that some one has been deceived. Attempts to deceive can only be met by publicity and a campaign of education. The courts are powerless, or, if not powerless, an attempt to exercise power would result in confusion worse confounded.
These views, we think, are supported by the great weight of authority. 

_Id._ at 92.

This old wisdom remains wisdom. The Board's affidavit requirement opens a Pandora's box of administrative and judicial interference with politics and democracy. Moreover, the Board's affidavit requirement would authorize the prosecution, conviction, and imprisonment of citizens who circulate initiative petitions upon a finding that a statement made by a circulator in the course of oral political discussions with other citizens on the sidewalk was false, and the circulator's affidavit was therefore perjurious.

The dangers of this regulation were emphatically demonstrated in 2004, when the D.C. Board of Elections and Ethics attempted to disqualify a proposed initiative legalizing slot machines on the ground that circulators' statements "that the initiative would produce benefits for [District of Columbia] schools and healthcare" in fact "constituted misrepresentations . . . and were therefore in violation of the attestation in the circulators affidavit that prohibits the making of false statements regarding the Initiative." _Citizens Committee for the D.C. Video Lottery Terminal Initiative v. District of Columbia Board of Elections and Ethics_, 860 A.2d 813, 814 (D.C. 2004). The Court of Appeals recognized that there were "significant First Amendment concerns raised by . . . the Board's exclusion of signatures based on "false advertising," id., and resolved the proposed initiative's status on other grounds. But the Board's position was remarkably insensitive to both the realities of political campaigning, and to First Amendment values, since predicting that the tax revenue generated by any given activity will produce benefits for schools and healthcare is an entirely legitimate political argument of the sort made in every political campaign. The Board's action shows how an administrative agency, armed with the power of subpoena (D.C. Code § 1-1001.05(h)), and the power to impose fines and penalties (D.C. Code §1-1105(b)), can become a source of serious oppression to those who support measures or candidates that the Board disfavors.

The very existence of such administrative power will also impose a serious chill upon the willingness of citizens to participate in the circulation of petitions. Who among us can swear that we never misstate or exaggerate the facts while engaged in oral advocacy? What circulator will want to have to defend herself against an allegation that she made a false statement, made by one or two of the hundreds of people with whom she spoke?

To put the teachings of the courts in the vernacular, in the arena of political speech the "cure" of government regulation for truth or falsity is worse than the "disease" of misinformation. Presumably the Board of Elections felt, in 2004, that it was advancing the cause of good government by protecting D.C. voters from misleading campaigning. But "[e]xperience should teach us to be most on our guard to protect liberty when the Government's purposes are

For these reasons, the Council should repeal 3 D.C.M.R. § 1003.8(i).

In addition, the Council Should Repeal Unconstitutional Limitations on Who May Circulate Election Petitions

Petitions in support of proposed initiatives or referenda may be circulated by any resident of the District of Columbia who is at least 18 years of age. D.C. Code § 1-1001.16(h)(5). But petitions supporting the nomination of candidates may be circulated only by registered, qualified electors. D.C. Code § 1-1001.08(b)(2). And petitions supporting the recall of an elected official may be circulated only by qualified registered electors who also reside in the official's election area (e.g., in a Ward or an ANC Single Member District). D.C. Code § 1-1001.17(i)(6).

We cannot discern any sensible reason for these differences, or any legitimate justification for preventing all adult residents of the District of Columbia from circulating petitions for any electoral purpose. A D.C. resident's interest in good government does not depend upon his or her voter registration status, and does not stop at the boundary of his or her Ward or ANC Single Member District.

Indeed, the courts have struck down as unconstitutional similar requirements in other jurisdictions. See, e.g., Nader v. Blackwell, 545 F.3d 459 (8th Cir. 2008) (striking down Ohio law requiring state residency for nominating petition circulators); Krislov v. Rednour, 226 F.3d 851 (7th Cir. 2000) (striking down Illinois statute requiring nominating petition circulators to be voters registered in the political subdivision in which the candidate is seeking office); Lerman v. Board of Elections in City of New York, 232 F.3d 135 (2nd Cir. 2000) (striking down New York statute requiring nominating petition circulators to be residents of the political subdivision related to the office at issue); Molinari v. Powers, 82 F. Supp. 2d 57 (E.D.N.Y. 2000) (same); Frami v. Ponto, 255 F. Supp. 2d 962 (W.D. Wis. 2003) (striking down Wisconsin law prohibiting out of state residents from circulating nominating petitions for political candidates); Morrill v. Weaver, 224 F. Supp. 2d 882 (E.D. Pa. 2002) (striking down Pennsylvania statute requiring nominating petition circulators to be residents of the electoral districts in which they circulate petitions).

Accordingly, D.C. Code §§ 1-1001.08(b)(2) and 1-1001.17(i)(6) should be amended to permit any adult resident of the District of Columbia to circulate petitions.
Thank you for considering our views.
Hearing of the Council of the District of Columbia,
Committee on Government Operations and the Environment
July 13, 2009

Testimony of Steven Carbó, Senior Program Director, Demos

My name is Steven Carbó, and I serve as Senior Program Director at Demos. We are a national, non-partisan research and advocacy organization established in 2000 and headquartered in New York City. Demos’ Democracy Program works with policy makers, advocates and scholars around the nation to improve our democracy and election process.

Allow me to thank the Chair and members of the Committee for this opportunity to testify before you today on Bill 18-345, the “Omnibus Election Reform Act of 2009.” I will focus my remarks on Sec. 301, the bill’s Same Day Registration (SDR) provisions.

In enacting Same Day Registration, the District of Columbia would become the tenth jurisdiction in the nation to permit eligible citizens to both register and vote on the same day. Maine, Minnesota and Wisconsin adopted SDR in the 1970’s. New Hampshire, Idaho and Wyoming followed suit twenty years later. Three more states moved to Same Day Registration in the last several years: Montana (2006), North Carolina (2007), and Iowa (2008). All have been able to open up their voter registration systems with minimal costs and without compromising the integrity of their elections. I have attached three recent Demos reports on Election Day Registration for your review: Voters Win with Election Day Registration, Election Day Registration: Best Practice, and Election Day Registration; A Study of Voter Fraud Allegations and Findings on Voter Roll Security.

Benefits of Same Day Registration

The argument for Same Day Registration is simple: it can increase voter turnout. States with SDR have historically seen average turnout rates that are 10 to 12 percentage points higher that non-SDR states. They led the nation by 7 percentage points in the high-turnout 2008 presidential election. The five states with the highest turnout –

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Minnesota, Wisconsin, Maine, New Hampshire, and Iowa were all EDR states.3 All told, over 1.5 million Americans were able to participate in the historic 2008 presidential election because of Same Day Registration.4

Same Day Registration’s potential for increased voting is due to the fact that it removes one of the chief obstacles to voter participation: pre-election voter registration deadlines. Voting rights experts agree that pre-election registration deadlines have contributed to lower turnout among eligible voters.5 While these deadlines may have served some legitimate public purpose in an earlier era, the experiences of Same Day Registration states show them to be unnecessary today. The District of Columbia’s 30-day deadline, the longest in the nation, is particularly problematic. Indeed, thirty-five states accept registrations after that point.6

Pre-election day voter registration deadlines are particularly unjustified in our highly mobile society, and in a highly mobile city like the District of Columbia. The U.S. Census Bureau reports that over 35 million individuals changed residences between 2007 and 2008, representing nearly 12 percent of the nation’s population.7 The current home foreclosure crisis will likely spur even more mobility. Americans who change addresses can easily find themselves unable to vote in their new election districts. They fail to re-register to vote or update their voter registration records in time to cast a ballot on Election Day. In fact, recent movers make up about 43 percent of all non-voters.8

Same Day Registration solves the problem. Those who move can simply register anew in their new voting districts on Election Day or the days beforehand, and cast a legal ballot.

Same Day Registration has the potential for appreciably increasing voting in the District of Columbia. Only 60.7 percent of eligible voters cast a ballot in the last presidential election, placing the District among the fifteen states with the lowest turnout rates.9 Over 11,000 eligible residents of the District of Columbia were not even registered to vote in time to participate in the election last November.10 SDR would have maximized their opportunity to cast a ballot if, as proposed in Bill 18-345, they were offered the option of registering and then voting at their local precincts on Election Day.

3 See http://elections.gmu.edu/Turnout_2008G.html
4 Voters Win with Election Day Registration, op. cit., p. 2
8 Eliminating Barriers to Voting: Election Day Registration, Brennan Center for Justice at NYU School of Law and Demos: A Network for Ideas and Action, at 13, available at http://www.brennancenter.org/content/resource/eliminating_barriers_to_voting_election_day_registration/
It is important to note that SDR can be particularly effective in increasing participation among those segments of the electorate who are most mobile and have historically had lower turnout rates, such as young people, African Americans, Latinos, and those with low incomes. Experts project increased voting rates for these groups with EDR.\textsuperscript{11}

A second argument for Election Day Registration is that it accommodates the fact that many Americans do not fully focus on candidates and other voter choices until elections near. According to the Gallop Poll, the percentage of people giving ‘quite a lot’ of thought to U.S. presidential elections rises dramatically in the final four weeks prior to the election.\textsuperscript{12} Voter registration deadlines move in the opposite direction. The District of Columbia and about 28 other states close the door on voter registration just as interest in elections begins to peak for many Americans.\textsuperscript{13}

A third, important benefit of Same Day Registration is that it reduces the need for provisional ballots. Provisional balloting can be a frustrating experience for elections officials and voters alike. Elections workers are often hard-pressed to comb their voter registration records in the hectic days after each election looking for evidence of the prior registration of provisional voters, whose names could not be found on the voter rolls on Election Day. Voters are upset that poll workers can not find their names on poll books and bridle at casting provisional ballots. Many are later disillusioned by learning that their provisional ballots were ultimately rejected, and never vote again. Over 4000 of the provisional of provisional ballots cast in the District of Columbia in the 2008 presidential election were rejected.

Election Day Registration offers a ready solution to these problems. Eligible voters whose names do not appear on poll books merely complete a new voter registration application on Election Day, and vote a regular ballot.

**Success in Newest Same Day Registration States**

Iowa and North Carolina both enacted Same Day Registration legislation in 2007. SDR went into effect in their first presidential elections last November. The results were astounding. With Same Day Registration in place, North Carolina saw the greatest increase in voting among all states since the 2004 presidential election. 253,000 citizens were able to participate because of SDR, which is available during the state’s 16-day early voting period, after the close of the state’s traditional voter registration period. African Americans were one of the particular beneficiaries of Same Day Registration in


\[\text{\textsuperscript{13} Carbo & Wright, note 29.}\]
North Carolina. While blacks represent 21 percent to the state’s voting age population, they accounted for fully 36 percent of state residents who used SDR to vote last fall.\textsuperscript{14}

Iowa’s first major experience with Election Day Registration was also impressive. Nearly 46,000 Iowans used EDR to vote in November 2008.\textsuperscript{15}

Provisional balloting also fell sharply in both states. In Iowa, provisional votes dropped from 14,661 in 2004 to 4,725 last November.\textsuperscript{16} In North Carolina, almost 40,000 fewer provisional ballots were cast in the much-higher-turnout 2008 presidential race that the 2006 mid-term elections.\textsuperscript{17}

**Concerns about Election Day Registration**

Opponents of Election Day Registration traditionally argue that EDR will undermine the integrity of elections and substantially increase the cost of elections. Careful examination of long-standing state experience with the administration of Same Day Registration and authoritative research shows these concerns to be unfounded.

**Election Integrity**

Simply put, voter fraud is a non-issue in EDR states. Election administrators there report that they can offer voters the opportunity to register and vote on Election Day without undermining the integrity of election results.

In 2007, Demos conducted a survey of 49 local elections officials in the six original Election Day Registration states to elicit information on their experience in administering EDR. The great majority of respondents reported that their fraud-prevention measures were sufficient in ensuring the integrity of elections.\textsuperscript{18} Their states impose heavy penalties for voter fraud, voters are required to show documentation for proof of residency, and voters must sign an oath attesting to their identity and citizenship. These protections would hold in the District of Columbia with adoption of Bill 18-345.

Election Day Registration also offers an inherent element of integrity not available in many other voter registration transactions: EDR requires eligible voters to attest to their identity, face-to-face, before an elections official. This safeguard does not hold for mail-in voter registration applications. Post-election audits of EDR voters like those conducted in Wisconsin can add an additional level of security.\textsuperscript{19}

The research also shows that sufficient safeguards against voter fraud are in place in EDR states and that very few instances of voter fraud develop. Barnard College professor Lorraine Minnite conducted an extensive analysis of voting data in Election Day Registration states from 2002 to 2005. Her research uncovered *just one case of*...
voter impersonation at the polls.\textsuperscript{20} Indeed, contemporary voter fraud is exceedingly rare today. A high-profile voter fraud initiative by the U.S. Department of Justice under the Bush Administration resulted in only 40 prosecutions for election crimes relating to illegal voting nationwide between 2002 and 2005.\textsuperscript{21} Wisconsin was the only EDR state implicated. Four voters were charged with double voting; 10 were prosecuted for voting while disfranchised for a felony conviction. Ultimately, the charges were dropped or the defendants were exonerated in all the double-voting cases and half the felon prosecutions. The minute number of convictions (the federal government obtains an average 90-percent conviction rate in nearly all felony crime cases) speaks strongly to the integrity of elections in Election Day Registration states, and elsewhere. An investigation of votes cast in 2004 by the New Hampshire Attorney General also found no fraud attributable to EDR.\textsuperscript{22}

Administrative Costs

The 49 local election officials who participated in Demos’ telephone survey described the incremental cost of EDR as “minimal.”\textsuperscript{23} Where costs were incurred, they were for training and employing additional staff to help with registrations on Election Day and inputting data to the permanent voter registration rolls on subsequent days. Significantly, respondents noted that Same Day Registration did not add work or expense but rather shifted the cost burden from one time and place to another.\textsuperscript{24} Rather than devoting time and resources to processing a surge of voter registration applications at the close of pre-Election Day registration period, elections administrators shifted costs to Election Day and the days that follow, when inputting information data is far easier and less time-sensitive.

Same Day Registration can actually save staff time and expenses in one regard. The steep drop in provisional balloting achieved by SDR appreciably reduced work demands on local election offices in the aftermath of elections.

Iowa’s first experience with Election Day Registration in a presidential election in 2008 is instructive. In preparation for the election the Iowa Secretary of State spent $36,568 to implement Same Day Registration statewide. The allocation was for public education and training. The biggest cost was $26,000 to produce a training video to be used statewide by auditors and precinct officials. $9000 was spent on same day registration precinct kits, including registration forms, oath forms, and instructions. And $1568 was spent on information brochures on Same Day Registration education.\textsuperscript{25}

\textsuperscript{20} Demos: A Network for Ideas & Action, \textit{Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security}, available at \url{http://www.demos.org/pubs/EDRVF.pdf} (A 17 year-old in New Hampshire was caught casting his father’s ballot in a 2004 Republican presidential primary. This fraud was unrelated to EDR because the father was already registered and on the rolls.)

\textsuperscript{21} Id. In 2002, 78,381,943 votes were cast in national elections; in 2004, 122,294,987 votes were cast in national elections.

\textsuperscript{22} Memorandum from Bud Fitch, Deputy Attorney General to Chairman Robert Boyce and Members of Senate Internal Affairs Subcommittee; Chairman Michael D. Walley and Members of House Election Law Committee (Apr. 6, 2008), available at \url{http://www.doj.nh.gov/publications/releases2006/040606wrongful_voting.pdf}

\textsuperscript{23} Demos, \textit{Election Day Registration: A Ground-Level View}, available at \url{http://www.demos.org/pubs/EDR_Clerks.pdf}

\textsuperscript{24} Id.

\textsuperscript{25} Email from Linda Langenberg, Iowa Deputy Secretary of State, to Regina Eaton, Deputy Director, Democracy Program, Demos (Feb. 18, 2009, 11:25 CST) (on file with recipient).
The cost of EDR implementation for Iowa’s 99 counties was also minimal. Many hired one additional precinct official to handle the new registration on Election Day, at an average cost of approximately $100 per official. The maximum combined expenditure for all counties was $177,400. Including the production of additional registration forms, the Secretary of State’s office estimated that the total cost for counties to be $200,000 statewide – an average of just over $2000 per county.26

In closing, I again commend the Chairperson Cheh and Members of the Committee on Government Operations and the Environment for considering the adoption of Same Day Registration. With SDR, the District of Columbia could expect to see increased voting, decreased provisional balloting, and an overall improvement in election administration.

26 Id.
Spoken Testimony Submitted to the District of Columbia City Council Board of Elections and Ethics Investigation Special Committee
(Written testimony for the record to be submitted later)

Submitted by Susannah Goodman
Director of Election Reform
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Contact Information:
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My name is Susannah Goodman and I am the Director of Election Reform Programs at Common Cause.

Common Cause is a national nonpartisan, nonprofit public advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. With nearly 400,000 members and supporters and 36 state organizations, Common Cause is committed to honest, open and accountable government.

Members of the City Council, thank you for the opportunity to speak today. On behalf of Common Cause I would like to commend the council for the introduction of B18-345 “The Omnibus Election Reform Act of 2009.” This legislation, if passed, would expand access to the residents of the District of Columbia, would improve election administration across the board, and could, with a few tweaks, will bring security and auditability to the voting systems available here in Washington, DC. Because of my short time today, I will limit my remarks to highlighting the importance of a few of the provisions of the bill.

Title II, Title III, and Title VI.

Leading up to and on Election Day, the Election Protection Coalition ran a hotline which fielded hundreds of calls from voters in the District of Columbia. Over 100 of those calls were
voters experiencing difficulties around voter registration. Particularly heartbreaking were the numerous calls where voters said that they had registered to vote but their names did not show up on the voter list so they were denied the right to vote. This is simply disenfranchisement by bureaucratic snafu. Title III would create a remedy for this type of disenfranchisement by allowing voters to register and vote on the same day. Additionally, allowing same day registration will boost voter turnout – all of the states which allow for same day registration have a higher voter participation rate than the District of Columbia.

Moreover, Title II which will allow 17 year olds who will be 18 on Election Day to register to vote will encourage young people to proactively become part of the electorate often before they leave high school. This is an ideal time to engage young voters.

Title VI is an excellent improvement over the current restrictive absentee ballot law in Washington, DC as it will allow for no-excuse absentee voting AND early voting. As a practical matter, work and family constraints still keep citizens from the polls on Election Day even if they will be in the precinct on Election Day. This simple remedy will stop voters from being disenfranchised for having work which we don't want them to miss (think hospital emergency room workers) or family obligations. Washington, DC will now join the now thirty-three states which allow pre-Election Day no-excuse absentee or early voting.

Title V and Title VIII take some critical steps towards making the voting systems of Washington, DC auditable and secure, and I applaud the Council for these efforts. Common Cause has long been very critical of Washington, DC as voters can cast ballots on paperless
voting systems which can’t be independently audited and upon which no meaningful recount can occur. By using these voting machines, voters can be disenfranchised simply by computer snafu. Votes can be lost or added and there can be no recourse. As currently drafted it appears that the legislation would require a separate voter verified record of every vote cast not only so that voters can verify their votes but so that there is a separate record to audit. And it appears that there is a rigorous audit requirement which would ensure that the voter verified records are used to audit the election. I do have some questions about specific wording which I hope to take up with you all this week so that the intent of this section is realized. These concerns will be articulated as part of my written testimony which I will submit after I have had a chance to speak with you all.

Common Cause commends the City Council for taking these vital steps to ensure that the elections process is transparent and accurate. We look forward to working with you strengthen and pass B18-345 “The Omnibus Election Reform Act of 2009. “The Omnibus Election Reform Act of 2009.
Honorable council members,

My name is William Frey and I am a New York City native and student at The George Washington University. I came to testify here before the Committee on Government Operations and the Environment today to share a young student’s perspective on the Election Reform Act of 2009 [Bill 18-345].

First, I will outline my opposition to certain provisions of the bill. And, rather than focus on the intent of the bill, I will instead look at the unintended consequences it will undoubtedly bring about.

Next, I will explain why I think the bill will cause more of the apathy it is intended to cure.

Let me be clear about this, Councilmember Cheh. It is not my intention to be altogether hostile to the noble goal of increasing youth turnout. I just think that not only are there better ways to increase youth turnout, but that this bill is fatally flawed in that it will have the exact opposite effect it is intended to have.

My main problem with the bill is that it allows for same-day voter registration. This would cause a mess of confusion, and would likely hurt Ms. Cheh’s efforts to streamline vote counting.

The intent of same-day voting is that is would increase the youth turnout by giving them a longer window in which to register. But, as a college student, I can tell you with great certainty that such an argument contains flawed logic.
If young people were allowed to register just prior to voting, it would give them no incentive whatsoever to do so prior to Election Day. Young voters, already apathetic enough about politics, would put off thinking about registering until the last minute.

As a college student, I believe that having same day registration would hurt the integrity of voting here in DC. Here’s why: it is very possible that people could both vote absentee ballot in another state and register here and on Election Day.

Thus, the bill would open the door to voter fraud and would likely cause significant problems for the Board. I urge the Council to reconsider the same-day registration provision in this bill and seriously reassess their initial opinion regarding the nature of youth voting.
Council of the District of Columbia  
Committee on Government Operations and the Environment  
Public Hearing on Bill 18-345, the “Omnibus Election Reform Act of 2009”  
Monday, July 13, 2009  

Statement of William O’Field, C.E.R.A.

Good morning Councilmember Cheh and members of the Committee on Government Operations and the Environment and staff. I am William O’Field a Certified Elections/Registration Administrator and a United States Electoral Specialist. I am here today as a result of my 13 year career in the elections field to comment on Bill 18-345, the “Omnibus Election Reform Act of 2009”.

I find it remarkable to be able to comment on Bill 18-345 as this is the first time in some 20 years that the District of Columbia’s election laws have been opened up for amendment to this degree. I am pleased to state that overall I support this legislation with just a few concerns and some suggestions.

With regard to Title I, Sec. 103, I would like for there to be a District of Columbia residency requirement for members of the Elections Advisory Committee. I believe the stakeholders are the residents of the District of Columbia and therefore our residents should serve on the Committee. The Committee would be free to seek outside expertise as needed for the Committee to do its work advising the Board.

Title III, Sec. 301, establishes same-day registration in the District of Columbia. This provision is troublesome to me. I support same-day registration; however, as I stated earlier this year at the January 26th public oversight roundtable of the Council Board of Elections and Ethics Investigation Special Committee, I have serious concerns about the Board’s bloated voter roll. The Department of Justice is also concerned about bloated voter rolls across the country because it could enable voter fraud.
I recommend that a thorough review of the voter roll be undertaken by an independent outside consultant with expertise in this area. The recommendations from the consultant could be reviewed by the Board’s staff who I believe needs help undertaking this kind of project. A nonpartisan contractor would give the Board’s staff the support that is needed.

After that is done, I would feel better about same-day registration, but I must caution that the District of Columbia is not like the states that have same-day registration where their voters may be less transient. With the surrounding jurisdictions so close to our 10 square miles that make up the District, nearby outside intruders can play mischief with our elections by crossing their state lines and come into our city.

At the January 26th hearing, I also stated that the Board of Elections and Ethics conducted a voter roll comparison with the surrounding jurisdictions in Maryland and Virginia in 1997 following the November 5, 1996 Presidential General Election. It was discovered that there were dual registrants who voted in two places. Those individuals voted in their state and then came into the District of Columbia and voted here. The names of those who voted in two places were referred to the United States Attorney’s Office. I further recommend that the Board once again work with the surrounding jurisdictions to run a comparison match for dual registrants and refer anyone they find who has voted in two places over the last eleven years to the U.S. Attorney’s Office.

I always want to open up the franchise further; however, I do not want the District to be victimized by voter fraud with same-day registration and find that an election has been compromised. In my opinion, and others, same-day registration is the one place in the election process that is vulnerable to election fraud.

Title VII, Sec. 703, would move the Advisory Neighborhood Commissioner (ANC)
elections from the November general election to the September primary election. The District’s primary elections are closed, therefore only voters in the three major parties – Democratic, Republican, and D.C. Statehood Green – qualify to vote. An ANC election, along with the Board of Education election, are for nonpartisan offices and therefore appropriate for a November general election. My concern is that by changing the ANC election to a closed primary election would cause voter confusion at the polling places. Independent and minor party voters could come into their precinct expecting to receive a primary ballot when they only qualify for an ANC ballot. This would add an extra burden to our dedicated citizen volunteers who serve as precinct captains and pollworkers on Election Day.

In closing, I would like to commend you, Councilmember Cheh, and your staff for the hard work you have done to investigate the Board of Elections and Ethics and to open up the election laws in the District of Columbia. However, I would caution that you carefully and deliberately consider making any changes that might cause fraud in our process. As I always say, in the end, it is the District’s electoral process and the public’s trust that is most at stake.

Thank you for the opportunity to present this testimony and I am available for any questions you may have.
UNIVERSITY LEGAL SERVICES, INC.
Protection and Advocacy Program
for the District of Columbia

Testimony of Akua Gyimah-Brempong, University Legal Services
before the Council of the District of Columbia
Committee on Government Operations and the Environment
Public Hearing on Bill 18-345, “the Omnibus Election Reform Act of 2009”

University Legal Services-Protection and Advocacy (ULS-P&A) is a private, non-profit organization that provides legal services to people with disabilities in the District of Columbia. As the designated P&A, ULS is mandated by Congress to pursue administrative, legal and other appropriate remedies to vindicate rights violations on behalf of children and adults with disabilities. ULS advocates for the full implementation of the Help America Vote Act of 2002 (HAVA) and greater participation by persons with disabilities in the voting process in the District of Columbia by working to ensure that all polling places in D.C. are fully accessible to people with a range of disabilities, and that voters with disabilities are able to vote independently and privately in their own precincts.

ULS has found many problems with the voting process and commends the Council for taking this long overdue initiative to reform the District’s voting laws. In keeping with the commitment to ensure the District of Columbia’s compliance with HAVA, ULS has reviewed Bill 18-345, the “Omnibus Election Reform Act of 2009” and hereby shares the following comments and concerns regarding the bill.

The proposed bill references written materials including meeting agendas (E.g., Section 102(b)), meeting minutes (Sec.102(d), Sec.103(d) (3)), meeting notices (Sec.103(d)(2)), voter registration applications (Sec.301(g)(2), (4)), voter registration update...
notices (Sec.301(g)(2)), but fails to offer alternative formats for these written materials to people with visual disabilities as is required under federal law. Consequently, the following provision must be incorporated into the legislation that requires the Board to provide all written materials in alternative formats for people with disabilities:

All written materials, including but not limited to, registration applications, notices, and meeting minutes, shall be available to patients in alternative formats such as large typeface (at least 24 point type), Braille, audiotape, and electronic formats, in conformity with the Americans with Disabilities Act.

In Section 103 regarding the establishment of an Election Advisory Committee, ULS supports the inclusion of representatives of civil rights organizations and disability rights organizations, among others. However, not all such organizations have formal memberships and therefore, the proposed bill should be revised slightly as follows:

Section 103 (c) “No person shall be a member of the Advisory Committee unless he or she:

(c) Is a member representative of a voting-rights organization, an organization whose mission is to defend citizens’ civil rights, an organization whose mission is to defend the rights of people with disabilities, or an organization whose mission is to promote civic participation and expand voting to all eligible voters.”

ULS routinely monitors the accessibility of elections in the District with the help of staff and volunteer advocates for people with disabilities, and thereby supports the requirement under Section 104 that BOEE issue regulations to permit uniform, non-discriminatory access to election observers by civic and civil rights organizations and individuals with due process requirements in conjunction with denying access. ULS supports of the same-day registration provision in Title III, Section 301 of the proposed bill.
This provision, allowing registration and voting on Election Day, will allow voters with disabilities in nursing homes, psychiatric facilities, prisons, intermediate care facilities, and other institutional living situations who may not have the opportunity to register before Election Day to both register and vote at the same time. It will ensure that they are permitted to take part in voting on Election Day.

ULS does not support the ID requirements set forth in Section 301 (5) as proof of residence. Because many of our clients are displaced and do not have government-issued identification, military-issued identification cards, or work for the government, they would be prohibited from registering under this proposed change to the law. This section would also have a marked effect on people who are institutionalized who often do not have any identification, a profound discriminatory effect on people with disabilities. The Council should either drop the identification requirement or expand the acceptable forms of identification to include Metro Access cards or anything listing the person’s name and address that will not disenfranchise voters with disabilities.

ULS supports the overall changes set forth in Sections 402 and 403 of Title IV regarding poll worker trainings and certification and performance standards for poll workers with the suggested changes discussed below.

For the past 5 years, ULS has closely monitored the accessibility of voting in the District and issued reports pointing out that many precinct accessibility issues arise from a lack of poll worker training. Poll workers typically hinder equal access to the polls of people with mobility disabilities and in doing so, violate their rights. In ULS’ Report “No Parity at the Polls: Four Years Later Accessibility Survey for the February 12th Presidential Primary,” ULS recommended that the BOEE increase oversight of the precinct captains and replace
precinct captains with repeated operational problems.\(^1\) The poll workers should be required to complete 8 hours of training as opposed to 4, including training on accessibility issues and what they should be doing to ensure there are no operational accessibility issues at their precincts. The BOEE should test poll worker competence regarding the respective duties so there is no doubt that the poll workers understand what their role in the voting process entails.

In light of these issues, the poll worker training requirement set forth in Section 402 should be revised as follows:

Sec. 402. Polling place worker training, certification, and oath.

Any polling place worker appointed pursuant to section 5(e)(4) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699, ch. 862, D.C. Official Code § 1-1001.05(e)(4)), shall be required to:

1. Complete at least eight (8) hours of training, at least 2 hours of which focuses on the BOEE’s obligation to accommodate voters with disabilities and afford them access to vote in private by ensuring precinct accessibility through compliance with the Polling Place Accessibility Checklist\(^2\) and;

2. Take and pass an examination testing knowledge and competence regarding the rights of voters with disabilities and polling place accessibility;

3. Receive certification as a polling place worker under standards that the Board shall promulgate;

4. Take and sign an oath of office to honestly, faithfully, and promptly perform the

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\(^1\) See No Parity at the DC Polls: Four Years Later Accessibility Survey for the February 12, 2008 Presidential Primary Election, p. 22. Available at www.uls-dc.org.

\(^2\) The Polling Place Accessibility Checklist is attached as Appendix A
duties of office and ensure their polling site is fully accessible to voters with disabilities for every election.

The Board should also clarify the requirements it will use in measuring the performance of poll workers as well as set out the consequences for poll workers who are not living up to these requirements. In 2006, ULS and BOEE worked together to create the attached Polling Place Accessibility Checklist for the precinct captains to use to ensure accessibility. Precinct captains are supposed to use this checklist in conducting walk-through inspections of their assigned polling sites the night before Election Day. The checklist was devised to prevent operational issues such as improper signage, voting equipment placement and door access, which undermines access by voters with disabilities. Despite BOEE claims that it incorporated this checklist into Election Day preparation, there are still many operationally inaccessible precincts. Consequently, the checklist should be incorporated into Bill-18-345 to make sure that poll workers use it. This will go a long way toward ensuring voter accessibility. As such, the poll worker performance management requirement set forth in Section 403 should be revised as follows:

Sec. 403. Polling place worker performance management.

The Board shall establish standards to measure the performance of polling place workers. These standards shall include adherence to the Polling Place Accessibility Checklist. The standards must be available to the public and also provided at all precincts on Election Day. The Board shall consider past performance of a polling place worker before appointing him or her to work as a polling place worker in a subsequent election.
Under Title VI, Section 602 should be revised as follows to enable voters with disabilities to vote in any precinct by special ballot in light of the fact that sometimes their assigned polling precincts are not accessible. The proposed bill should be revised to require BOEE to count their votes via special ballot for all elections, both federal and district-level:

Section 602(a)(3) “If a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for federal and District election contests.”

By proposing the changes set forth in the Omnibus Election Reform Act of 2009, the Council appears to be taking steps toward improving voting procedures in the District of Columbia. If adopted, these changes will help facilitate and streamline the voting process for the District’s residents. ULS will continue to monitor the polling sites and report our findings and recommendations to both the Council and the BOEE. We appreciate the opportunity to share this information with you. If you have any questions, please contact Akua Brempong at 202-547-0198 ext. 102 or abrempong@uls-dc.org.
APPENDIX A

Polling Place Accessibility Checklist

If your polling place has street parking, post “Accessible Parking” sign as close to the “curb cut” (a curb cut is the little ramp that allows wheelchairs to roll from the street to the sidewalk).

If your polling place has a parking lot, check to make sure there is handicapped parking available. There should be signs indicating which spaces are handicapped spaces.

For “curbside voting,” post “Accessible Parking” sign close to the entrance.

Post “Alternative Voter Entrance” signs to guide voters to the accessible entrance and from the entrance to the voting place. Make sure signs are at a height where a person in a wheelchair will see them.

Walk the path from the accessible parking space, either on the street or in the parking lot (if there is one) all the way to the accessible voting machine. Check for any obstructions that might make it difficult for someone in a wheelchair to navigate this path.

If there are mats along the pathway to the accessible entrance or to the accessible voting machine, secure them with grey duct tape provided in the supply box.

Test the doorbell to make sure it is working properly and can be accessed and used by wheelchair riders to gain entry into the polling station. Make sure that the doorbell is placed immediately outside the door or outdoors on an accessible path. Monitor the doorbell throughout the day to ensure it is working and can be heard inside the building.

Check to make sure magnifying glasses are available at the voting demonstration table and the check-in table and the audio headset is available at the touch-screen voting machine.

____________________________________   _______________________________________
Signature                                  Signature
Voting Demonstration Clerk                Precinct Captain
Chairperson Cheh, members of the Committee, thank you for inviting me here today and for your consideration of what I believe to be an important piece of legislation, the Omnibus Election Reform Act of 2009.

During the process the Special Committee undertook to examine the District of Columbia’s elections processes and procedures I urged the committee to use the problems that occurred during last year’s primary as an opportunity to reform the system in a way that expands access to the ballot box for this city’s traditionally disenfranchised voters. As an Election Protection leader, election reform advocate, and proud D.C. voter, I am extremely pleased that Chairman Gray, Councilmember Cheh, and Councilmember Thomas decided to do just that when they introduced the Omnibus Election Reform Act of 2009.

The Lawyers’ Committee was founded 45 years ago by President Kennedy to organize the pro bono resources of the private bar to protect civil rights. The National Campaign for Fair Elections was established by the Lawyers’ Committee to serve as the lead legal partner of Election Protection, and to turn the lessons learned from that experience into real, effective policy solutions for America’s voters.

Election Protection is the nation’s largest non-partisan voter protection coalition and has become an invaluable resource for traditionally disenfranchised voters. The program is not just about Election Day, but about developing a comprehensive and proactive campaign to ensure that all eligible voters are able to cast a meaningful ballot. The work of our Election Protection Legal Committees (EPLCs) involves the entire voter engagement process, including meeting with election officials, supporting non-partisan grassroots organizations, and providing valuable voter education and voter protection materials and resources.

One of the cornerstones of the program is 1-866-OUR-VOTE, the nation’s largest voter services hotline which, since its inception, has handled over 500,000 calls from voters across the country, including over 240,000 during the 2008 election cycle. In 2008, Election Protection launched www.866ourvote.org, a dynamic online clearing house providing state specific information on voting rules and laws, an interactive web chat to answer voter questions, and a real time chronicling of the problems and challenges that confront our election system. Nearly 300,000 unique users visited 866ourvote.org in the six weeks leading up to the election.
from calls into the hotline and stories collected over the web are logged into www.ourvotelive.org, the coalition’s web based database. The stories that make up the nearly 90,000 reports in our database paint the most complete picture available of the American voting experience from the perspective of the voter. This leadership has provided us with a front row seat to the problems voters face in D.C. and across the country, and it is that experience that I will draw from in my testimony today.

**Title III – Voter Registration**

Title III of the Omnibus Election Reform Act of 2009, allowing voters to register in person at the Board of Elections after the 30th day preceding an election, and creating a system of Election Day Registration will go a long way towards solving the single largest cause of the problems on and before Election Day – voter registration. According to the Cooperative Congressional Election Survey (http://web.mit.edu/polisci/portl/cces/index.html) – conducted by researchers at 30 leading universities across the country –44 million of the 79 million Americans who did not vote in the 2008 general election were not registered. Additionally, two to three million of these voters were prevented from voting because of registration or authentication problems.

Election Protection witnessed this impact first hand. Over 1/3 of all problems tracked by the OurVoteLive Database came from voters with registration issues, by far the largest single source of problems experienced by the nearly ¼ of a million voters we assisted through the hotline and the hundreds of thousands more we worked with through our field program, through our online voter assistance center and through our extensive outreach and productive relationships with election officials.

The effects of our poor registration system are felt across the electorate. New voters and long time voters are both at risk of disenfranchisement because of the challenges with the voter registration system. The problem disproportionately impacts certain Americans; overseas citizens and military service people cannot correct problems or omissions on the registration rolls because they have poor access to registration facilities. Likewise, older voters and voters with disabilities are often forced to rely on an absentee ballot process that requires up to date registration rolls to effectively administer mail in voting. Young voters and students are frequently left off the rolls because they move often and are unfamiliar with the process.

Many times a voter will do everything right, but because of problems with our antiquated voter registration system, they are disenfranchised through no fault of their own. Kisha H. from Southeast, called Election Protection on November 4, 2008. Kisha reported that despite visiting a social service agency in September and filling out a registration form, she was not on the rolls when she went to her polling place. This was also not the first time Kisha had attempted to register at social service agencies in DC before but she had never made it onto the rolls.

The provisions afforded by Title III will ensure that voters like Kisha will not be turned away from the polling place because of problems with their registrations. It will also greatly expand the opportunities for Washingtonians to participate in our democracy by removing the barrier of restrictive and arbitrary voter registration deadlines that often times can prove insurmountable.
While I am pleased to see Election Day registration in this legislation, there is one section that I urge this committee to provide more detail to during markup. Currently, this legislation would allow any qualified elector to register at his or her polling place on Election Day by presenting a valid driver’s license or identification card issued by the District, a military identification card that shows the voter’s name, or any other document approved by the Board as proper identification. The Lawyers’ Committee and our partners have seen too many states put in place restrictive voter ID laws that do nothing but lead to the disenfranchisement of eligible voters – especially the elderly, young voters, minorities, and low-income voters. While I do not believe that this is the intention of the legislation, leaving ID requirements to the discretion of the D.C. Board of Elections could lead to just that. I encourage this committee to remove that stipulation and instead use the national standards set by Title III of the Help American Vote Act. These standards are currently in place for any D.C. voter who is voting for the first time in a federal election and registered through the mail. Acceptable identifications under this law are:

- any current and valid government-issued photo ID; or
- a copy of a current utility bill, bank statement, government check, or pay check that shows the voter's name and address.

Amending Title III of this legislation to include these standards will ensure that legislation intended to expand access to the franchise does not have the opposite effect.

It is very positive that Section 302 instructs the board to submit a feasibility study on implementing automatic voter registration no later than May 1, 2010. Creating a system of automatic voter registration will remove the burden of our antiquated voter registration system from the backs for District voters and election officials. Adding all eligible voters to the rolls when they turn 18 or become a naturalized citizen will allow our hard working election officials to focus their time and resources on ensuring the smooth administration of elections. Instead, the current inefficient, paper-based system requires election officials to use precious time and resources processing the crush of registrations that are submitted right before the deadline. Additionally, making registrations permanent will allow voters’ registrations to move with them when they move within the District through change of address.

I urge this committee to take this report seriously, and enact legislation that will modernize our city’s voter registration system.

Title IV – Polling Place Workers

Voter registration issues may have been the single biggest problem tracked by Election Protection last year, but problems at the polling place was a close second at 26% of all problems reported. While there are several reasons why a voter may report a problem at the polling place, the single biggest cause of these problems is too few or undertrained poll workers.

Poll workers often have the greatest impact over whether a voter has a good or bad experience. A lack of poll workers leads to long lines, and turned away voters. Also, when poll workers are short staffed, they do not have the time or resources to do the due diligence to ensure a voter is able to cast a ballot that will count. Additionally, when voters do not have the training they need, their performance suffers, and catastrophes can occur. One does not have to look past
news reports from Florida in 2000, Ohio in 2004, and Virginia in 2008 to see what happens when you have under resourced or undertrained poll workers.

Title IV of this legislation will provide much needed help in stemming this problem in the District of Columbia. Eliminating the residency requirement and adding a poll worker check-off to voter registration applications will increase recruitment opportunities, and mandating a minimum of four hours of training and establishing standards to measure poll worker performance will improve the service provided on Election Day.

Title VI – Absentee and Special Ballots

Title VI of this legislation will allow D.C. to join the many jurisdictions across the country that have been increasing opportunities for voters to cast ballots before Election Day. Early voting allows election officials to recognize problems and find solutions in a real election environment before the majority of voters go to the polls. It also allows voters to correct mistakes and provides an opportunity for voters who can’t get to the polls on Election Day to still be part of the process. According to Dr. Michael McDonald, a professor at George Mason University’s Department of Public and International Affairs, approximately 30 percent of all ballots cast in the presidential election of 2008 were cast prior to Election Day¹. Of those approximately 39.7 million ballots, 94 percent were cast in the 34 states with some form of no excuse early voting.²

This early exercise of the franchise alleviated significant stress on the system on Election Day in 2008. States that had Early Voting fared better than those that did not in overcoming some of the most pressing problems of this election season, including inadequate preparation by election officials and poll workers for the increased turnout, malfunctioning machines, shortages of paper ballots, and long lines.

Early voting is not only a part of the solution to the problems that plague our system. It is also a way to increase civic participation – especially among the underserved population. Over one-third of registered voters who do not vote attribute their inaction to being out of town, away from home, too busy, or having conflicting obligations on Election Day. Other Americans complain of transportation problems or inconvenient polling place locations. More of our citizens will vote when we allow them to choose where and when they will vote.

There are two improvements that I urge this committee to make to Title VI during the committee markup. Permitting any duly registered voter to vote by absentee ballot is a great start, but it should be made permanent. Allowing voters to check a box that would make their absentee voting status permanent would increase turnout and decrease the burden of absentee ballot applications on election officials. Additionally, creating a culture where voters vote by mail will reduce the strain on polling places and election officials by reducing the number of ballots cast in person and absentee ballot requests sent through the mail. This is a system that has been met with great success in California, Oregon, and Washington, and was recently enacted in New Jersey.

I also urge this committee to amend Title VI to expand the number of locations where voters can cast absentee ballots in person. As the legislation currently stands, voters can vote absentee at the Board of Elections or any other place designated by the Board. One Judiciary Square is not the most accessible building for all residents of the District of Columbia. It is located downtown and has very limited street parking during business hours. Additionally, voters must present photo ID or be escorted by a DCBOEE staff member and pass through metal detectors and security. This is quite a high threshold to ask Washingtonians to cross just to exercise their civic duty. Also, last year, under restrictive absentee voting requirements, demand for in-person voting was so high that voters had to wait in lines two to three hours long. Loosening the restrictions on absentee voting will only increase demand. I urge this committee to amend the legislation to instruct the Board to designate additional early voting locations that are geographically and physically accessible to all residents of the District.

**Title IX – Miscellaneous Provisions**

There is one last section in the Omnibus Election Reform Act of 2009 that I would like to comment on – Section 903. During the final months of the 2008 general election, the 1-866-OUR-VOTE hotline was inundated with calls from voters who had heard a rumor that they would not be allowed to vote if they wore the paraphernalia of a certain candidate to the polling place. While this rumor brought the issue of passive electioneering into the public discourse for the first time, it is an issue not new to voters across the country. Electioneering laws in many states are quite vague when it comes to the issue of passive electioneering. This often leads to poll workers misinterpreting the law and turning away eligible voters or humiliating them by forcing them to turn t-shirts inside out or change clothing just to exercise their civic right. Section 903 will remove the ambiguity from D.C.’s electioneering laws by clearly stating that passive electioneering should not be prohibited.

I am a proud voter and home owner in the District of Columbia. Through my time working on candidate and issue campaigns in the District I have seen just how important it is to give voice to the most disadvantaged. Working at the Lawyers’ Committee as a leader on voter protection and election reform issues across this nation has shown me just how stifling problems with our election system can be to the principles of democracy. More than anything else, I want to see the ideals of civic participation and the pride in community that is so beautiful in this city spread to its most disadvantaged residents. While the Omnibus Election Reform Act of 2009 is not a magic potion that will solve all our election problems and give D.C. the highest voter turnout in the country, it sure is one gigantic step in the right direction. I urge this committee to amend the Omnibus Election Reform Act of 2009 as I have suggested and forward it to the full Council.

Thank you very much and I look forward to your questions.
Good Morning, Chairperson Cheh and Members of the Committee on Government Operations and Environment. My name is Rokey W. Suleman, II, and I am the Executive Director of the District of Columbia Board of Elections and Ethics (Board). I recently joined the Board from Fairfax County, Virginia, where I served as General Registrar. I was also involved with a top-to-bottom review of Ohio’s election systems during my previous tenure as the Deputy Director of Elections for Trumbull County, Ohio. I am a Certified Elections/Registration Administrator through the Election Center and Auburn University, I have a Masters Degree in Public Administration from the University of Akron, and I have served as an international election monitor in Kazakhstan and Macedonia for the Organization for Security and Cooperation in Europe.

Thank you for the opportunity to appear before you today to comment on Bill 18-345, titled the “Omnibus Election Reform Act of 2009.”

First, I would like to say that the Board of Elections and Ethics appreciates the interest of the District of Columbia Council (Council) and your commitment to our work. We are enthusiastic about the goal of this legislation, which is to modernize the way we run our
elections and assist us in making the District of Columbia a model for the nation. While there are provisions of this bill that we think require some changes and that we may ultimately disagree on, we share the same overall vision for leading the way on innovative practices and ensuring that our office is equipped to perform at a high level and to administer the elections that our voters expect and deserve.

This bill currently contains 28 separate provisions, each impacting the Board. I would like to start off with the provisions that the Board enthusiastically supports. Second, I will discuss provisions of the legislation that will require some changes for us to implement them effectively. Third, I will address provisions that we believe would have severe unintended consequences or that we believe interfere with the independence of the Board as designed and granted by Congress and the Home Rule Act.

We will begin with No-Fault Absentee Ballots. I have testified on behalf of no-fault absentee voting at both the state and national level. I believe that excuse-based absentee voting is a relic of times gone by. Requiring a specific reason to vote absentee might have been valid several years ago. Now our citizens lead busier lives than those in the past. It may be more convenient for a voter to receive their ballot and vote from the comfort of their living room. We should facilitate that process.

The Board welcomes the ability to extend polling location hours under emergency situations at the Board’s discretion.
The Board also welcomes the posting of the precinct results at the location on election night. This step furthers the transparency of an election. The Board does not believe a time frame is a necessary nor particularly enforceable part of the legislation, but is prepared to implement the legislation however passed.

The Board understands the rationale for allowing votes cast by special ballots out-of-precinct count for federal races. The Board will make any administrative changes necessary to ensure these ballots count for federal races and to preserve the secrecy of the ballot to the greatest extent possible.

Several provisions in the bill deal with the subject of poll workers. Poll worker recruitment, training and retention are challenging issues both in the District and nationwide. Our office was already researching options to achieve the goals of this legislation prior to its introduction. We intend to place significant resources to this endeavor whether this legislation exists or not and will do our best to implement them without impacting our general fund budget. Increasing the hours of training and instituting new performance management processes, however, may require extra resources, both in software and personnel.

There are several provisions of the legislation that would require significant resources beyond those currently at the disposal of the Board. Funding for portions of this may be covered under the Help America Vote Act of 2002. We will do our best to implement these changes without impacting our general fund budget and will be aggressive about
maximizing our use of federal funds and seeking grants from foundations and other sources. However, in this economic environment, we will have to be realistic about the resources that the Council can direct toward our office and align our wish list with our budget.

The portion of the legislation requiring, if feasible, a voter verified audit trail is already being investigated by the Board although how and if we replace or retrofit our voting equipment would be dependent upon funding and the most economical solution. There may be situations where sole-source may be the only option.

Additional wording in the legislation refers several times to the standards “set forth in the Help America Vote Act of 2002.” Which standards does the legislation reference? Are they the Mandatory Standards or the Voluntary Standards? If Voluntary, are they the latest standards or the latest for which the equipment is certified? At this time, our current equipment is in compliance with the standards set forth by the EAC and meets all current ADA standards. The language here is too vague and should be discussed further with the Board.

The Board is very supportive of the idea of vote centers and early voting in general. This method of voting is becoming very popular across the country and again I have advocated for this at both the state and national level. However, implementing these provisions cannot occur without incurring significant start-up costs. In Virginia, my jurisdiction had vote centers for absentee voting so I am very familiar with the needs. The Board will
have to seek out suitable locations and determine if there should be a location in each
ward. The length of time and hours these locations are to be open need to be set.

Equipment and procedures will need to be developed to prevent people from voting
twice. A determination as to how to vote in a vote center, either electronic voting or paper
ballots, has to be made and the appropriate equipment needs to be purchased. There will
be a training component involved regarding poll workers and staff. For these and other
reasons, the Board would like to respectfully delay this proposal while a cost-benefit
analysis is developed and presented to the Council. It is only after the fiscal impact of this
legislation is presented that the Council can make a fully informed decision. Again, I am
very supportive of these ideas and the office will eagerly implement them, provided
funding is available.

The Board is currently promulgating regulations to establish ballot auditing standards.
The audit requirements in this legislation are very specific. While a partial recount may
catch glaring discrepancies, it fails to audit our procedures for counting votes in the first
place. An audit needs to account for the fact that errors can and may occur but that the
Board has sufficient safeguards to catch them. An audit should also seek to bring finality
to an election. The Board is currently reviewing audit regulations and believes that any
language in the code must give deference to the Board’s regulatory power on how to
implement audits. We welcome the debate on how to implement meaningful audits and
will work with the Council on how to achieve this.
The Board has already adopted final regulations that allow election observers in the election process, which may make this proposed legislation unnecessary. As a veteran international election observer, I understand the benefits to the transparency of the election process as well as the difficulties that observers may provide election administrators. If the Council should see the need to duplicate our efforts, we would encourage the phrase “and courting centers” be inserted after “polling places” and before “as well as” on page 6, line 10 of the proposed legislation. We also respectfully request that the word “as” be inserted between “answered” and “fully” on page 6, line 11 and the phrase “as possible” be inserted after “cooperatively” on the same line. Such changes would then mirror the Board’s regulations, which were adopted on July 9, 2009.

Election observation can be very difficult in confined spaces. Every effort will be made to accommodate observation but we must also take effort not to encroach on the ability of the workers to do their job. Overcrowded polling locations or tabulation centers may cause workers to make mistakes and we should try to balance the two objectives.

There are several proposals in the legislation where the Board does not believe that a change in the law is necessary but where the Board would not oppose passage. We will just point a number of administrative issues associated so the Council may make an informed decision.

The Board would like to discuss with the Council the concept of allowing citizens from outside the District serve in the capacity of a poll worker. If the rationale is to allow the
many college and university students that live in the District to serve, we are extremely supportive. However, if the goal is to allow any citizen from outside the District to serve, we find that much more problematic. We are concerned about the reasons why a person from outside the District should choose to work here and not in their home community. The Board believes that this idea needs to be vetted further.

Allowing “passive electioneering” inside a polling location is an invitation to future confrontation. Contrary to what some believe, banning the wearing of campaign paraphernalia is not a violation of a person’s right to free speech. Case law in the District and across the country has consistently supported the notion that the state has a right and an obligation to maintain an orderly and safe polling environment and that banning these items is proper. The United States Supreme Court refused to hear an appeal of a case upholding the District’s own law. I do not need to tell the Council that laws are created as reactions to circumstances. Although the specific confrontations that led prior legislatures and councils to ban campaign paraphernalia in polling locations may be lost to history, we can be sure that they will rise again. Elections bring with them the inflamed passions of the electorate and there is a fine line between “passive electioneering” and “active electioneering”. We may go several years before a confrontation arises in a polling location because of comments about a t-shirt or button, but they will happen. We think it prudent to maintain our authority to prevent potential conflict at the polls and that this law not change.
In our view, adjustments to the number of signatures needed for the Advisory Neighborhood Commission (ANC) nominating petitions are not necessary. The proposed legislation would remove the uniform 25 signature requirement for each ANC petition and change it to “no fewer than 25, or 1%, whichever is less.” There is currently only one ANC district that would require 25 signatures under the new provision. The overwhelming majority of ANC candidates have no problem obtaining 25 valid signatures regardless of the size of their district. If we change this law for the very small number of candidates that complain, each ANC district would have to be continually calculated in order to provide the signature number. This opens up the door, however slightly, to errors or misunderstandings from our staff or candidates. Election administrators across the country strive for uniformity in processes. This provision will erode that uniformity.

There are a few proposals that, as currently proposed, the Board is against. Better understanding of what the Council hopes to achieve with these legislative changes may lead to common ground on which to build, so that we may work on avenues for success other than the current language.

Requiring prior election experience or government ethics may limit the pool of talented candidates to serve on future boards. We agree that it is vital to have understanding of election laws and procedures as board members. However, there are other qualities that are also important to overseeing a government agency and this provision may prevent an otherwise highly qualified individual from being appointed. We believe that requiring
continuing education for a board member once appointed to the Board is a better way to achieve this goal.

The Board would like the opportunity to research and study same-day registration of voters. The goal of registering every voter in a way that is as convenient as possible is a shared goal, but it needs to be balanced with the needs of the District to maintain accurate voter registration records and with the ability to plan for an election. The legislation already requires the Board to study the feasibility of implementing automatic voter registration by next May. We should also conduct a feasibility study of same-day registration at the same time, as properly implementing same-day registration will require us to get a better sense of how many voters are eligible so that we can print enough ballots and process their voter registrations in a timely manner, while we are also counting ballots after the election. There are also concerns about fraud, whether legitimate or not, that need to be adequately addressed.

Same-day registration presents many issues in an urban environment that are not realized in the seven states that offer it. In those seven states, only a few cities reach the size of the District and they do not have citizens from two other states surrounding their borders. The states that offer same-day registration have small populations serviced by dozens of election jurisdictions. The populations of these states are stable. The unique geographic nature and mobility of the citizens surrounding the District present challenges that need to be properly vetted before this should become law.
The Board does not understand the provision allowing a 16 year-old to register to vote. We support civic education and researching ways to get youth engaged in the electoral process. However, this well-intentioned law may, in fact, lead to voter disenfranchisement. If a 16 year-old were to register to vote today, they would not be eligible to vote in an election until September, 2012. With such a long time frame between registration and the act of voting a young voter may very well forget that they are registered and re-register. These duplicate registrations will create unnecessary paperwork at crucial times. Also, during the time that a voter is registered yet not able to vote, the voter may move and never update their address. This provision will also needlessly clutter our voter registration systems. A young voter may register at 16, go to college at 18, and register to vote in another state having never voted in the District. If trying to encourage 16 year-old voters to participate in the process is the goal, we should work on other avenues that do not create the extra administrative burden.

Placing the competitive contract provisions into the Code may have severe unintended consequences. The Board understands the concept of the language but strongly feels that it is a matter best suited for contract negotiations. We understand that by placing these provisions in the Code, the Council intends that vendors be forced to comply. We believe the actual result may be that vendors may not want to be forced in to such constraints outside of the scope of a negotiated contract and will choose not to do business with the District. That may place us in the position of having to purchase equipment that no vendor is willing to sell to us.
Regulations, either current or proposed, by the EAC will also render moot the provisions requiring vendors to "promptly and fully disclose any flaw, defect or vulnerability in the voting system." Also, this section is extremely vague and has terms that are not well defined. This may create further reluctance to work with the District.

Secondly, there is a provision in this legislation that would give the Board the ability to have a perpetual license to "modify" software programs. Election systems and software must go through a certification process under the control of the U.S. Election Assistance Commission. Any modification of software would have to be re-certified. If the Board made the modification, I assume the vendor would hold us responsible for paying for recertification, not to say voiding any warranty associated with the software. This places the Board in a disadvantaged position unintended by the legislation. Placing software in escrow is an achievable goal and the Board will work with vendors to place that provision in any future contract.

We believe that the repeal of the "false statements" provision cannot be achieved through Council legislation. Section 1003.6(i) of Title 3 of the District of Columbia Municipal Regulations was enacted by the Board under its independent, rule-making authority. As you know, the Board is an agency created by Congress and one of only five agencies designated in the Home Rule Act with independent authority. D.C. Code §1-1001.06(a) states: "In the performance of its duties, or in matters of procurement the Board shall not be subject to the direction of any nonjudicial officer of the District, except as provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978."
The Board believes in the rule as currently written and has no intention at this time of repealing such rule.

The independent authority granted to the Board by Congress and the Home Rule Act is the heart of our strong objections to the next pieces of the proposed legislation.

We do not understand how the role of an Advisory Committee can be anything but an encroachment upon the purposefully designed, politically independent authority granted the Board by Congress and the Home Rule Act. If the Advisory Committee was truly created to ‘advise’ the Board, what would they advise on? What would occur if the Board disagreed with the ‘advice?’ Who would pay for matters that the Advisory Board was to take up? Would they have ‘advised us’ how to rule on the recent gay marriage issue that came before the Board? The concept of this advisory board is fraught with the potential for political mischief and manipulation.

We also strongly disagree with the numerous requirements within the legislation that compel the Board to produce reports to the Council. We will voluntarily respond to requests from the Council for certain items before and after an election in a timeframe that does not interfere with election preparation or wrap-up. We also welcome the members of the Council to attend our meetings. The Board is a public body that conducts business in public session. We are accountable for our actions and take our roles as guardians of the people’s right to vote very seriously. The Board encourages people to address issues or complaints in our public meetings. We seek to work with the Council to
ensure that the elections in the District are fair, free and without political influence and we appreciate your role in working with us to identify priorities for the office that are consistent with your responsibility for the budget of the District. However, any report that is appropriate for the Council is also appropriate for the voters of the District. We believe the requirement to report specifically to the Council undermines the political independence of the Board.

There are very good pieces in this legislation. We appreciate that all of the concepts behind the entire legislation are meant to see to it that the elections in the District of Columbia are accurate representations of the will of the people. We eagerly await implementation of portions of this legislation. For those portions of the legislation that we disagree on, I would welcome meetings with Council members to seek out our common ground and build a successful framework, upon which the elections of the District of Columbia may be a model for the nation. Thank you for the opportunity to discuss these issues with you today and I will be happy to answer any questions that you may have.
MEMORANDUM

TO: The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi  
Chief Financial Officer

DATE: September 25, 2009


REFERENCE: Bill Number 18-345 – Committee Print Share with OCFO on September 17, 2009

Conclusion

Funds are not sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The costs associated with implementing the proposed legislation can be absorbed by the non-lapsing, non-reverting funds made available to support this legislation\(^1\) in FY 2010, FY 2011, and FY 2012, but not in FY 2013. The estimated negative impact in FY 2013 is $75,800.

Background

The proposed legislation would amend the District of Columbia Election Code of 1955\(^2\) ("Code") to make several changes impacting the Board of Elections and Ethics (BOEE) governance structure, voter qualifications, voter registration, polling place workers, voting machine requirements, absentee and special ballots, election procedures, and post-election audits.

Below is a topic-by-topic summary of the proposed bill:

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\(^1\) The pertinent subtitle of Bill 18-203, “Election Reform Fund Establishment Amendment Act of 2009,” transfers a total of $300,000 in the Fund by redirecting $289,000 of BOEE’s personnel services budget into the Fund for implementing election reform initiatives. Additionally, it would transfer $17,000 from Office of Campaign Finance’s special purpose revenue into “Fund.” The BOEE has noted that the transfer of $289,000 from the BOEE’s personnel services could result in a spending pressure for the agency; however, the full impact of the transfer is not known at this time.

\(^2\) Approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.2)
BOEE Governance:
- Amend the Code to require the BOEE, the Mayor, and the Council to consider an individual’s personal character and expertise in government ethics or in elections laws and procedures. Each Board member would also be required to be a registered voter in the District;
- Require the BOEE to hold regular monthly meetings that are open to the public, unless the members vote to enter into Executive Session;
- Prohibit the BOEE, while in Executive session, from voting, making resolutions or rulings, or taking actions of any kind unless there is a special circumstance that requires doing so;⁢
- Require the BOEE to make the minutes of each meeting available to the public through their website;
- Amend the Code to add the term “election observer” defined as “nonpartisan domestic and international observers, including but not limited to voting rights organizations, and civic organizations;”
- Add a new subsection to the Code requiring the BOEE to issue regulations for granting access to the electoral process, including access to polling places, ballot-tabulation centers, and other similar locations, to observers; and
- Require the BOEE, within 90 days following a general election, to publish on its website an after-action report.

Voter Qualifications:
The proposed legislation would amend the definition of “qualified elector” to mean a person who:
- Is at least 17 years old and who will be 18 years old on or before the next general election, and
- Is not incarcerated for a crime that is a felony in the District.

Voter Registration:
The proposed legislation would amend the Code to:
- Authorize District residents to register to vote in the precinct in which the voter maintains residence at any time except in the 30 day period preceding a scheduled election;
- Require the BOEE to process voter registration applications and registration update notifications by the 23rd day preceding an election;
- Require the BOEE to process faxed postcard applications from persons eligible to vote absentee in federal elections in the District no later than the 30 days prior to the election;
- Allow DC residents to register on Election Day at the polling place in their neighborhood precinct, so long as they can provide proof of residence;
- Require each precinct captain to keep a record of individuals who attempt to register on Election Day but did have proper proof of residence;

⁢ Section 2(c) of the proposed legislation outlines certain circumstances in which the BOEE would be authorized to act in closed-door Executive Session.
• Require the BOEE to publish the list of all those same-day registrants, including those who attempted to register but where unsuccessful;
• Require the BOEE to submit, no later than May 1, 2010, a report indicating the feasibility of implementing voter registration in the District; and
• Designate the Department of Corrections (DOC) and the Department of Youth Rehabilitative Services (DYRS) as “voter registration agencies.”

Polling Place Workers:
• Require polling place workers to be District residents. Current law requires polling place workers to be registered District voters;
• Require polling place workers to complete at least four hours of training, receive BOEE certification, and take and sign an oath of conduct;
• Require the BOEE to establish performance measurement standards for polling place workers;
• Authorize District employees to take paid leave to serve as a polling place workers; and
• Require the Board to provide a field on voter registration forms to allow an applicant to indicate his or her interest in working as a polling place worker in future elections.

Voting Machines:
The proposed legislation would require each voting machine used in a District election occurring after January 1, 2012 to meet the following requirements:
• Meet or exceed voting system standards set forth in the federal Help America Vote Act of 2002;
• Create a voter-verifiable record of all votes cast;
• Be capable of creating, storing, and exporting an anonymous separate machine record of each voter-verifiable record, showing each choice made by the voter; and
• Meet additional standards established by the BOEE.

Additionally, the proposed subtitle would require the BOEE to purchase voting system equipment under a competitively bid contract that met certain conditions as specified in the legislation.

Absentee and Special Ballots:
• Allow any registered voter to vote by absentee ballot for any reason;
• Allow registered voters to cast a vote in a voting precinct that does not serve his or her current address by special ballot, and require the BOEE to count that vote for federal elections and for any District-wide election contests;
• Authorize the BOEE to establish for each primary and general election no fewer than four early voting centers, equitably distributed geographically throughout the District;

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4 A “voter registration agency” means an office designated under D.C. Official Code § 1-1001.07(d)(1) and the National Voter Registration Act of 1993 to perform voter registration activities.
5 District employees that take paid leave to serve as polling place workers on Election Day would not be allowed to collect compensation from the BOEE for their service.
6 The costs associated with purchasing voting system equipment would be paid for with federal funds made available through the Help America Vote Act of 2002.
• Require early voting centers to be open to voters for at least seven days prior to the election;
• Require the Department of Real Estate Services to assist the BOEE in identifying appropriate locations for early voting centers; and
• Require the Office of the Chief Technology Officer to assist the BOEE in ensuring each early voting center maintains a secure network environment with the BOEE’s office.

Election Procedures:
• Require the BOEE to extend polling hours in the event of an emergency; and
• Require the BOEE to post in a visible location a summary count of votes cast at the precinct.

Post-Election Audits
• Require the BOEE to conduct a public manual audit of the voter verifiable records tabulated by the BOEE, and
• Require the BOEE to make the results of the public audit available on its website; and
• Require the BOEE to retain voter-verifiable records for 22 months. Current law required the records be retained for 12 months.

Financial Plan Impact

Funds are sufficient in FY 2010, FY 2011, and FY 2012 to implement the proposed legislation, but funds are not sufficient over the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation.

It is estimated that full implementation of the proposed legislation would cost approximately $124,970 in FY 2010 and $375,800 over the FY 2010 through FY 2013 budget and financial plan. Currently, the BOEE has $300,000 available in their “Election Reform Fund” (“Fund”), a non-lapsing, revolving fund administered by BOEE, to implement the provisions of this legislation. Consequently, the agency can carry over fund balance to cover the costs of the proposed legislation in the following fiscal year. Based on the Office of Chief Financial Officer’s assessment of the costs of the proposed legislation, the allocated funds can cover the implementation costs in FY 2010 through FY 2012. The Fund balance in FY 2013 is not adequate to cover the full cost of implementation, resulting in a negative fiscal impact of $75,800 in FY 2013.

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7 See Footnote 1.
8 The requirement to make voting centers available beyond December 31, 2010 is subject to the inclusion of funds in the budget and financial plan. Additionally, the Council intends to amend the legislation at mark-up to make the no-fault absentee voting provision subject to appropriations starting in FY 2012; to fully implement the legislation in FY 2012 and FY 2013, the Council would need to appropriate funds for FY 2013.
The costs associated with purchasing new voting machines would be paid for with federal funds. Additionally, the DOC and the DYRS designations of "voter registration agency" could be absorbed by each agency with agency resources.


<table>
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<tr>
<th>Uses of Funds</th>
<th>FY 2010</th>
<th>FY 2011</th>
<th>FY 2012</th>
<th>FY 2013</th>
<th>4 Year Total</th>
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<td>$20,020</td>
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<td>($3,450)</td>
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<tr>
<td><strong>Savings in Poll worker Compensation</strong></td>
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<td><strong>Total Costs for BOEE</strong></td>
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<tr>
<td><strong>Total Fiscal Impact</strong></td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ (75,800)</td>
<td>$ (75,800)</td>
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</tbody>
</table>

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8 It is estimated the BOEE would need one additional poll worker per polling location. Poll worker payment for this position is currently $140 per day, and there are 143 precincts in the District. Staffing costs may decrease in future years as the BOEE collects data on the number of people who utilize this process.

9 The proposed legislation would authorize DC employees to take a paid leave of absence to work the polls on Election Day, but they would not be allowed to collect compensation from the BOEE for their service. As a result, the BOEE would realize cost savings since they would no longer be required to compensate these poll workers. The BOEE estimates that approximately 20 poll workers are District employees. It is assumed that in the next election

9 The BOEE has federal funds available through the Help America Vote Act to purchase new voting machines that meet the requirements of the proposed legislation. These funds are also available to pay for some of the costs associated with training poll workers.

10 The designation as a "voter registration agency" would require the DOC and DYRS to conduct certain voter registration activities as mandated by the federal National Voter Registration Act of 1993. These responsibilities include: distribution of mail voter registration application forms; assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance; and acceptance of completed voter registration application forms for transmittal to the appropriate District election official.
30 District employees would volunteer as poll workers; as a result the BOEE would save $115 per District employee. Poll worker compensation can range from $50 to $180 depending on the position.

c It is assumed the BOEE would use the Old Council Chambers located at 441 4th Street, NW as a center for in-person no-fault absentee voting, as was the case in the 2012 presidential election. As a result, BOEE would not incur any facility costs.

d The BOEE would have to purchase 10 computers to process the absentee voters.

e The BOEE estimates that they will need 20 people per day at $10 per hour for 11 hours to process absentee ballots. The agency can absorb the cost of 10 staff people but would need resources to train and staff 10 additional workers.

f It is assumed that their would be a 20 percent increase in absentee ballot requests; and a 10 percent increase every year after.

g The cost estimates for the early voting centers assume that only electronic voting would be offered at these sites, as per the BOEE's current implementation plan. If paper ballot votes were also made available, the cost of implementation would increase significantly. Additionally, it is assumed that early voting centers would be located in government buildings, and therefore the BOEE would not incur any facility costs. However, if the BOEE is required to use non-governmental buildings, there would be facility costs incurred.

h The BOEE would need to purchase 4 computers ($1,000 each) for each voting center. Additionally, all sites would need wiring for live, secure connections.

i Estimate based on one voting center having 8 staff for 11 hours (8:30 am - 7:30 pm) at $10.00 per hour. Each voting center would be open for 7 days prior to the election.

j The staffing costs are based on 15 teams of 3 workers compensated at $10 per hour for 8 hours for 4 days. A team usually consists of 1 reader, 1 reviewer and 1 tabulator.

k Bill 18-203, “Fiscal Year 2010 Budget Support Act of 2009,” sets aside $300,000 in an Election Reform Fund that would be administered by the BOEE and used solely to implement election reform initiatives enacted by the D.C. Council. $289,000 of the $300,000 was redirected from the BOEE’s personnel services budget.