



Moving Forward: Election Reform in the District

Report prepared by the Council Board of Elections and Ethics Investigation
Special Committee

July 15, 2010

Mary M. Cheh, Councilmember, Ward 3, Chairperson
Phil Mendelson, Councilmember, At Large
Harry Thomas, Jr., Councilmember, Ward 5

Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington, DC 20004

I. Introduction

The Special Committee

On September 16, 2008, the Council of the District of Columbia established the Council Board of Elections and Ethics Investigation Special Committee (“Special Committee”) to investigate irregularities in the District’s 2008 Presidential Preference and Primary Elections and to make recommendations for reform of the administration of elections in the District.

As part of its charge, the Special Committee investigated the District’s management of elections; issued two preliminary reports with recommendations; and aided the Committee on Government Operations and the Environment in reforming the District’s elections laws. On November 3, 2009, the Council enacted the Omnibus Election Reform Amendment Act of 2009 (“OERA”),¹ which drew significantly on the preliminary findings and research of the Special Committee’s investigation. In addition, the Special Committee conducted a review of the hardware and software used during the 2008 election to determine the potential cause of the irregularities during the 2008 primary. This report represents the culmination of that effort.²

Acknowledgments

The Special Committee would like to acknowledge the invaluable *pro bono* assistance of Jenner & Block LLP and Hunton & Williams LLP, which provided substantial guidance in the conduct of the investigation and drafting of the Special Committee’s report. In particular, the Special Committee would like to thank Lorelie Masters and her team at Jenner—Kristina Filipovich, Caroline Lopez, Albert Peterson, Damien Specht, and Nicholas Stephanopoulos—and Virginia Albrecht and her team at Hunton—E. Carter Chandler Clements and Aaron Flynn—for their extraordinary effort. In addition, the Special Committee appreciates the guidance from many technical experts, including Aaron Burstein, Steve Checkoway, and Joseph Hall. Finally, the Special Committee is deeply grateful to both Jeremy Epstein and Douglas Jones, who conducted the forensic evaluation of the voting machines.

¹ Omnibus Election Reform Amendment Act of 2009, effective February 4, 2010 (D.C. Law 18-0103) (attached as Appendix C).

² The Special Committee released two preliminary reports—*Restoring Confidence in the District’s Elections* and an *After-Action Report for the November 2008 General Election* (attached as Appendices B and C, respectively)—which are incorporated and attached to this final report. Those reports contained factual findings and made policy recommendations, such as the adoption of post-election audits, and they will not be repeated in this final report.

II. The Board of Elections and Ethics

The Board of Elections and Ethics (“Board”) is an independent, quasi-judicial body with jurisdiction over the management of the District’s elections and the interpretation, application, and enforcement of the District’s campaign-finance, conflict-of-interest, and lobbying laws. It is composed of three members, one of whom serves as a Chairman, selected by the Mayor, and each member serves a three-year term. Moreover, under the applicable law, “no more than 2 [members] shall be of the same political party.”³ Although a stipend is available to Board members, the practice has been that they receive no compensation for their service.

Among the Board’s most important responsibilities is the oversight of the District’s elections. As an independent agency, the Board selects an Executive Director and General Counsel, who are responsible for administering special, primary, and general elections. The Board is responsible for approving contracts related to elections administration (including voting systems technology), certifying candidates and election results, and litigating matters before the District of Columbia Court of Appeals. The Board also reviews actions of the Office of Campaign Finance, a subordinate agency, which enforces the District’s campaign-finance and conflict-of-interest laws and has responsibility over District lobbyist rules.

Over the course of its investigation, the Special Committee determined that the Board’s governance structure required reform. The Board’s management of elections has been historically problematic, and the Board suffered from years of neglect due to a lack of significant oversight. As an initial matter, the Special Committee learned that, because Board members serve as volunteers and generally lack significant elections experience, there is a reluctance to make any significant changes to the practices and procedures of the election laws. In addition, the members rely heavily on staff to make high-level policy decisions.⁴ Finally, as has been discussed in earlier reports of the Special Committee, over time, the Board has had an unfortunate record of lack of transparency and candor.

To address these concerns, the Special Committee identified three areas for reform in the Board’s governance structure: (1) establishing minimum qualifications for Board members; (2) requiring open meetings; and (3) expanding the number of Board members from three to five members. As part of the OERA, the Council adopted

³ D.C. Code § 1-1001.03(a).

⁴ In 2003, for instance, the District of Columbia Office of Inspector General found that the Board provided “ineffective” oversight of the BOEE and the Office of Campaign Finance. D.C. Office of Inspector General, *Report of Investigation Concerning Inadequate Oversight and Misconduct at the District of Columbia Board of Elections and Ethics and the Office of Campaign Finance*, OIG No. 2002-0252 (May 22, 2003).

