

y 4
.D 63/1

1014

93/4
D 63/1
E 2/2

E1 2/2 AMENDING THE DISTRICT OF COLUMBIA ELECTION LAW

GOVERNMENT

Storage

DOCUMENTS

JAN 11 1974

THE LIBRARY HEARINGS
KANSAS STATE UNIVERSITY BEFORE THE

SUBCOMMITTEE ON THE JUDICIARY

OF THE

COMMITTEE ON

THE DISTRICT OF COLUMBIA

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 6713

TO AMEND THE ELECTION LAW FOR THE
DISTRICT OF COLUMBIA

MAY 10, 1973



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1973

95-659

KSU LIBRARIES

A11900 971487

COMMITTEE ON THE DISTRICT OF COLUMBIA

CHARLES C. DIGGS, Jr., Michigan, *Chairman*

DONALD M. FRASER, Minnesota
W. S. (BILL) STUCKEY, Jr., Georgia
RONALD V. DELLUMS, California
THOMAS M. REES, California
BROCK ADAMS, Washington
WALTER E. FAUNTROY,
District of Columbia
JAMES J. HOWARD, New Jersey
JAMES R. MANN, South Carolina
ROMANO L. MAZZOLI, Kentucky
LES ASPIN, Wisconsin
CHARLES B. RANGEL, New York
JOHN BRECKINRIDGE, Kentucky
FORTNEY H. (PETE) STARK, California

ANCHER NELSEN, Minnesota
WILLIAM H. HARSHA, Ohio
JOEL T. BROYHILL, Virginia
GILBERT GUDE, Maryland
HENRY P. SMITH III, New York
EARL F. LANDGREBE, Indiana
STEWART B. MCKINNEY, Connecticut
STEVEN D. SYMMS, Idaho
WILLIAM M. KETCHUM, California
GENE TAYLOR, Missouri
E. G. SHUSTER, Pennsylvania

DOROTHY E. QUARKER, *Chief of Staff*

ROBERT B. WASHINGTON, Jr., *Chief Counsel*

JOHN E. HOGAN, *Minority Counsel*

SUBCOMMITTEE ON THE JUDICIARY

WALTER E. FAUNTROY, District of Columbia, *Chairman*

THOMAS M. REES, California
JAMES R. MANN, South Carolina
CHARLES B. RANGEL, New York
JOHN BRECKINRIDGE, Kentucky

HENRY P. SMITH III, New York
WILLIAM H. HARSHA, Ohio
WILLIAM M. KETCHUM, California
E. G. SHUSTER, Pennsylvania

(II)



CONTENTS

H.R. 6713-----	Page 1
Analysis of State election laws-----	4

STATEMENTS

Barry, Marion, president, District of Columbia Board of Education-----	16
Harris, Charles W., chief, Government and Research Division, memorandum to Congressman Fauntroy, dated April 5, 1973-----	3
Lucy, William, chairman, District of Columbia Democratic central committee, accompanied by Mary Orchin, member, District of Columbia Democratic central committee-----	22
Pendleton, Edmund, Jr., chairman, District of Columbia Republican committee-----	31
Perkins, Norval, executive secretary, District of Columbia Board of Elections, accompanied by Charles B. Fisher, chairman; Robert E. Martin, member; and J. E. Bindeman, member-----	8
Wood, Anton, accompanied by Lawrence Kamins, District of Columbia Statehood Party-----	35

COMMUNICATIONS

Perkins, Norval E., executive secretary, District of Columbia Board of Elections, letter to Harley Daniels, counsel, House Judiciary Subcommittee, dated May 17, 1973-----	16
--	----

SECRET

1. The purpose of this document is to provide information regarding the status of the project and the progress of the work. The information is being provided for your information and for your use in the future.

2. The project is currently in the planning stage. The work is being done in a systematic manner and the results are being reported to you as they become available.

3. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

4. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

5. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

6. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

7. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

8. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

9. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

10. The project is being carried out in accordance with the plan and the schedule. The work is being done in a systematic manner and the results are being reported to you as they become available.

TO AMEND THE ELECTION LAW FOR THE DISTRICT OF COLUMBIA

THURSDAY, MAY 10, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON JUDICIARY,
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 1310, Longworth House Office Building, the Honorable Walter E. Fauntroy, Chairman of the Subcommittee, presiding.

Present: Representatives Fauntroy (presiding), and Smith.

Also present: Harley Daniels, Subcommittee Counsel; and John Hogan, Minority Counsel.

Mr. FAUNTROY. I have convened this meeting of the Judiciary Subcommittee today for the purpose of hearing testimony on H.R. 6713. This bill would amend the District of Columbia Election Act in several significant ways. I introduced the bill at the request of the District of Columbia Board of Elections.

[The bill follows:]

[H.R. 6713, 93d Cong., 1st sess.]

A BILL To amend the District of Columbia Election Act regarding the times for filing certain petitions, regulating the primary election for Delegate from the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the District of Columbia Election Act (D.C. Code, secs. 1-1101—1-1115) is amended as follows:

(1) Clause (A) of paragraph (2) of section 2 of such Act (D.C. Code, sec. 1-1102) is amended to read as follows: "(A) who resides or is domiciled in the District and who does not claim voting residence or right to vote in any State or territory;"

(2) Paragraph (1) of subsection (b) of section 5 of such Act (D.C. Code, sec. 1-1105) is amended by striking out "after the first Monday".

(3) Paragraph (2) and (3) of subsection (b) of section 5 of such Act (D.C. Code, sec. 1-1105) are each amended by striking out "forty-five" wherever it appears and inserting in lieu thereof "sixty".

(4) Section 5 of such Act (D.C. Code, sec. 1-1105) is amended by inserting at the end of that section the following:

"(f) Notwithstanding the provisions of the fourth paragraph under the section headed 'Militia' of the Act of July 7, 1898 (relating to appropriations) (D.C. Code, sec. 1-215), the Board may accept volunteer services for the purposes of voter education and registration."

(5) Clause (C) of paragraph (1) of subsection (a) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended by striking out "forty-fifth" and inserting in lieu thereof "sixtieth".

(6) Subsection (f) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended by striking out "5 per centum" and inserting in lieu thereof "1 per centum", and

by inserting at the end of that subsection the following: "The Board shall by regulation specify such additional details as may be necessary and proper to effectuate the purpose of this subsection."

(7) Subsection (h) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended by striking out "or party runoff".

(8) Subsection (i) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended (A) by striking out "forty-fifth" and inserting in lieu thereof "sixtieth", and (B) by striking out "ninety-ninth", "ninety-ninth", and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth", "one hundred fourteenth", and "eighty-fifth", respectively.

(9) Paragraph (1) of subsection (j) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended (a) by striking out in clause (A) "forty-fifth", and inserting in lieu thereof "sixtieth", and (B) by striking out "ninety-ninth", "ninety-ninth", and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth", "one hundred fourteenth", and "eighty-fifth", respectively.

(10) Subsection (k) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended by striking out "or party runoff".

(11) Subsection (o) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended (A) by striking out in clause (A) "forty-fifth", and by inserting in lieu thereof "sixtieth", and (B) by striking out "ninety-ninth" and "seventieth", respectively, and by inserting in lieu thereof "one hundred-fourteenth" and "eighty-fifth", respectively.

(12) Paragraph (1) of subsection (p) of section 8 of such Act (D.C. Code, sec. 1-1108) is amended by striking out "forty-second day before the date of the election" and by inserting in lieu thereof "third day after the filing deadline for nominating petitions".

(13) Subsection (e) of section 9 of such Act (D.C. Code, sec. 1-1109) is amended by striking out "seven" and by inserting in lieu thereof "ten".

(14) Subsection (g) of section 9 of such Act (D.C. Code, sec. 1-1109) is amended by striking out "or party runoff".

(15) Paragraph (1) of subsection (a) of section 10 of such Act (D.C. Code, sec. 1-1110) is amended by striking out "after the first Monday".

(16) Paragraph (3) of subsection (a) of section 10 of such Act (D.C. Code, sec. 1-1110) is amended by striking out "the first Tuesday in May of each even-numbered year;" and inserting in lieu thereof "the first Tuesday in May of each Presidential election year, and on the second Tuesday in September in each even-numbered non-Presidential election year;"

(17) Subsection (b) section 10 of such Act (D.C. Code, sec. 1-1110) is amended by striking out "8 o'clock antemeridian" and by inserting in lieu thereof "7 o'clock antemeridian".

(18) Paragraph (4) of subsection (a) of section 10 of such Act (D.C. Code, sec. 1-1110) is repealed.

SEC. 2. The amendments made by this Act shall take effect on and after the date of enactment of this Act.

We have been holding elections here in the District of Columbia for over 15 years now, beginning with party primaries and later expanding to the Board of Education and the delegate races. Even so, we are still relatively new to the elections and the formation of election law is evolutionary, resulting from trial and error and the new experiences from every election.

We probably will never have a perfect election law, but still every effort should be made to make it as fair and effective as we possibly can.

It is for that reason that this hearing has been called and is being held today.

At the onset of the hearing, and without objection, I will insert into the record a study prepared for this subcommittee relating to practices of other States with respect to run-off elections.

[The document above referred to follows:]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., April 15, 1973.

To: The Honorable Walter Fauntroy.
Attn: Harley Daniels.

From: Charles W. Harris, Chief, Government and General Research Division
(Research by David C. Huckabee).

Subject: Fifty-state analysis of primary and general elections laws to determine which states provides for a run-off election in the event that none of the candidates receive fifty percent of the vote.

In accordance with your request and our subsequent telephone conversation, we examined the laws of the fifty States and the District of Columbia to determine which State laws provide for run-off elections in primary and general elections in the event that none of the candidates receive fifty percent or more of the vote cast.

Of the jurisdictions examined, only the District of Columbia and the State of Georgia provide for run-off elections in the general election. In the District, a run-off election is required to be held in any general election for the office of Delegate, when "no one candidate receives at least forty per centum of the total vote cast for that office."¹

Georgia, however, requires a run-off election if no candidate for Congress receives a majority of the votes cast in the general election.²

Twelve of the States (including the District of Columbia) provide for run-off elections in the event certain criteria are not met in the first primary. Of those twelve, nine States require a run-off if no candidate receives a majority in the first primary, and three States (including the District) require run-offs under different circumstances. Detailed descriptions of these individual State run-off provisions, and citations to the State and District codes, are contained in the attached tables.

We trust that this material will meet your needs in this matter. Please do not hesitate to call upon us if we may further assist you.

¹ Run-off elections shall be held for the office of Delegate whenever no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates for that office. Any such run-off election shall be held not less than two weeks nor more than six weeks after the date on which the Board has determined the results of the preceding general election. *D.C. Code Ann.* (1970-71 Supp. 1-1110(4) (B)).

² No candidate shall be nominated for public office in any primary or elected to public office in any election unless such a candidate shall have received a majority of the votes cast. In instances where no candidate receives a majority of the votes cast, a run-off primary or election, between the candidates receiving the two highest number of votes, shall be held on the 21st day after the day of holding the preceding primary or election. *Ga. Code Ann.* 1970. (34-1513, as amended; No. 543, 1971 Session Laws).

ANALYSIS OF STATE ELECTION LAWS—LAWS REGULATING PRIMARY ELECTIONS

[Provisions for runoff elections in congressional election contests]

State or Jurisdiction	Primary	Runoff	Provisions in individual State laws governing runoff primaries in congressional election contests
Alabama ¹	1st Tuesday in May in even-numbered years.	4th Tuesday after the 1st primary	Runoff primary held if no candidate has a majority. Alabama Code title 17, sec. 340.
Alaska	4th Tuesday in August in even-numbered years.	None	
Arizona	8th Tuesday prior to general election	do	
Arkansas	Preferential—2 weeks prior to general primary.	General primary 2d Tuesday in June preceding general election.	If a preferential primary candidate receives majority of votes cast such person will be declared the party nominee. Arkansas (act 347, sec. 4, laws 1971). If no candidate receives a majority of votes cast then the names of the 2 candidates who receive the highest number of votes shall be printed on the ballot at the general primary (runoff) election. Arkansas (act 347, sec. 4, laws 1971).
California	1st Tuesday after the 1st Monday in June.	None	
Colorado ²	2d Tuesday in September in even-numbered years.	None	
Connecticut ³	The 8th Wednesday following the close of the State convention of each party. If primaries of the 2 largest parties fall on the same day, the primary of the largest (based on last gubernatorial vote) shall be held on the 9th Wednesday.	do	
Delaware ⁴	1st Saturday following the 1st Monday in September in election years.	do	
Florida	1st Tuesday on 6th day or later in September.	3d Tuesday after 1st primary	Runoff primary held if no candidate has a majority. Florida Statute Annotated, (1971-72 supplemental 103.101 as amended, ch. 236, laws of 1971).
Georgia	2d Tuesday in August of even-numbered years.	21 days after regular primary	Runoff primary held if no candidate has a majority. Georgia Code Annotated 1970 (sec. 4-1513 as amended No. 943, 1971 session laws).
Hawaii	1st Saturday in October in even-numbered years.	None	
Idaho	On the Tuesday after the 1st Monday of August of 1972 and every 2 years thereafter.	do	
Illinois	3d Tuesday in March	do	
Indiana	1st Tuesday after 1st Monday in May	do	
Iowa	1st Tuesday after the 1st Monday in June in even-numbered years.	do	
Kansas	1st Tuesday in August of even-numbered years.	do	
Kentucky	1st Tuesday after the 4th Monday in May	do	
Louisiana	2d Saturday following 1st Monday in August in year in which a U.S. Senator is to be elected.	6 weeks after the first primary	Runoff primary held if no candidate has a majority. Louisiana Revised Statutes 1950, 1969 (secs. 18:281, 18:239).

Maine.....	3d Monday of June of each general election year.	None.....	Runoff primary held if no candidate has a majority. Mississippi Code Annotated (1971 supplemental 3 11, 3194).
Maine.....	2d Tuesday after the 1st Monday in September except on the 3d Tuesday in May in a Presidential election year.	do.....	
Massachusetts.....	7th Tuesday preceding biennial State elections.	do.....	
Michigan.....	Tuesday after 1st Monday in August preceding general November election at which a U.S. Senator is to be elected.	do.....	
Minnesota.....	1st Tuesday after 2d Monday in September in general election years.	do.....	
Mississippi.....	1st Tuesday in June preceding general election at which a U.S. Senator or Congressman are to be elected.	3 weeks thereafter.....	
Missouri.....	1st Tuesday after the 1st Monday in August of even-numbered years.	After proclamation by Governor.....	
Montana.....	1st Tuesday of June preceding the general election.	None.....	
Nebraska.....	1st Tuesday after 2d Monday in May in even-numbered years.	do.....	
Nevada.....	1st Tuesday in September in general election years.	do.....	
New Hampshire.....	2d Tuesday in September before November general election.	do.....	
New Jersey.....	1st Tuesday after the 1st Monday in June.	do.....	
New Mexico.....	1st Tuesday in June of each even-numbered year.	do.....	
New York.....	3d Tuesday in June.	do.....	
North Carolina.....	1st Saturday in May in general election year.	4 weeks after the first primary.....	In case no candidate receives a majority, or in case of tie between 2 candidates or more, a 2d primary shall be held 4 weeks after the first primary, North Carolina General Statute 1964, (1971 session laws examined), sec. 163-111(e).
North Dakota.....	1st Tuesday in September in general election years.	None.....	
Ohio.....	1st Tuesday after 1st Monday in May of each general election year.	do.....	
Oklahoma.....	4th Tuesday in August in even-numbered years.	3d Tuesday in September.....	
Oregon.....	4th Tuesday in May in even-numbered years.	None.....	If no candidate receives a majority of the votes cast, a 2d (runoff) primary shall be held on the 3d Tuesday in September. Oklahoma Statutes Annotated title 26, 1971-72 (supplemental secs. 113, 345.11).

See footnotes at end of table.

ANALYSIS OF STATE ELECTION LAWS—LAWS REGULATING PRIMARY ELECTIONS—Continued

[Provisions for runoff elections in congressional election contests]

State or jurisdiction	Primary	Runoff	Provisions in individual State laws governing runoff primaries in congressional election contests
Pennsylvania.....	3d Tuesday in May in even-numbered years, except in Presidential election years, when it shall be held on the 4th Tuesday in April	do	
Rhode Island.....	2d Tuesday after the 1st Monday in September of 1962 and in each even-numbered year thereafter	do	
South Carolina ¹	2d Tuesday in June in general election year	Each 2 weeks, successively, thereafter	If no candidate receives a majority in the 1st primary, a 2d shall be held and if there is a tie a 3d, each 2 weeks successively, thereafter, South Carolina Code Annotated (Wichie) (1971 supplemental secs. 23-396, 23-397).
South Dakota ⁴	1st Tuesday in June in even-numbered years	None	
Tennessee.....	1st Tuesday in August in even-numbered years	20 to 30 days after the State primary board has canvassed returns.	In case of a tie a 2d primary shall be held from 20 to 30 days after the State primary board has canvassed returns. Tennessee Code Annotated, 1955 (1971 replacement volume) (sec. 2-821).
Texas.....	1st Saturday in May in 1960 and every 2 years thereafter.	1st Saturday in June.	If no candidate receives a majority at the 1st primary, a 2d primary shall be held on the 1st Saturday in June, at which only the 2 candidates receiving the highest votes at the 1st primary shall be voted for. If no candidate received a majority in the 1st primary and there was a tie between the 2d and 3d highest candidates they shall cast lots to determine who shall appear on the ballot at the 2d primary. Texas Election Code Annotated (Vernon's) (art. 13, 03).
Utah ²	2d Tuesday in September	None	
Vermont.....	2d Tuesday of September in even-numbered years	do	
Virginia ¹⁰	2d Tuesday in June in next preceding general election	do	
Washington.....	3d Tuesday in September in general election years	do	

West Virginia	2d Tuesday in May in 1964 and each 2d year thereafter.	do	
Wisconsin	2d Tuesday of September in even-numbered years.	do	
Wyoming	1st Tuesday after 3d Monday in August in election years.	do	
District of Columbia	1st Wednesday in May of each even-numbered year.		Not less than 2 weeks and not more than 6 weeks after date Board of Election has determined the result of the preceding primary election.

Run-off elections shall be held whenever (A) in any primary election of a political party for candidates for the office of Delegate, no 1 candidate receives at least 40 percentum of the total votes cast in that election for all candidates of that party for that office. District of Columbia Code Annual 1970-71 supplemental sec. 1-1110(4)(a).

^a If no person at a preprimary State convention, other than the party-endorsed candidate, has received at least 20 percent of the convention vote, or if no candidacy for nomination by a political party has been filed by, or on behalf of, a person other than the party-endorsed candidate, no primary shall be held for such office, and the convention-endorsed candidate shall be deemed the nominee of such party. Conn. Stat. Ann. 1958 and 1971-72 supplement chapter §9-416b.

* All persons receiving 35 percent of the eligible votes cast on the final polled vote in the State primary nominating convention shall be certified as being eligible to run in a primary. Del. Code Ann., Tit. 15, (1970 Cum. Supp., § 3116). If, however, a certified candidate does not notify the State election commissioner of his desire to call a primary no later than 12 o'clock noon on the 5th day following the convention vote, the candidate who received the largest number of votes in the State nominating convention will become the party nominee and no primary will be held. (Supp., § 3107 (1)).

⁵ Candidates can be nominated to run in the primary either by the State preprimary party convention or by obtaining signatures of at least 10,000 qualified voters of this party, not more than 1,500 of which from 1 county. Candidates who received at least 20 percent of the vote on any ballot for nomination for such office at the party preprimary convention shall be required to have nomination papers signed by at least 2,500 voters, not more than 500 of who shall be from any one county, Mass. Gen. Laws Ann. 1971 (Supp. §§ 44, 45).

⁴ Candidates for statewide offices are designated by the State central committees, Election Law (McKinney's) § 971-72, supplemental, sec. 131.20(b)(1). Anyone receiving 25 percent of the votes of a central committee may require that a primary be held (supplemental, sec. 131.2(b)(2)). Primaries may also be required by candidates who secure the signatures of 20,000 or 5 percent of the enrolled party voters within the State (supplemental, sec. 136.5).

⁷ Candidates may be nominated at State party conventions only if three-fourths of the total membership of such a convention votes to do so. South Carolina Code annotated (Michie) (1971 supplement, sec. 23-264).

⁸ In case no candidate receives 35 percent of the votes of his party for U.S. Senator, the State convention shall from the 2 candidates who received the highest number of votes in the primary, select the party nominee. South Carolina Code annotated (secs. 12-5-20, 12-6-51).

⁹ A State primary convention is held prior to the primary to nominate candidates to run in the primary. Utah Code Annotated (1976 supplemental, sec. 20-4-3). The 2 nominees receiving the highest number of votes shall be selected to run for each office except that in the event that 1 candidate receives 70 percent or more of the votes cast where only 1 office is to be filled, he shall become the party's candidate in the general election without the necessity of running in the primary. (Supplemental, sec. 20-4-9).

¹⁰ Each party shall have the power to provide whether a party nomination shall be made by direct primary or by some other method. Virginia Code Annotated 1971 cumulative supplemental (Michie) sec. 24-1-171, 24-1-172. No party which has adopted the plan of making nominations for office by direct primary shall have the power to nominate by convention any candidate to be voted for at any particular primary. 1971 cumulative supplemental, sec. 24-1-173.

Mr. FAUNTROY. We will now give attention to our scheduled witnesses and it is my privilege to hear now a panel from the District of Columbia Board of Elections; its executive secretary Mr. Norval Perkins; its chairman, Mr. Charles B. Fisher and its other member, Mr. Robert E. Martin and Mr. J. E. Bindeman.

**STATEMENT OF NORVAL PERKINS, EXECUTIVE SECRETARY,
D.C. BOARD OF ELECTIONS, ACCOMPANIED BY CHARLES B.
FISHER, CHAIRMAN; ROBERT E. MARTIN, MEMBER; AND
J. E. BINDEMAN, MEMBER**

Mr. FISHER. Mr. Chairman, I am Charles B. Fisher, Chairman of the Board of Elections. With me are Robert Martin, member of the Board of Elections, and Norval Perkins, Executive Secretary of the Board. We appreciate this opportunity to participate in your consideration of the revision of the election laws of the District of Columbia.

The Board of Elections supports the provisions of H.R. 6713, the bill introduced by Mr. Fauntroy at the request of the Board of Elections. These recommended amendments are primarily technical in nature and are designed to help the Board more adequately perform its functions, particularly those related to processing nominating petitions.

Changing filing deadlines and related dates for nominating petitions

The bill provides for the moving back of all filing deadlines and related dates by 15 days. Thus, all filing deadlines will be changed from 45 days before the election to 60 days before the election. The Board is asking that all filing deadlines be moved from 45 days to 60 days before the election in order to insure sufficient time for the staff to complete necessary work, such as the validation of petition signatures, processing of absentee ballot requests, printing of absentee and sample ballots, etc., and to avoid down-to-the-wire court cases which seriously delay the necessary functioning of the Board of Elections in preparing for elections. In every election the Board has been involved in one or more court cases resulting from either challenges to nominating petitions or other lawsuits to which the Board has been a party. This litigation has consumed so much time that often it has been very difficult for the Board to meet deadlines required by congressional statute.

In addition to recommending that filing deadlines for nominating petitions be set back 15 days, the Board is also requesting that the dates when petitions may be made available and when petitions may first be filed also be moved back by 15 days in order to maintain the same timetable and to provide candidates the same amount of time to circulate petitions and to gather signatures. These changes, therefore, are in the interest of all—candidates, the public, and the Board.

Definition of a qualified elector

The Board recommends that the statutory definition of a qualified elector be changed to eliminate the present 90-day residency requirement for voting. This change is necessary in order to bring the law into conformity with the Supreme Court's decision in *Dunn v. Blumstein* on March 21, 1972, in which the Court declared durational resi-

gency requirements unconstitutional except for a very brief period of time to permit election officials to process the registration rolls in preparation for the coming election.

Exemption of board from prohibition against volunteers

The Board is asking that it be exempted from the provision of the D.C. Code which prohibits the government of the District of Columbia from accepting personal services without compensation. The Board has many opportunities to utilize the personal services of volunteers in connection with voter registration drives and nonpartisan voter education efforts, and wishes to be free of cumbersome constraints in appropriately stimulating citizen participation in the electoral process.

Reduction of signature requirement for third party candidates for President

The Board further recommends that the signature requirement for third party candidates for President be reduced from five per cent of the registered voters to one per cent. Requiring the signatures of five per cent of the registered voters on the nominating petitions of minor party candidates for President places unreasonable burdens upon both potential candidates and the Board of Elections. Not only is it very difficult for candidates to gather such a large number of valid signatures, out in the event of a challenge, it is also difficult for the Board to validate the signatures within the time allowed. In response to challenges to candidates' petitions, the Board has had to examine tens of thousands of signatures in order to determine whether the persons were registered and whether the signatures were valid. This imposes an extremely heavy burden upon the Board, disrupting its work schedule, and making it most difficult at times to complete the tasks required by law.

Moreover, 42 states in 1968 required third parties to obtain the signatures of only one per cent or less of the electorate in order to appear on the Presidential ballot. This suggests that a one per cent requirement is quite adequate. In order to bring the signature requirement in the District of Columbia into line with those of the overwhelming majority of the states, therefore, the Board recommends that the signature requirement for third party candidates for President be reduced to one per cent of the registered voters.

Rule-making authority for presidential elections

The Board is asking that specific language be included in the statute to allow the Board to make necessary regulations governing the preparation and presentation of nominating petitions for third party candidates for President. General rule-making authority is granted to the Board in subsections dealing with the preparation and presentation of nominating petitions for other elections, but is not specifically included in the subsections dealing with third party candidates for President. This authority should be made explicit for the preparation and presentation of nominating petitions for third party candidates for President also. Otherwise the Board's authority in routine administrative matters is subject to question and to legal challenge—the result of which would discommode the election timetable.

Elimination of runoff

The Board further recommends that the provisions in the law for a runoff election after the primary election for Delegate and after the general election for Delegate be eliminated. Only ten states in the entire country have a runoff after the primary election for House of Representatives, and only one state has a runoff after the general election for the House of Representatives. In addition, a runoff election costs about \$50,000. As presently written, the law provides for a Delegate runoff in each fiscal year. Thus if we eliminate the runoff, we would have a potential savings of \$50,000 per fiscal year.

Timetable for challenged ballots

Further the Board is requesting that the period of time provided to rule on the validity of challenged ballots be extended from seven days to ten days. The present timetable of seven days does not provide the Board staff with sufficient time to handle the large work load of challenged ballots such as often occurs in an election with a large turnout.

Delegate primary in September in nonpresidential years

In addition, the Board recommends that if the political parties are in agreement, the Delegate primary be moved from May to September in nonpresidential years. A shorter period of time between the primary and the general election for Delegate would prevent a loss of interest in the election on the part of the voters. In addition, a more compact election schedule would allow the Board to store supplies at the precincts for the short period of time between the elections rather than moving them out and then moving them all back in again.

We emphasize that the amendment in H.R. 6713 should read "the second Tuesday after the first Monday in September" in order to prevent the election from falling on the day after Labor Day.

Opening the polls at 7 A.M.

The Board is asking that the polls be opened on Election Day at 7:00 A.M. rather than at 8:00 A.M. Opening the polls an hour earlier will provide greater opportunity for voting early in the day by persons whose work day begins at an early hour. Since many offices and jobs in the District begin work as early as 7:30 a.m. or 7:45 a.m., there are many people who cannot get to the polls at 8:00 a.m. If more people can be encouraged to vote early in the day, they will be less inclined to put it off or forget about it as the pressure of daily routine increases. This would also help to prevent the formation of lines of voters later in the day.

Technical amendments

Three amendments recommended are purely technical in nature, designed to resolve inconsistencies or contradiction in the language of the statute. Two of them relate to the scheduling of the presidential preference primary and the local party elections. The amendments provide that they be held on the same day as the Delegate primary.

The other technical amendment refers to the beginning of the 10-day challenge period following the filing of nominating petitions.

Mr. Chairman, we would be glad to entertain or respond on any questions you would like us to.

Mr. FAUNTROY. Thank you so much, Mr. Fisher, for a very clear and a lucid presentation of the bill which you would like to see this committee pass.

I have several questions. The first has to do with the signature requirements. I have noted in your proposal that we don't have any changes in that regard, and we did last year consider implementing a few changes.

Is it your judgment, your considered judgment, that requirements now are too high or too low or are they just right?

Mr. FISHER. No, I would say that they are too high. I think it really doesn't prove too much from my point of view, really, as to how many persons a citizen can get on a petition. I think that tends to keep people out of the electoral system, and I don't know that they should be as high as they are now. I think they should be lowered.

Mr. FAUNTROY. I would hope that you would submit to us any suggestions that you may have in that regard because we might just as well include that kind of consideration in the legislation we have anyway.

Mr. FISHER. Right.

Mr. FAUNTROY. Dr. Martin?

Mr. MARTIN. Mr. Chairman, may I add in this connection that, as you know, the main purposes of signature requirements is, one, to see that the candidate has some kind of substantial support in the community. Now how many that takes is an open question, but certainly it often is felt that present requirements go beyond the necessary number. Secondly, signature requirements is expected to discourage capricious candidates but our experience is it really doesn't because if a person really wants to get that publicity and so forth, he will find a way to get those signatures and then the legitimate candidate, particularly those without substantial incomes for the kind of assistance that is often required to get these signatures, faces great difficulty. And the whole situation lends itself towards padding and soliciting signatures, more carelessly and without the kind of restraint that would prevent valid signatures from persons who are really registered.

We think there should be some reductions in the signature requirements.

Mr. FISHER. We would be glad to submit to you the proper language of our recommendations. We will do it pronto.

Mr. FAUNTROY. We will be pleased to receive that.

In this regard, also, are you satisfied with your ability to check on the validity of signatures under the present law?

Mr. FISHER. Well, the numbers, we get into the numbers of signatures on the petitions and the numbers of challenges on various petitions.

It could become a task that the Board could not do properly if there are too many to become involved with. In other words, we have had experiences in the past that we don't choose to go through again with regard to checking signatures.

We have taken the position on the Board that the impetus for the challenge must come from the voters, and except in very blatant cases, of course, where we can just by intuitiveness know that there are signatures that certainly are not valid, well, for the most part the impetus

for the challenge comes from the voters and if there are no challenges, and there are no real blatant petitions of invalid signatures, then the Board does not check each signature or each petition.

Mr. FAUNTROY. I wondered, finally, for my purposes, if you wouldn't reiterate and elaborate your reasons for suggesting the elimination of the runoff in our primary and general elections here?

Mr. FISHER. I would like for Dr. Martin to respond.

Mr. MARTIN. Yes, one thing of course is we have looked at other systems to see how that has compared with ours and we found this is most unusual. Our experience with primaries, with runoffs, has been that there is a tendency for very small numbers of people to turn out so they do not give any more substantiation of the preferences of the electorate than from that originally made, unless there were so many candidates that the vote was fragmented to the point that nobody got any real sizable vote from the public, so it seems to me except in that kind of case—and I might add, that has not usually been the case; we have not had that kind of situation here—that the primary would not serve any purpose other than to consume time and added expense.

Mr. FAUNTROY. Dr. Martin, you have indicated that you have studied this question. I wonder if you would state for the record your background in this area?

Mr. MARTIN. Yes, Mr. Chairman. I am a political scientist. I have been involved in studying the electoral process for a quarter of a century having prepared myself for this as well as the formal academic process provides by going through the usual degree-seeking efforts and securing three degrees in the American politics. So this is a continuing matter of concern to me in my regular work.

My full time position is Professor of Political Science at Howard University and in my continuing research efforts I am looking towards publication.

Mr. FAUNTROY. Thank you.

Mr. Smith?

Mr. SMITH. Gentlemen and ladies, thank you for coming this morning.

Dr. Martin, I was just looking at this in the proposed bill that is the proposals for eliminating runoff elections. I haven't made a study of this and I am not sure whether this might not be a good idea in the primary election, but I serve on the Judiciary Committee and last year we were engaged in an exercise of hearings and markups for a direct Presidential election. As you may remember, the final consensus of the Judiciary Committee was that in the final election there should be a runoff election in case no candidate were to receive 40%. The reasoning behind that was that if there should happen to be in this country, which is not traditional but which could be possible, a fractionating of parties, you might have the plurality of votes where the winner of the election was elected—depending on how far you fractionated it—with 22% or 15% or something like that, which is hardly possible, but it may be.

So we did include a runoff election for the President in the event of direct elections, in the event that would happen. For that reason, because of that consideration, it brought up a lot of unanswered questions, and questions that the committee preferred not to look at such as a court challenge in a Presidential election, a legal challenge in each

one of our election districts in the country, we may have 15,000 or 22,000, well whatever it may be, so that had the possibility of stringing out the actual decision of who the winners were to a period beyond the inauguration time of a new President. So this is one of the problems.

Anyway, I am wondering if the same reasoning about having a runoff election, not necessarily in the primary, but in the final election for delegate, might not be a good requirement?

Mr. MARTIN. Yes, may I also add, Mr. Smith, and Mr. Chairman, in the studies that I have made of this, we found that where the primaries are of such crucial importance, where it is really tantamount to an election because of the absence of a strong second majority party, this is where the tendency has been to have a primary—I mean a runoff, after the primary. But in areas where you have relatively strong two-party competition, it has not been found to be necessary and we would hope that this community would become increasingly a situation in which there was a viable two-party system.

I should also mention to you, sir, that if the election schedule has changed, is changed, as we have requested by moving it up to September, this would just about prohibit a runoff.

Mr. SMITH. A primary runoff?

Mr. MARTIN. Yes, because of the fact that the November election would be so close upon us. So I think these two matters must be considered by the committee in relation to each other in terms of impact which one has upon another as you make the decision.

Mr. SMITH. For instance, the present registration is about seven to one Democrat to Republican in the District, so that here there would theoretically be the reasons existing which have caused the sort of one-party States to have runoffs in the primaries.

I wonder, Mr. Fauntroy, what would you think about primary runoffs in the District of Columbia? Do you feel it is necessary or not?

Mr. FAUNTROY. It is difficult for me to say. When this problem came up, I had as the chairman of this committee tried to look at it from my own personal point of view and I can't see how it could either aid or detract from my own situation.

I was persuaded by the agreement for tightening up the primary general election that not only from the point of view of expenses across the board but also from the expense to all candidates.

Mr. SMITH. I have to say from my own experience I think anything we can do to bring a primary election closer to the final election would be good. The closer we could get to the Canadian system, for example, or the British system, where they have maybe 6 weeks to campaign for the election, I think would be all to the good. I don't know just how it fits into our political system, but I think it is certainly something we ought to think about.

Mr. FAUNTROY. We have not been forced to hold primary or general election runoffs in the delegate race—and in the foreseeable future I don't anticipate that situation—but another argument which the Board has persuaded me about is that runoffs can work a hardship upon the candidate with limited resources.

I mean, you knock yourself out to win an election and because you may not be as strong financially as another candidate—and I have had that experience—mounting a runoff might really inundate many candidates.

Mr. MARTIN. May I add one other thing? Now that we have elections every year in the District of Columbia rather than the old situation where we had them only once in 4 years, I think we have to consider burdening the electorate as a possible problem, too. Experience seems to suggest in many parts of the country that an overburdened electorate, in terms of frequency of calling them to the polls, often results in a decline in interest and declining participation. And I think the concept of frequent use of runoffs might well contribute to that. And yet I could understand that the statute might provide for some reasonable minimum below which would trigger a runoff, but it seems to us in view of the circumstances rather a heavy load on the electorate.

You know, we had a situation in which a runoff election was held—and this is in the School Board election—so that a candidate in the runoff secured a far smaller part of the vote, the total vote, than the other candidate, the losing candidate, had received in the original election.

Mr. FAUNTROY. Would the gentleman yield for just one question in that relation?

The studies that we have had done for us suggested that some of the 51 States—that rather, in all of the 50 States——

Mr. MARTIN. We may become 51.

Mr. FAUNTROY. Only 12 have any form of runoff, and that only two have runoffs in general elections. Against the background of your own study, what has been the reason for the elimination of the runoff concept in congressional elections in the vast majority of the States?

Mr. MARTIN. I think it has been in large part because of considerations we have made here, that participation falls off, I mean burdening candidates is a very real problem, and the results upon analysis of the runoff elections have not seemed to suggest that they were really worth the time, effort and expense that went into them.

Mr. SMITH. Well, Mr. Fisher, in regard to the proposal that voting places shall be opened at 7 a.m. instead of 8 a.m., do you have any estimate of what the official cost of that additional hour would be?

Mr. FISHER. Yes, we have estimated the cost would be approximately \$5,000.

Mr. SMITH. That would be a total annual cost?

Mr. FISHER. A total annual cost for each election.

Mr. SMITH. For the whole District of Columbia?

Mr. FISHER. Right.

Mr. SMITH. In my own State of New York, the polls to the general election open at 6 a.m. in the morning, of course, and I generally favor an early opening to take care of people on the way to work so I think it is a very good idea.

I have no further questions, Mr. Chairman.

Mr. FAUNTROY. Counsel?

Mr. DANIELS. Mr. Fisher, I see from H.R. 6713 that the Board of Education election coming up in November is affected by this legislation. It is also clear that the time deadlines in existing law would be changed by this legislation. Is there any reason, or are there any time factors, that this subcommittee or the full committee ought to deal with in considering this legislation that would cause us to act promptly?

Mr. FISHER. As you know, Norval Perkins is our executive secretary for the Board of Elections.

Mr. PERKINS. The petitions would normally be available under the present act July 30, and we would like for them to be available July 15 under the new schedule that we propose. So that means that some promptness, I guess, would have to be asked in consideration of this bill. And it does turn out that challenges turn up quite often in a School Board election. We shall have quite a few candidates, I am certain.

Mr. FAUNTROY. Now, in that regard, what date are you suggesting you would like to have the tools in hand to have this?

Mr. PERKINS. Inasmuch as it is July 15 that we are talking about and if we have to promulgate any regulations as a result of it, we should have 30 days before that. So that is saying June 15, if you follow that.

Mr. MARTIN. Mr. Chairman, if you can't do it within that rather tight schedule, there is a procedure by which we could take advantage of an emergency situation and avoid the 30-day wait, and I think since these recommendations are in the interest of all concerned that it would not be to the disadvantage of anyone using the emergency route, and I think it would not be objectionable to anyone. And I think also we would want to say that we would, even if you find you can't do anything for this election, we still have those others up the road, so we would hope that you would continue and look into this.

Mr. SMITH. Dr. Martin—I meant Mr. Perkins, were you saying that in regard to School Board elections, if this law were to go speedily through, you would have to have the petition ready by July 15, is that right?

Mr. PERKINS. That is right.

Mr. DANIELS. Mr. Fisher, H.R. 6713, as you proposed it, would give the Board specific rule-making authority with respect to third-party presidential candidates, in the District of Columbia. As you were presenting your testimony, I was looking at the existing District of Columbia Election Act, specifically at section 1-1105(d) which, as I read it, would seem to give the Board generally rule-making power with respect to all matters given to it under the District of Columbia Election Act. Is it your judgment that the grant authority in that section is not as broad as I may be reading it, but much narrower relating only to a Presidential primary?

Mr. FISHER. It has been challenged of course, in the courts, and we feel that it could be made more explicit, and of course that would have to come from the Congress.

Mr. DANIELS. Well, wouldn't the remedy then be perhaps to amend this section to make it clear that the general rule-making authority is intended to apply to the entire act rather than as we move along giving you specific rule-making authority with respect to individual responsibilities given you under the act?

Mr. FISHER. I think that would be appropriate, fine.

Mr. DANIELS. Finally, Mr. Fisher, under the rules of the House, the committee, assuming that the bill is reported on favorably, must supply in its report a cost estimate of legislation that it is presenting to the House of Representatives. We don't have a cost estimate in front

of us at the present time. So would you review the act and get to us as quickly as you can, a cost estimate of the various changes proposed by H.R. 6713? It may be under a certain set of circumstances that in fact there will be a cost reduction, but could you get us a cost estimate?

Mr. FISHER. Yes.

Mr. DANIELS. So we will have that for the record?

Mr. FISHER. Yes.

Mr. DANIELS. We will need that in writing.

Mr. FISHER. Yes.

[The information requested follows:]

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
BOARD OF ELECTIONS,
Washington, D.C., May 17, 1973.

Mr. HARLEY DANIELS,
Counsel, Judiciary Subcommittee, Cannon House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR Mr. DANIELS: In response to your request for a cost estimate for H.R. 6713, the Board has estimated that it would cost \$5,000 more per election to open the polls at 7:00 A.M. rather than at 8:00 A.M. There are no other provisions which would result in an increase in expenditures. On the other hand, a runoff election costs about \$50,000. As presently written, the law provides for a Delegate runoff in each fiscal year. Thus, if we eliminate the runoff, we would have a potential savings of \$50,000 per fiscal year.

In addition, the Board proposes the following language for amending section 5(d): Subsection (d) of section 5 of such Act (D.C. Code, sec. 1-1105) is amended by striking out "chapter" and by inserting in lieu thereof "Act".

We appreciate your assistance in amending the Election Act.

Sincerely,

NORVAL E. PERKINS,
Executive Secretary.

Mr. FAUNTROY. Well, thank you gentlemen. I certainly appreciate your appearance.

Our next witness is Mr. Marion Barry, President, D.C. Board of Education.

**STATEMENT OF MARION BARRY, PRESIDENT, D.C. BOARD OF
EDUCATION**

Mr. BARRY. Mr. Chairman and members of the committee. I am Marion Barry, Jr., President of the Board of Education. I would like to comment briefly on proposed changes in the election law that are now before you, that should be changed.

Your proposed changes in the hours of voting is a good one. The 7 a.m. opening of the polls will enable a significant number of persons who work to vote. Secondly, I am in support of a change in the 45-day period between time of filing and time of election to 60 days. Thirdly, I am in favor of moving the dates of the primary election for the delegate from May to September during non-presidential election years. Fourthly, I am favor of eliminating the 40% requirement in the party primaries. However, I am strongly opposed to the elimination of the 40% requirement in the general election. If we were to use a plurality as a basis of election it is certainly possible for a person to be elected as a non-voting delegate with between 25% and 30% of the votes. In fact it is possible, if seven or eight strong candidates are running, that a person could be elected with 20% of the vote, which means that our

non-voting delegate would represent the entire city, even though only 20% of the people voting elected the person. This process could lead to a demeaning of the office. As we all know the delegate does not vote on the House floor and the only source of power would be his or her individual personality, and a large community base. In some instances, as we know, our present delegate is ignored by some Congressmen. However, part of his strength is the fact that the Congressmen know that over 58% of those voting in the last election is supportive of our representative. This would not be the case if our representative was elected to office by a plurality, rather than at least 40% of the vote. Therefore, I would reiterate my strong opposition. I would urge the Committee to delete this section from the bill.

Finally, Mr. Chairman, as you know there is a long wait between the time that a person is elected to the Board of Education and the time he or she takes office. If one were to run in the November 7 election and win, it would be the third Monday in January before he or she took office. As you know the 11 members of the Board are elected in staggered terms with six members being elected at one time and five at another time. Obviously six persons (which make up a majority of the Board) could be defeated. Between the time of their defeat and their actual removal from the Board all kinds of negative things could happen that would affect the education of our children. Therefore, I would urge the committee to look at a way of either shortening the term of office of the present candidates by 2½ months in order that a person could take their seat immediately upon certification by the Board of Election, or move the election up to the point where the results would be certifiable by the third Monday in January. In my view this is a very serious problem and a serious concern of mine and several other members of the Board of Education. Therefore I would urge the committee to add language that would correct the present situation.

This ends my testimony, Mr. Chairman. Thank you very much.

Mr. FAUNTROY. Thank you, Mr. Barry. You made two very important points, and I just want to clarify them for my own thinking.

You would be in favor of eliminating the runoff requirement for the primary, but not for the general election, is that what I understood you to have said?

Mr. BARRY. Yes, it seems to me that there are at least four established parties in the District and the primaries is basically an internal affair. If they want to run 10 people and do it on a plurality, that is their business.

It seems to me the general election, which is a final test about whether you come to the Congress or don't come, you should have at least 40 percent.

I am concerned with this situation because if the District eliminates the policy and some of the other changes that have been suggested take place, you could have seven or eight people running. And if they are strong candidates, the vote would be fairly evenly divided and you would have someone coming to Congress with about 20 percent of the votes. I understand in a number of States, the general election figure is a simple plurality, but quite frankly I think that is what accounts for some of our problems in Congress because we don't have as strong a candidate as you would have had if they had to win with 40 percent.

So, particularly in the District of Columbia, I think that ruling ought to be the case where they would need 40 percent.

I indicated in my testimony part of your strength is your constituents. In Washington, D.C., as you know, we are without representational government and so we must rely on the number of people who support us.

I happen to believe that in this case.

Mr. FAUNTROY. Your second recommendation for change is one that you didn't tie down as firmly, but of the two alternatives you suggest which in your considered judgment would be the one you would like to see included in the law?

Mr. BARRY. The reason I couldn't tie it down as firmly is I think you might have a problem in the sense that the term of office of the president of the Board was spelled out before he ran and once he is in office, he is supposed to serve a 4-year term. The question is how do you interdict that system somewhere and shorten it so that those who are running—and maybe it can't happen in 1975 so maybe you must do it in terms of those who are running in the Fall—but I wasn't as specific on that because I don't have all of the answers as to how to tighten this up.

The easiest way probably would be to move the election up except that during the Presidential years—no, I am sorry, we are not affected by the Presidency because it is an odd year situation, but there is a good possibility that if we get the right to vote, there may be some elections that would combine with that office. So maybe the easiest and most immediate thing to do would be to move the election up for that period except you have the problem that it moves it into the winter. I think that lessens your possibility of getting out and getting in contact with people. So it is really a serious problem—I just don't have the answers as firmly as I want to. I want to give it to you to try to work out some possible language to solve this problem.

Mr. FAUNTROY. I wonder if I might ask Dr. Martin to come up to the table for a minute and share with Mr. Barry these questions.

Dr. Martin, what is the rationale for the gap between the election and certification and the actual assumption of the functions of the office as relates to schools?

Mr. MARTIN. I'm afraid I am not in a position to speak with any authority on that point. I have never followed that type of election very carefully. There have been so many other regulations that have consumed most of my time, I just don't know.

I am really not in a position to comment on that with any feeling of certainty.

Mr. SMITH. Would the gentleman yield? Without being a student of it myself, my best guess would be that it probably allows a reasonable amount of time for challenges to the election by one party or the other.

Mr. FAUNTROY. With respect to Mr. Barry's suggestions that the terms in the law be adjusted to bridge the gap, to close the gap slightly, are you aware of any elections where people understand they serve not on a specific date but on an election, that is very often as a case in point on the appointment process for the District Council Members, they serve a specific time or until their successor is appointed.

Mr. MARTIN. I have some knowledge that might be helpful there. I know in the case of some community elections in which I have pro-

vided the personnel for conducting the election, they have a plan by which they provide orientation for the newly elected members for some months prior to their becoming full-fledged members of the board. They go through some formal programs and training and they bring them into some sessions that the board holds between the time of the election and the time that they are to assume their duties. That has been the most important purpose in this connection that I have come across.

Of course, I suppose that in the case of the community elections, where frequently the people selected are not expected to have had much experience, that in this kind of situation the feeling of a need to have these people be more adequately prepared to perform their functions would be an important consideration.

I have a feeling that this may well be true in the case of some of the official long standing boards of education, too, but I have not come across literature specifically stating so.

Mr. BARRY. Mr. Chairman, let me give you a specific problem I know something personally about. In 1971 when the last School Board Election was held, six persons were elected. At that particular time, the then Board of Education had not passed the Board of Education budget for fiscal 1973.

Now, in December or November that budget was late. It should have gotten passed no later than August, so it would have been submitted to the Mayor and the City Council. As a result when I came on the Board of Education, we had no official budget for fiscal 1973, which means that once the four new people got on joined with the two others who were returning, it took us a month—and this was like March before we passed the budget, and as a result it could have been a bind in the sense that we discovered we really needed \$5 million more than the District had suggested and that the Board of Education was considering, so we passed a \$152 million budget and we got \$145.5 million. Those are the kinds of problems created because those persons who were not returning unfortunately didn't seem interested enough to pass on the budget in time and get it in. So there was a gap of almost 3 or 4 months. That is just one example.

The other problem is that on the Board of Education it takes six out of 11 to make a majority. If the meeting only has about eight people there or nine people, that is five people, that means that these candidates really could mandate some things on the school system that would be unfortunate during the period they are there. Now, hopefully reasonable people won't do that, but some people are not always reasonable and you don't want to take a chance on that.

So that is my point. It is not a training situation or a learning process, but it is a process of how do you stop people from making official decisions in a situation like that. Unlike the Congress of the United States where all of the members are elected, it is very unlikely that a majority at any one setting would be defeated. It is very unlikely that 218 people would be defeated and so that the 218 that are there waiting until January 1 would do some dangerous things. You have checks and balances. You have the Senate. You have the President of the United States who can veto a particular bill. But you don't have those checks and balances on the Board of Education at all. I mean, the Board of Education is vested with the full authority for

the control of public education, which means that anything those members are doing, the majority is all right unless it is challenged in the courts or unless the superintendent refuses to carry it out, which means that ostensibly six people could get together, as they did in Houston, Tex., and fire the superintendent between the time they were defeated and the time the new people were coming on. That means that when six new people came on, when the five came on, you wouldn't just have a superintendent. Those are the things that could really happen when you don't have checks and balances. I am just concerned we don't get into that kind of bind.

It happened in Houston where the lame duck fired the superintendent and the new board came on and they hired him back because he hadn't gotten a job in the 2 months, but in this situation we can't afford that.

Also, the Board of Education is vested with the authority of passing on personnel matters above a TSA-8 and above, which includes the principal up to the superintendent, the superintendent has to arrange with the Board written recommendations regarding personnel. Now, a lame duck board could deny the appointment of very important positions the superintendent recommends which means the school system would be somewhat crippled if the superintendent wanted a person and they said we are not going to let you hire him.

So those are the kinds of problems we have.

Mr. FAUNTROY. I personally want to thank you for bringing that kind of problem to our attention.

I have just one question before I yield to my distinguished colleague, and that is are the School Board members elected for 4 years? Do they have a 4-year term?

Mr. BARRY. That is what the act says presently, yes.

Mr. FAUNTROY. What would your view be on the principle of recall?

Mr. BARRY. Well, the concept I have no problem with. The specifics, though, I would sort of like to look at. I am for recall, but I am opposed to recall just for frivolous kinds of things where you are constantly battling for your election rather than battling for education.

It seems to me that after a reasonable period of time, say 2 years of service with a reasonable amount of signatures of those who are registered to vote, I would have no problem with it. I don't want to get caught up into an everyday hassle where your decisions are based upon political direction rather than what you believe in as an educator, but I believe in the concept. I think that 4 years is a long time for a person to serve and, when we get into that, there are some other provisions of that act I would like to look at because there are no provisions for instance for a person who is ill. A person could be ill for 2 or 3 years, and unless he or she on their own resigned, there is no provision in the act that empowers the Board of Education to remove that person from office.

He could only be removed from office himself by death or resignation. I can't do that. That is another problem we are going to look at, not as a part of this bill necessarily but maybe as a part of another bill.

I think the School Board Act of 1968 should be looked into for a number of things, including salary and other things in there.

Mr. MARTIN. May I make a brief comment on this matter of recall as a political scientist? This is one of the decisions that grew out of

the strong movement to further democratize the political process in the late nineteenth century. Experience has indicated that although many jurisdictions have the provisions for recall in their local election processes, it is very rarely used. However, many people have concluded that its presence there is its main purpose as a constant reminder that it is there and can be treated if the need be, but it is very rarely used.

Mr. FAUNTROY. I recall, however, on a visit to Flint, Mich., when I visited Michigan University and to my amazement the whole school board had been recalled about the busing issue.

Mr. MARTIN. Yes.

Mr. FAUNTROY. So it does happen sometimes.

Mr. MARTIN. Oh, yes.

Mr. SMITH. Thank you for your testimony, Mr. Barry. I think perhaps we ought to give some consideration to school elections, and perhaps now that the act has been enforced for well, what is it, 3 or 4 years?

Mr. BARRY. About 5 years, now.

Mr. SMITH. Is it 5 years?

Well, we perhaps ought to look at it and see how it is looking and whether it could be made better. I would like to suggest to you that when you have some time, you might give us your thoughts about, oh, several things having to do with an elected school board. You have indicated some of them this morning, for instance, you might instead of having a six and five you might have 3-3-3-and two or something like that, which would reduce the problem that you brought up of a majority of the Board going off and not being there or a defeated majority being there to contravene the wishes of the people during the gap period.

In my home State we have in New York State an elected school board that is elected in May. They were just elected last week. That is all over the State of New York and is prescribed by the State Education Law. The members run on a nonpartisan basis. I guess they do here too?

Mr. BARRY. Yes.

Mr. SMITH. And run again with staggered terms. This is a possibility. They take office in the First of July and the division between those who are running and those who are not is not as great. For instance, in my State there was one place on a board of five, I think it is.

So that the purpose of having the election of course in May is to take it out of the November sweep of politics and so forth as much as possible.

Well, this is another thing that might be looked at, and I think if during the course of your tenure, if you would give this some thought, and let us have your thoughts, it might be very useful to the cause of education in the District.

I guess I don't have any more questions, Mr. Chairman.

Mr. FAUNTROY. Thank you. Counsel?

Mr. DANIELS. Just one question. Mr. Barry, in earlier testimony the Board recommended that signature requirements be reviewed and perhaps lowered. As I understand it for Board of Education Elections, the requirement is 200 signatures for ward races, and for at-large

raises the requirement is 1,000 signatures. Do you believe that those requirements should be changed at this time?

Mr. BARRY. I haven't given a great deal of thought to that. I know that it is kind of difficult. As I understand it the 1,000 signature requirement has been changed somewhat already where you can get them from anywhere you want to get them. In the past you had to get 125 from each ward.

I don't have any problem of filing signatures myself with these 200 or 1,000 registered votes. I think that serious candidates ought to stand some test and shouldn't the test be that the citizen would have to look at 30 names on a ballot and try to figure out what is going on. I think the Board of Education work is so serious that we ought to attract serious people and it shouldn't be politicized in the sense that if you want to run, you run, or if you don't want to run, you won't run. I don't have any problems with filing signatures. I am glad to see, as I understand it the fee has been dropped from \$100 to nothing which is good because it allows a person without money to at least qualify. It doesn't take a lot of money to get signatures of course. It takes people to do that.

So I don't really have any problem with the 1,000 requirement as it is now, particularly since you can get them in any of the eight wards you want to.

I do think though, that in terms of the signatures, that the Board of Election—and I am not sure they don't do that now, but one of the difficulties that a candidate has is verifying whether or not the people are registered to vote. I am not sure that the Board of Elections supplies candidates a place where you can sit down with the computer run and go through it. Now they may do that.

Mr. FISHER. We do that.

Mr. BARRY. Oh, you do? I said I didn't know whether you did or not.

I made the statement because sometimes we have campaign workers who are working 11 or 12 o'clock at night. That is when they work. They might not be able to get in there during the day, and so maybe it ought to be open on a 24-hour basis for a certain period where your workers could go down there and you could let them go through it. I mean, those things cost something like \$700 or something like that and most people can't afford that.

But I don't have any problems with signatures.

Mr. FAUNTROY. Minority Counsel?

Mr. HOGAN. No, I have no questions.

Mr. FAUNTROY. Thank you, Mr. Barry.

We move on to Mr. William Lucy.

STATEMENT OF WILLIAM LUCY, CHAIRMAN, DISTRICT OF COLUMBIA DEMOCRATIC CENTRAL COMMITTEE, ACCOMPANIED BY MARY ORCHIN, MEMBER, DISTRICT OF COLUMBIA DEMOCRATIC CENTRAL COMMITTEE

Mr. LUCY. My name is William Lucy and I am chairman of the District of Columbia Democratic Central Committee. With me this morning is Mrs. Orchin who is a member of that committee and a member of the executive committee of the Central Committee itself.

We are very appreciative of the opportunity to state our views on proposed changes in the election laws that would affect the committee.

We were listening to the testimony of the Board of Education as well as the Board of Elections this morning and substantially we are in agreement with many of the things that have been said. We would like to, in support of some of the conclusions we have reached, just sort of review a little bit of history and make just a couple of analyses with reference to other countries.

Our country has recently emerged from a widely publicized Presidential campaign with unprecedented exposure in the press, on the radio and television should have developed wide-spread voting on election day. Unfortunately, less than 55% of the eligible American citizens cast a vote.

It is clear that we are failing in our responsibility if full and active participation of citizens in the voting process is not developed. Coupled with this responsibility must be a revision of our election and registration procedures so as to neither inhibit nor intimidate the rights of all citizens to participate in the election process. I am sort of heartened by the action in the Senate yesterday which moved closer, I think, to a more reasonable system of registration, which would not put the kind of cumbersome inhibitions on the procedures we have normally had, not just nationally but sectionally in terms of the country itself.

I think too often election and registration procedures have been used to intentionally limit participation; to exclude the poor, the black, the brown and citizens with limited education in our society.

The record of other western countries shows how dismally we are performing. At the same time as our Presidential election, Willy Brandt led his coalition of German Social Democrats and Free Democrats to victory and over 91% of the voters went to the polls in that country, which I think is a rather remarkable showing. Great Britain, in 1970, in that election for instance, witnessed a 72% participation. In countries such as Norway, in their 1969 election they showed an 82.5% participation. Canada followed in 1968 with 75.5%. All of this far surpasses the record of the United States' turn-out of an average of 61% turn-out in our elections.

The present dilemma has not always been the case. Before a registration system was adopted, our country ranked among the highest in the world's democracies. More than eight out of ten eligible Americans voted in 1876 before the States adopted the complicated registration systems they have. By the time all the States adopted registration systems in 1924, less than half of the citizens were participating in the electoral process. With the adoption of our present registration system, one-third of our eligible citizens stopped voting, which I think is sort of a remarkable achievement, if you want to call it that.

Richard Scammon, who is one of the leading national authorities on voting behavior, correctly points out "very few countries require the voter to go down and get registered by going to the city hall or the county courthouse or some temporary place."

England compiles an annual registration list on a visitation basis while Canada sends registrars house to house 6 weeks before the election itself. This results in a live register with approximately 98%

of the potential recorded. No Presidential election of the past three decades has reached a 65% turnout. Even those that seem to spark genuine interest, like the Kennedy-Nixon race of 1960 and the Humphrey-Nixon-Wallace contest of 1968. Rarely, in nonpresidential year elections does voter performance exceed 50% and I think this is sort of tragic in the sense that our entire democracy is based upon full participation.

However, I think the key reason for the low voter turnout is primarily due to archaic and restrictive laws in many States and communities that load the dice against a citizen registering and voting.

After studying the problem in 1969, George Gallup stated "it is not the lack of interest but rather the residency and other registration qualifications that prove to be the greatest barrier to wider participation in our Nation."

Therefore, some of the items in the proposed legislation would, we feel, significantly enhance a voter participation. The elimination of your traditional residency requirements, visitor requirements, in light of recent Supreme Court decisions, and their previous use as a restrictive mechanism is something to be applauded by our committee.

The persistent charge that this may lead to widespread fraud is simply unfounded and I think the few areas where this has been changed sort of points up this. Both in North Dakota, which does not have registration, and Texas, which allows citizens to fill out registration coupons placed in local newspapers, that has not led to any fraud whatever. As long as the elector does not claim voting residency or the right to vote in any State or territory as is outlined in the bill there should be no hesitation for supporting this item.

The provision to allow volunteer services for voter registration and education is also a very positive move and we certainly support this action. I think this can lead us closer to the kind of other systems that exist in California and other areas where we would enlarge the numbers who are really eligible to participate. This could lead to the development of a visitation system similar to the one established in Canada or in Great Britain.

The move of the filing date from 45 days to 60 days before the election will also allow for smoother campaigns we feel. If challenged petitions arise, the new time limit will allow ample opportunity for the Board of Elections to fully investigate and review the charges. Also it will allow the public additional time to more carefully scrutinize the views of the candidates. I think the District, in moving to more political offices, certainly should have the opportunity of being allowed all adequate time in which to put their programs across to the District. The provisions to open the polls earlier and to have a September delegate primary in non-presidential years are also supported by the Central Committee. I think a very valid point was made by Mr. Fisher of the Board of Elections who indicated that here in the District a substantial number of employees have work schedules that begin right about the time the polls open and I think there would certainly be an added incentive if the polls were open at a time that would give the voter a chance to vote before he goes to work.

The amendment that raises the most question is the anticipated elimination of the runoff. Even though 40 States do not have any runoff and only Georgia provides for a system similar to the District, it is

our belief that the runoff system must be intensely studied before any action is taken. Many correctly state that no elected official can rightfully claim that they have a mandate to govern when they receive less than 40% of the vote.

There is obviously a trend in municipal jurisdictions for the establishment of runoff elections, and cities such as New York, Los Angeles, and Oakland have such systems. The other side also correctly can be argued, that with the possibility of four campaigns, the financially well-healed candidate will tend to have an overwhelming advantage. It is clear that both sides have valid points and that the runoff must be explored further and must obviously be tied to some limitation on campaign expenditures.

The concern of the committee is not that the elimination of the runoff is a good or bad move. We are concerned obviously that the possibility of four campaigns certainly weighs heavily on candidates who may have limitations in their ability to raise funds, and certainly it raises a question with a substantial number of candidates for a particular race that one could possibly win with less than a clear mandate from the people. We think on balance it is probably a good move and a positive move to move away from the runoff system, but I think we ought to have some kind of built-in protection for the ability of ordinary candidates to compete. We are not saying that the control on expenditures really deals with the theory of runoff. We are simply saying that given the two things, we ought to provide some kind of control that a potential candidate may have the opportunity to raise funds to campaign on and yet is not faced with a second campaign right afterwards. I would also want to point out that in the bill where we talk about the reduction of required signatures from I think it is 5 percent to 1 percent, we think it is a very positive move.

I would certainly want to emphasize the fact that we believe that the Board of Elections itself should assume a positive role in making sure that the signatures that are submitted are valid signatures. I don't think it is a reasonable position for the Board to wait until a petition is challenged and then review it because what it says then is that the system itself is potentially corrupt and only through action by the citizens do they become motivated to move.

I think that the process itself would have a degree more of integrity if the average voter knew that the Board of Elections would automatically review for validity of the signatures that were submitted on any petition.

Mr. Chairman, in summary, with the exception of the one recommendation that the committee is making terms of an additional study on this question of runoff, I believe we are essentially supporting the position of the Board of Elections and I would support the submission of the bill by the Congressman's office. We are hoping that the committee can be of any service in reviewing these matters.

Mr. FAUNTROY. Thank you so very much, Mr. Lucy. Your testimony was very clear and sharp in the positions that you have taken in support of what I think are the objectives of the bill.

I wonder if you would care, not as a function of the committee, because you have said you have taken no position, but Mr. Barry has suggested that perhaps a compromise might be the elimination of the runoffs in the primaries, but keeping it for the general elections, so as

to assure that at least the person who represents the entire city has a fixed percentage to reach.

Mr. LUCY. I think as just sort of a top-of-the-head thing, without really giving it much thought, I would think that may well be a workable solution. My concern is that viable candidates have an opportunity to campaign on the issues and to put their program before the voters of the District. I am leery of a situation where, for instance, a newly created office may spark 15 or 20 candidates and then the voting situation would be spread so thin that just a plurality may well be in the neighborhood of 25 percent. I don't have the background or the knowledge to know what system ought to be devised to protect the voters from this situation or to insure that we will get the most viable candidates.

If a study, for instance, indicates that Mr. Barry's proposal may well be the best system we could find, we would be obviously in support of it. On the other side of the coin, I could not say that elimination of the runoff is not a good proposal. I think it may well be, but I don't see the machinery to protect the concern upon this score that we have, and I think looking at some of the other elections that have taken place in some other cities and States where simply candidates have filed with no program whatsoever, and in some situations where the candidates have won, well, that is the real fear that I have.

Mr. FAUNTROY. Thank you.

Mr. Smith?

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Lucy, I think I have to agree with you that registration procedures should be made easier as we go along. The danger of doing away with registration, of course, is vote fraud which is a reason that should be considered.

In my own State of New York we used to have required personal registration every year, which got to be a terrific burden, of course. Good voting groups, like Junior Chamber of Commerce and Voting Rights people and everybody else, had to get out there and have a big campaign for registration. The State finally won a permanent personal registration. You register once and then you remain registered, and unless you miss two general elections in a row, then you have to go back and register. So, if you vote at least every other time, you stay generally registered.

I think we are all tending to move towards making these registration procedures easier, which is always good.

I am interested in your comment on the percentage of voting. I would question a little bit the implication from your statement that before our registration system was adopted, our country ranked among the highest of the world's democracies in voting with more than 8 out of 10 eligible voters voting in 1876. My guess would be—and I don't know for sure about this—but to be eligible you would have to own property and have certain money in the bank and all of this sort of thing, so that the amount of people involved was very small, so that you could get a bigger percentage.

Mr. LUCY. That is true.

Mr. SMITH. One matter along this line that I have been interested in and I have thought some of doing something about here in the Congress, but I haven't so far, is, well, in Australia they have a fine

for not voting, and so they end up with about 99.8% of all of their citizens voting. I have thought some of introducing a bill that would put a reverse poll tax on, for instance, people, in their words, if you didn't vote you would have to pay a poll tax, which would operate hopefully like the Australian experiment where they do get such a fantastically high number of their citizens voting. Perhaps I shall do something about this.

On the question of runoff elections, within which you have raised your own questions, the testimony this morning, which you may not have heard was that generally in this country the runoffs in primaries are in States or areas where there is or has been a one-party government, for instance, mostly in the South, where the Democratic party—election in the primary was tantamount to the election. Now this is gradually changing, but that is what we find.

Here in the District, with the present registration I think about seven to one Democratic to Republican, if that matter had any validity, that is, about the primary, how would you feel as chairman of the Democratic Central Committee about the runoff in the primary, that is, I would expect that you might have here in this particular city under the present conditions, six or eight or more Democratic candidates in the primaries. The question then would be as to whether the winner by 18 or 20 percent or whatever it might be of those voting in that primary would probably represent the Democratic party. I think it would seem to me that some party officials could say, yes, that would be all right and he would represent our party. But on the other hand, if you said that under present circumstances, we think, as a party, there ought to be a primary runoff because of this situation, I would like to hear what you would comment on that? Here again, under the present circumstances, that problem does not arise in the final election.

Now, as a Republican, I would hope this would change gradually, but what is your comment about the primary election?

MR. LUCY. Let me say I agree with the comments of Mr. Barry that the primary generally is sort of an inter-party situation, but as I view the situation, I think there are a number of people who share the view that the District is moving into really sort of full citizenship status and the question goes more to the ability of the process to produce leaders who, one, have vision, programming, et cetera, to guide the affairs of the city. My concern goes beyond whether or not it is a Democratic or Republican kind of situation, more to the question of the quality of leadership. And I said, I haven't done a great deal of research on the primary situation, but my concern is that the procedure itself would produce leaders that have had an opportunity to expose themselves to the people and have received, as a result of that exposure, a mandate from the people.

I suppose my argument is going quite a bit towards the elimination of the runoff as far as primaries are concerned, but my basic bottom line position is that whatever the system is, one election should produce a clear mandate to some particular candidate.

MR. SMITH. I would take it then that you wouldn't have any problem about a runoff in the Democratic primary that whoever was picked by a plurality in the Democratic primary would be a candidate the party would back?

Mr. LUCY. I would tend to agree with that. My concern again—and let me emphasize this—is that the procedure, you know, should be able to produce and provide exposure to a candidate who can have, as a result of that procedure, a mandate from the people.

Now let me state my concern again, that if you have nine or 10 or 12 candidates—and my mind goes back to the first race that the Chairman himself was involved in for Congressman—it was like a football squad. The problem there is, we could have lost his leadership as a result of that system. I am saying the system ought to provide a clear mandate such as it was his good fortune to receive.

Since we are moving into sort of a new arena, I am saying that there ought to be a system developed that provides checks to ensure the quality of a leadership and so on.

Let me comment on one other aspect of your statements. You mentioned the question of registration. A long time ago when I was a young fellow I used to think that participation in the election process ought to be tied in together, also like our participation in the protection of our country, that is, it is mandatory that you be drafted. I used to think it should be mandatory you register to vote, which would relieve some of the problems people have as to whether they are qualified or meet certain regulations. I think if our country moved to a point where we said it was an obligation to participate in the voting process, we would see not only substantially more participation but we would obviously see leadership that had a more relevant program of postures that relate to the people in the country.

I mean, I think what has happened is in certain areas of the country certain political parties have tended to support situations that denied or rather excluded people from the process as opposed to including as many as possible.

Mr. SMITH. Well I think I agree with the gentleman about we should make registration a necessary item, but also we should make the registration process as easy as possible. For instance, we send registrars along with candidates and this sort of thing. We could do a number of things to make the process easier and to help in the process.

Of course, in the great registration drives in the Southern States, that we have had over the last 10 years, it has been aided considerably by sending in Federal registrars who would actively work on the job rather than passively. So I agree with you that we should move in this direction nationwide.

Mr. LUCY. I think a movement toward using voluntary registrars is a positive movement, but I also have to say that there is still a problem that exists for a substantial number of potential voters that even this process may not get involved with. For instance, particularly with the poor communities and particularly the black and brown communities, where as a result of their becoming registered, you become subject to a whole series of things, for instance, you become subject to the possibility of serving on juries, and you create a record for bill collectors; and these kinds of people to know where you are. I think what we have to do is to move to a system that makes it more of an obligation to participate. In spite of the fact we are talking about post card registration, it does not overcome the stigma that a number of people have about the voting process itself.

For instance, throughout the South, a whole generation of people grew up in theory as being part of the voting process.

Even though we have Federal oversight now, this in itself does not relieve some of the fears that have been built in as a result of the repressive society that a number of people live in.

MR. SMITH. I would tend to agree with that. I think this is one of the processes that matures and grows and hopefully gets better.

Thank you, Mr. Chairman.

MR. FAUNTROY. Thank you so very much. Counsel?

MR. DANIELS. Mr. Lucy, I would simply ask you the same question I asked Mr. Barry, and that is, do you believe that a change in the signature requirement is sensible at this time?

MR. LUCY. I believe so, yes. I think it is very sensible.

MR. DANIELS. Do you believe they should be lowered?

MR. LUCY. Yes, I believe they should be lowered. My concurrent point with that is that the Board of Elections assumes the responsibility and a positive responsibility, of making sure the signatures that are submitted are valid signatures.

I think that the requirement of 5 percent or whatever it is at the present time, is a bit high. I think it places a sort of unfair burden on legitimate candidates, as well as those who would aspire to office. The big problem with that procedure is that it would allow—well, let me see, the problem with the Board's response only upon a challenge to respond is that nobody takes the situation seriously.

I am saying that the Board has to make the whole system credible by assuming the responsibility of satisfying the community that every signature that is on the petitions is a very valid and eligible signature.

MR. SMITH. Would the gentleman yield?

MR. FAUNTROY. Go ahead.

MR. SMITH. I'm not sure, but I would expect that that is almost impossible as a practical matter for the Board of Elections to do. It may work out as a practical matter that the only real way you can do this is by challenging the way it is done now.

MR. LUCY. Well, you see, if any registered voter can challenge the validity of signatures on a petition and then the Board acts, you in fact, in terms of the magnitude of the work have a situation where the work is the same and—

MR. SMITH. Excuse me, except, as an actual matter of fact, compared to the number of petitions involved, there aren't too many challengers or at least where I live there aren't. There are a certain number, but not every signature is challenged.

MR. LUCY. No, but the problem is that any frivolous challenge can impede the process, and what I am saying is if the Board assumed a positive position that they themselves as a matter of procedure would attest to the validity of the signatures, that relieves and removes that possibility.

MR. SMITH. Well, I will agree with you that if it is possible for them to do it that is the best of all possible worlds. I just don't think they are ever, as a practical matter, going to be able to do that.

MR. LUCY. I think they can do it if you tell them to do it. I don't think I agree with you.

If you say it is a question of manpower resources, then you have to weigh that against the positive changes that come out of it. I think the best possible situation is for the citizens of the District to know that the system is good and to remove any possibility of frivolity out of the system—if that is the proper word—frivolity out of the system.

Mr. SMITH. Mr. Chairman, I must go. I want to apologize to Mr. Pendleton and say I have read his statement.

Mr. FAUNTROY. Thank you.

I would like you for the record, if you could get this in within a week or so, put your recommendations on the signature question in.

Mr. LUCY. All right.

Mr. MARTIN. Mr. Chairman, could I as a member of the Board make one very brief comment on Mr. Lucy's statement here?

Mr. FAUNTROY. Certainly.

Mr. MARTIN. The Board has always looked at all petitions, and we have been prepared to challenge petitions where there were obvious implications that there were numbers of invalid names. However, you are incorrect, I think, in your assumption that if the people know the petitions are going to be subject to challenge they are going to get them in, because we have had a lot of challenges.

As a matter of fact, there have been few elections, hardly any, in which there were not challenges. These challenges were highly publicized challenges, and yet we have petitions turned in with large numbers of invalid names.

In the last Presidential election, the Board was faced—to Mr. Smith's comment—the Board was faced with a petition with 26,000 names on it, and we had the responsibility of going through that petition and finding whether or not there were 5 percent, which was around 13,000 valid signatures. That was a tremendous job. That was well beyond the capability of the Board. We had to, of course, submit names to the handwriting experts and the police department because we are not experts, sir, in this.

But I think that you are quite correct when you indicate that if a smaller number is required, then the Board has the capability of dealing with those effectively, and this is why we would certainly recommend it.

Mr. LUCY. This is why I am saying our support of the reduction is tied to the positive position taken by the Board in terms of giving the valid stamp of approval to the names on the list. That is the relationship we are talking about.

Mr. FAUNTROY. Did you have a comment?

Mrs. ORCHIN. Mr. Congressman, I wanted actually to speak to the Congressman from New York about the suggestion that there might be a poll tax levied against those who cannot make it to the polls. I think that this bears a lot of close consideration and, as I am sure you understand, in our city we have many women who really find it more difficult than the men, to get to the polls. And I am afraid that this kind of penalty might penalize women and especially women of low income or no income more than it will men.

When I first heard about this whole thing from Australia, I thought it was a super idea. I think it now deserves closer consideration. I am

not sure whether this is a serious consideration, but if it is I would hope you would consider that women do have a more difficult time in getting to the polls, and if the candidate that they are going to vote for cannot provide child care and transportation, sometimes it is an impossibility.

Mr. FAUNTROY. Well, OK, thank you. I don't know whether Mr. Smith is prepared to present his point.

Thank you so much.

Our next witness is Mr. Pendleton.

**STATEMENT OF EDMUND PENDLETON, JR., CHAIRMAN,
DISTRICT OF COLUMBIA REPUBLICAN COMMITTEE**

Mr. PENDLETON. Thank you very much for this opportunity to appear before you. My name is Edmund Pendleton, Jr. I am Chairman of the District of Columbia Republican Committee.

We are happy to support H.R. 6713 which proposes various changes to the District of Columbia Election Act.

We understand that this represents the unanimous recommendations of the Elections Board and we feel that it is a useful and desirable proposal.

I would like to refer to the more important substantive changes which are made by this bill.

First is the elimination of runoffs.

1. Elimination of run-offs. (Par. 7, 10, 14, 18)

These sections repeal the present law which provides for run-off elections for delegate after the primary election and after the general election, if no candidate receives more than 40 percent of the total vote cast. Under existing law, a total of 4 elections might be held before our delegate to the House of Representatives is chosen. This would seem to involve an undue burden upon the electorate and undue expenses to the candidates. Voter interest, I am sure, would tend to lessen after each election. Moreover, the expense might be prohibitive for qualified candidates. Only a few States have a run-off election after the primary, and I know of no State that has a run-off after the general election of a congressman.

In these days of budget paring, it is most germane to note also that an election costs the taxpayers about \$50,000. Eliminating this provision might save as much as \$100,000 every 2 years.

2. Reducing the requirement for minority parties to nominate candidates for President of the United States by obtaining petitions of 1% of registered voters instead of 5% as at present. (Par. 6)

The present law requires minority parties to obtain petitions signed by at least 5% of the registered voters in order to have its candidate for President and Vice President listed on the ballot. Since we have approximately 300,000 registered voters in the District of Columbia, these parties must each obtain about 15,000 signatures in order to get their candidate on the ballot. As a party which does not have that burden, we believe the public interest is best served by not requiring an inordinate burden on a minority party. We, therefore, support the effort to have a lower requirement.

3. *Changing the delegate primary date in non-Presidential election years from May to September. (Par. 16)*

The law presently requires delegate primary elections to be held in May with the general election held in November, a gap of 6 months. This span encourages apathy and a substantial loss of voter interest between primary and general elections. Moreover, this undue length of time also places an unreasonable burden upon the candidate.

We believe the public interest is better served by changing the primary date from May to September reducing the time span from 6 months to 2 months. Because of other complications this change would be effective only in years when we do not have a Presidential primary and party elections.

4. *Changing the hours the polls may be open from 8 a.m. to 8 p.m. to 7 a.m. to 8 p.m. (Par. 17)*

This change has been urged by many who must be at work early. They want to vote early, but are unable to do so because the 8 a.m. opening hour is too late for them. This change would seem to operate in favor of making it easier to vote, and thus encouraging voter participation.

5. Finally, may I say, many of the other suggested changes move back filing dates in order to give the Board of Elections more time to respond to objections and to litigation. Since the original dates of obtaining petitions are also moved back, the petitioner's rights are not compromised since he has the same time to submit his petitions. However, this is a much needed administrative change.

With these comments, we would like to present our support of this bill in front of the committee.

MR. FAUNTROY. Thank you very much, Mr. Pendleton, and I certainly appreciate the testimony. It was right on the point and I have no questions based on the testimony you have made.

Counsel?

MR. DANIELS. Mr. Pendleton, do you have a view as to whether the present signature requirement in the Elections Act should be changed at this time?

MR. PENDLETON. The one that we suggested for the petitions, yes. We feel that should be.

MR. DANIELS. Other than that one, the signature requirements, for example, in respect to national committeemen, Republican national committeemen?

MR. PENDLETON. No, we have no comment on that, we have taken no position.

MR. HOGAN. Just a couple of questions. Are you a lawyer, Mr. Pendleton?

MR. PENDLETON. Yes, I am.

MR. HOGAN. Have you read the *Dunn v. Blumstein* opinion?

MR. PENDLETON. No, I have not.

MR. HOGAN. I must confess, I have not yet either, and I don't know what exactly it does. I will accept Mr. Daniel's interpretation of it at least until I have had a chance to look at it, but I was wondering if you happened to know what the other jurisdictions are doing in response to that decision on the duration of residency?

Mr. PENDLETON. I don't know what they are doing elsewhere, but I understand this should not present a major complication here. I think the Elections Board by its own administrative authority does tend to close registration here 30 days in advance of any balloting and I think our feeling would be that the 30-day period is enough to permit the Election Board to do its job and not unduly extend a domicile requirement.

So I think what is being done here administratively would not tend to conflict with the opinion of the court.

Mr. HOGAN. I haven't had an opportunity this morning to know what the Senate did yesterday with respect to registration. Have you had an opportunity to do that?

Mr. PENDLETON. No, I'm sorry.

Mr. HOGAN. I don't exactly know what they did.

Mr. PENDLETON. I understand from the newspapers that it is going to be over here shortly.

Mr. HOGAN. Yes, it is going to be.

This is a registration by mail procedure, as I understand it. Now that it is a registration by mail provision, and assuming again that it might be either a different bill or that bill itself might be passed by the House, would you think there would be any need to revise or amend your testimony as it would relate to provisions here on registration?

Mr. PENDLETON. I think that is an entirely separate question, and a very difficult one, as witness the amount of time that the Senate has spent on discussing it. I would certainly want to talk to some of the members on the staff of the Elections Board before I came in with any position or recommendations on that procedure. A lot of people find it very easy to take a whack at the Election Board because of the problems we have had, but after all, the Elections Board is no more faulty than our citizens are, so when we are ready to vote 100%, the Elections Board can be criticized for failing to allow us to vote 100%. I think they have been trying very hard and I certainly wouldn't want to come out in favor of something which they felt was really not workable. I think this has to be something that is workable and I think the District of Columbia is not exactly the same as every other State in the United States. I think we are now in the election process and I think that we ought to look pretty carefully at a new registration system before we take a position.

Mr. HOGAN. Do you happen to know, and perhaps the Doctor knows if you don't, but as I understand it the reason that the State Statehood Party qualified was because they garnered 50.1 percent or whatever it was. Do you happen to know—does that reflect their general registration in the District? Was there any reregistration of people?

Mr. PENDLETON. I would have to leave the answer to that to Mr. Martin.

Mr. MARTIN. The statute requires a certain percentage of the votes. The percentage of the vote was received by the Statehood Party. It does reflect registration, because the registration at that point was under 100, but they did need the support at the polls that they could qualify as a party.

Mr. HOGAN. Yes, I understand that, but do you happen to know, has there been a registration since that election?

Mr. MARTIN. Oh, yes.

Mr. DANIELS. Statehood Party registration?

Mr. MARTIN. Under our statute, registration is closed by law 30 days prior to election, and reopens immediately the day after the election. We are very proud in the District of Columbia of our record. We think we have perhaps the most progressive system in the country because we have not only waited for people to come to the Board of Elections, but we have sent people to hospitals, to rest homes, to shopping centers, to churches, to club meetings, even to the city jail, and we have used hundreds of volunteers to go door to door.

We now have, we think, probably 80 percent at least, and perhaps more, of the total potential, because some people in the District deliberately maintain registration back home. At the present, we have in addition to the registration going on daily at the Board of Elections, all library branches receiving registrations daily.

Mr. HOGAN. What I am curious about is to know what the Statehood Party registration is? As I understand it the Republican Party registration is about one out of seven.

Mr. MARTIN. I do not have the precise number, but it has increased a good deal. The last time I looked at it, it had risen up to over 300. Somewhere around 200 or 300, which is an increase of about four fold from the time it had been only about 50 two years ago.

Mr. HOGAN. So that at least as far as registration is concerned, it is not a significant factor?

Mr. MARTIN. It is not what?

Mr. HOGAN. I said, as far as registration is concerned, it is not a significant factor?

Mr. MARTIN. In terms of the numbers of registered voters, I suppose that conclusion would be justified. They have presented some strong candidates, however, who have received considerable votes.

Mr. HOGAN. Then, Mr. Pendleton, do you know how many jurisdictions have three qualified parties in their elections?

Mr. PENDLETON. No, I can't cite these from knowledge. Of course, I am aware of New York, that does, but how many other parties, how many other jurisdictions, have them, I can't say.

Mr. HOGAN. Now, I would assume that in preparing your response to the items set forth in the bill here, you took into consideration that there were in effect three parties here now rather than two?

Mr. PENDLETON. Oh, definitely.

Mr. HOGAN. I believe that was one of the bases upon which you made your conclusions as they reflect each provision.

Mr. PENDLETON. We are delighted to see another minority party besides ourselves.

Mr. HOGAN. Thank you.

Mr. FAUNTROY. Thank you.

Our next witnesses are from the Statehood Party, Mr. Anton Wood and Mr. Lawrence Kamins. We are very pleased to have both of you.

**STATEMENT OF ANTON WOOD AND LAWRENCE KAMINS, D.C.
STATEHOOD PARTY**

Mr. Wood. I am Anton Wood, and with me is my associate, Mr. Lawrence Kamins. Both of us are from Stanton Park Statehood Club, which is really a part of the Statehood Party.

I would like to say once again that it is probably not our privilege to come here and testify. If we really had true meaningful election reforms, I am sure the Chairman would be aware that the bill would probably read "be it enacted that the District of Columbia shall be now known as the State of Columbia" but since that is not at hand, let's deal with the bill.

Mr. KAMINS. OK. I think first we are going to have to get into the fact that the election laws in the District of Columbia have served as a broad base for a wide range of election shenanigans and have not served, the laws have not served to properly transfer our power in the District of Columbia.

I am going to start with a little history of some of the problems and errors that were clear and obvious and have not been dealt with in the past. The law does not deal with—well, does not provide the Board significant—what would be the word, significant leadership in knowing how to handle elections; apparently the Board does not know how to deal very well with elections.

This history is a small 1-year history. It starts with the November School Board Election of 1971 and goes through the primary election of 1972. I am going to list things. I will elaborate on them when they are important. I will explain some of the obvious points. Most of them are either violations of the law or violations of common law, or violations of common sense, which we have run into in the District of Columbia. I will start with the November of 1971 election.

One thing I'm going to comment, this is not in any order of importance. This is the order in which these things were compiled.

There were such things as extra ballot boxes available, extra materials. These things could be used in any kind of fraud. In this particular election we documented four different ways of election fraud that could be perpetrated without the system having any way of dealing with any of them. The extra ballot boxes was one way. Any time there were additional ballot boxes, they could be stuffed and there were extra ballots available. There were piles of extra election credentials. My colleague has a couple of these credentials with him. These are official election credentials designating election officials, and not just watchers, but officials of the Board of Elections. There were boxes of these available. These are unnumbered documents. At any time they were not prestamped with a signature, you could fill them in and become an election official and obviously wreak any kind of havoc upon the elections.

This has gone on continuously and the Board has not seen fit to stop this kind of problem.

There were also ballots lost and then found in the flaps of ballot boxes because the ballot boxes were so poorly designed and this de-

sign has not yet been improved at all, and yet ballots were actually lost in these ballot boxes. There were ballot boxes discarded, and then you would go through the ballot boxes later and continue to find ballots.

In at least one precinct it was discovered that all of the votes for a particular candidate just failed to get recorded. This was found only because the watchers had looked at enough records to be able to detect it. These had not gotten fed into the machinery correctly and although it was later corrected, this had occurred.

In the November, 1971 election it was found the Board notified many voters incorrectly as to where they were to vote. It had specifically mailed them cards in the mail giving them the wrong information as to where to go. In one case in Anacostia when the people arrived at the polls, the poll officials had the wrong information as to what precinct they were and improperly turned people away from the right poll.

The Board has failed to meet many legal deadlines in the past for publishing lists for such things as challenged voters. The deadlines are usually 10 days or 7 days. In the November 1971 election the Board did not legally publish those within the time allowed for the voters to make proper appeals.

Again, November of 1971, about 2 days after the election and prior to the counting of the absentee ballots, the room in which blank ballots were stored, official blank ballots, was left open to a public corridor in the ground floor of the District Building and repeatedly—it took three requests to get the Board to close the room.

And using ballots that were perhaps obtained illegally from that room, a demonstration was held by the D.C. Statehood Party when the counting of the absentee ballots took place in order to demonstrate to the Board how these ballots could have been illegally substituted and so voided that part of the election. Not a great deal was done about that.

The Board, contrary to the mandate of the law, had carried on its voter registration lists for people without addresses. The law specifically says you must have an address because the person must vote within the precinct wherein they reside. We have an example, the quickest one, in which the person was listed in Precinct 93 and for some reason unknown a Mary Baker had no address. When questioned about this, the Board had said they had indeed attached a note to Mary Baker's registration, that should she show up at Precinct Number 93, they would appreciate her giving the address. Under the registration law she could not vote, but the Board allowed her to vote anyway, whomever she might be, whether or not she was an actual person.

In at least one precinct, candidate literature was openly displayed on a desk where the voters received their ballots at the ballot box. This consisted of 8 by 11 material and larger material. We had available for our use at one time an affidavit to the effect that this material was there, that it was not removed, and that the Board of Election officials were aware of it; the people on the scene at the time.

One thing, ballots were continually transferred by the Board from one box to another box, from container to container and anytime during this transfer, they may be tampered with, ballots may be lost. In

In many jurisdictions I have seen ballots are retained at all times in the original container. If they are taken out, they are to be returned to the same container so at no time could ballots be tampered with or removed or transferred.

Now this is still of November of 1971. The people who did the actual counting at no time certified that the numbers recorded were the numbers they counted. This is important when you have a counter that he sign his name to those numbers. They were writing them down on tally sheets, and they were going somewhere else, and someone else was transferring them on other forms. A counter, once he wrote this in pencil on a tally sheet, he never again saw it. Anybody could merely change the numbers since there is no verification that the number finally recorded was the number counted.

The Board has multiples of materials. You could have a tally sheet in which you write the results as 15 when they are only 5. This means that in the process of transferring materials into the computer, etc., that a tally sheet carrying information on candidate X could be intercepted and substituted with another one that is just as efficient because it came from the same stack of 200 on the table. There are many materials lying around. Materials like this should be numbered and there should be a limited quantity of them. So if you ruin one, there is a procedure to get the extra so that materials like this are not openly available and easily substituted.

There is one minor thing, which is called zero filling of blanks, where you have a sheet that has squares to fill numbers in and you have fifteen squares and only fill in the last two with a number say of 32 and so to prevent anyone from writing on the line before it, you zero—fill a line through it so that nothing else could be added. The Board has not seen fit to do this in any regular form so that a tally sheet once it leaves the hands of the counter or whoever recorded it, could have additional numbers added.

Then the ballot sheets are counted, and are stored in boxes, to which the Board affixes a nifty little red seal, which were of such insignificant value that just sitting there in the counting room they started falling off and did not protect the ballots from being tampered with, so that in the case of a recount there would be no way to verify that these ballots had not been tampered with.

Now moving up into the 1972 primary, after most of these items and many more had been pointed out to the Board and certain corrections had been made and certain variations and alterations made, we continued to find certain problems, such as the multiple materials still available. The Board had done nothing to remedy that.

During the 1972 primary election the Board had accepted the advice on the number of ballots, so that they could then know how many ballots were outstanding, how many ballots had been issued to each precinct, etc. These were done properly, and the numbered tabs have been torn out to maintain the secret ballot. However, on the day of election, the Board issued an order that these numbered tabs were not to be removed, thereby invalidating the secret elections for that day, since it would be simple for any candidate—since people were to be handed their ballots in order as their names are called out—to maintain a list of who was who and the count, by notifying

their own watchers, could be kept and they would be able to find out how people voted.

Again, the ballot boxes had not been redesigned. The ballots, at least 14, were removed by an officer as well as discovered in the garbage pile.

On that day there was a problem when the Board somehow failed to properly collect all ballot boxes from all of the precincts. It had something to do with a bomb scare, but the fact is the Board's procedures were lax enough that they were not fully aware of the problem that the ballot boxes had not come in on time.

Particularly in dealing with the delegate primary for the Republican Party, the Board was unable to arrive at a final accurate count. They counted it something like three or four times, coming out with varied figures, each time. Again, the persons who counted the votes did not certify to the numbers recorded, but at least they did record them personally this time.

The Board actually allowed duplicate registrations to be in their files with the restriction to counter it that if the person showed up and it was verified, they would be pulled. However, these were again open to multiple voting frauds and things like that.

A number of things have been submitted to the Board. The citizens have continually aided the Board. They have continually gone out of their way to tell the Board things, to notify the Board of important pieces of information. In the 1971 primary the Board was continually notified of its obligations under the law by the Statehood Party. We continually relied on them and continually aided them and asked them when they would meet the deadlines on their obligations.

There is one other thing that occurred during these elections, that is of significance, which is that certain things are required to be published in a newspaper of general circulation. One time, when a complaint was made that something had not been published in such a newspaper by the deadline, the Board responded that it had by having been published in the *Afro-American*, which has a verified circulation in the District of Columbia of no more than 25,000 when there was a voter registration at that time of more than 200,000.

Mr. Wood. I would like to move on to some more recent incidents, basically these took place before and during the November, 1972 general election.

Number 1, I have here that according to the District of Columbia register, section 6.1 of Title 37, it specifies that the Board must print a sample ballot on a white sheet of paper.

Now, you may say it is very minor, but it again shows a complete lack of regard for the law. It is printed on a blue sheet of paper as you may see in front of you.

Generally moving on, on November 6, the day before the election, the Board gave Carleen Pertschuk, of which we have an affidavit is available, two official ballots because of the reason that the Board had run out of sample ballots at that time.

Now the ballots were code labelled 999 which meant that they could not be counted unless they were altered by using various substances, which could very well have happened, and the possibility of fraud is greatly present there.

Now the Board also encountered some serious problems in certifying candidates for President and Vice President of the United States. Now three cases were brought against the Board in the courts for improper conduct. The Communist party won their suit. The Socialist party—the Socialist Workers Party succeeded in their behalf because the Board withdrew. The Statehood Party suit is still pending in the Federal courts, and it stands a good chance of being successful. So that we can see that the people and parties and participants in elections have gone through a considerable amount of trouble just to gain ballot access in the District of Columbia.

Let's see, I think another area which we should get into is the whole question of where the Board has now gone into computerization of counting elections and also voter registration. I think this is an area which must be explored here because of the safeguards that must be involved in insuring the integrity of elections in the District of Columbia and providing access and appeal proceedings where participants and citizens can challenge rulings and regulations of the Board. This at the present time does not exist.

Mr. KAMINS. I think it is interesting to note that in the last general election the Board of Elections counted by computer the results were on computer printouts and computer tapes which were later fed into another computer for a total tally and turned out later certified.

At the same time the Board was doing this, in the Supreme Court of the United States they had recently promulgated rules of evidence and one of the rules of evidence dealt with computer printouts and likened them to photograph and tape recorded evidence where without witnesses that can support them by personal testimony, that these things are not in any way distorted and that they were achieved properly and accurately, they would not be allowed.

But this time the printouts of the Board of Elections on the last general election cannot be supported by supportive evidence. They very possibly would not be allowed in evidence in court. They are that weak.

The Board proceeded into computers without hearings, proceeded into computers without contacting the parties, proceeded into computers in a very cavalier manner in which it ignored the safeguards necessary.

Now the capacity of the computer is interesting. You take an average counter machine, and all it can do is count. There is very little you can do to tamper with it. You can change whether or not it will count, you can preset it. But you take a computer, it has a capacity to do far more than just count. It has the capacity to alter percentages.

A computer can be programed to totally ignore ballots and come out with a predetermined result. A computer can be programed to alter certain percentages of the vote. It can be altered to ignore certain precincts or simply change the vote of certain precincts. It can change the vote of certain candidates. You can program that into it. This information can be sent into it by magnetic tape, by teletype machine, by switches and buttons on it itself, by possibly putting information on the ballots themselves that would not normally be there, so that to make a computer count validly you have to have

procedures that could protect against all of this. The Board had none.

They introduced a new element into the District elections by putting the actual counting machine in a room behind a glass wall and they kept the partisan watchers, contrary to District law, outside. They allowed only the Board contract for volunteer services watchers from two organizations, one of which was the Training Opportunities Programing and allowed them in as technicians to oversee the technical processes and turn in reports to the Board. These would normally be the people who would testify in the court as to the validity of procedures.

At this time, TOP has still not turned in its final report although they have made comments to the newspapers to the effect that there is plenty in the report for the people to run with about the way these procedures were handled.

At the time you had this computer locked away in a room where I could watch it from a distance, I could not verify what the Control Data people were doing when they were pushing the buttons on the machines. I don't know what information they fed into it. I don't know that they were valid for a fact, because I cannot see the numbers on the computer panel which are a quarter of an inch high and nine feet away from me, so I don't know that the number of ballots that went through the machine were actually all counted on the computer printout.

Now, test decks. There are ways that you can test this by having predetermined decks to run through the machine. The Control Data Corporation said the test decks could not be used because they would mess up the computer. Yet it was discovered they used them themselves but refused to allow us to use them.

The magnetic tape used on the machine used by the Board is insufficient to the task of counting ballots in the District of Columbia.

They would put information on the magnetic tape and later send it down to another computer to be finally tallied. The magnetic tape was not verified so that erroneous information could be fed to the magnetic tape. The Board utilized two computers, with one as backup. The backup computer was started up without the proper safeguards because they were behind schedule. Such things as this information should be supplied to the watchers in advance of the entire procedure so that we know everything that is going on and know when something is out of line and in this case it was.

There is nothing in the law about computers or machines. Many States have special laws just dealing with the average ordinary voter machine. The District of Columbia would not have any of this. It is an open field. It is ripe for corruption and the incompetence of the Board in dealing with this is mainly I suspect because they don't fully understand these machines, and this is not acceptable.

Hearings are necessary. Discussions with the parties are necessary. We found when we went to talk with TOP when we understood what they were doing, they told us they couldn't talk to use because we were partisans. But what we needed from their testing this machinery was different from what they needed. To them, to the technician, it is sufficient to verify the machine was working 3 weeks in advance. To

the election watcher it is not. They have to verify that the machine is working that morning, that it is working all during the day and afterwards it is working. So the mind of the technician is not properly oriented to the partisan watcher's. The Board's efforts to supplant the partisan watcher with the nonpartisan technician serves to circumvent the purposes of the partisan watcher in the law, so that we need to do a great deal with the electronics aspect of this, and that is a lot more than this puny little bill that the Board has submitted deals with.

Mr. WOOD. I would also say that there really needs to be established in an Elections Act firm procedures, sort of pursuant to the Administrative Procedures Act, where citizens and parties and other participants have well defined channels for hearings where you can have some sort of due process and not just be put off by administrative decisions and then hope that you can gain some access through the courts. This has proved to be very unsatisfactory. It is very expensive to people who have limited amounts of capital and it is very time consuming in that by the time one may get this settled through the courts, the election could be over by 4 or 5 months. This is very unsatisfactory.

There is no way to deal with the immediate problems, such as what could arise on election night while you are counting. There is no specific procedure.

I myself as a counter was involved in this and would file many protests to the Board. There is no procedure for that so it is basically an *ad hoc* kind of thing where you just write it up and you corner some official and you question him about it. This is terribly unsatisfactory. Plus the fact on election night I would consider there are major violations of security.

We have people walking in and out of the counting area who really had no business being there. We have people like on loan from the Defense Department, a tour of how elections should be run walking through. There were children of members of the Board running through. There were all of these. There was in fact one incident where a member of the City Council came into the observation room of the computer at which only people who were wearing a special yellow tag to designate entry were allowed. This person did not have such a tag. When requested by me to get one, he was very obstinate about the whole thing and finally was persuaded to wear one.

Now such procedures as this, where anybody can just walk in and yet partisan participants are limited is totally unjustified.

Mr. KAMINS. In addition, it has to be noted that anyone walking in would seem insignificant except for the fact that the ballots are everywhere. There are stacks on the tables. The Board tolerates counting erasures as proper ballots, so you could just come in with a pencil eraser and change 25 ballots and the Board would count them as sufficient ballots.

Procedures are lacking especially as to what is and is not a valid ballot. The Board has been unable to handle this and Congress has not given them any guidance in handling this. It is very unfair to the people of the District of Columbia. We are merely tolerating Congress' interference at this time because we have no way to eliminate it in this area.

Mr. WOOD. I would say too that much of the irregularity in the elections of the District of Columbia come directly from the process,

number one, that we don't control our own elections, and, number two, we are saddled with inadequate legislation in terms of running elections, which the Board has not really seen fit to expand their powers in ruling on the various regulations that are even in your discretion.

Mr. KAMINS. We also have one very little uniqueness in the District of Columbia in which the Board has seen fit not to count write-in votes for the President.

Mr. FAUNTROY. Would you repeat that?

Mr. KAMINS. I said the Board has seen fit not to allow write-in ballots in the District of Columbia for President, contrary to the precedent of over 45 States, the Board has felt that the legislation prohibits them from doing so. This is presently in litigation, but it seems an overly broad interpretation to the law that exists.

Mr. WOOD. We would like to proceed at this point with sort of our own analysis of H.R. 6713.

Mr. KAMINS. I am going to go point by point and skip the duplicate points, but the changing of the residency is quite acceptable. In fact, it is extremely good.

The striking of after the first Monday seems insignificant. It is merely a technicality. The changing of the time, however from 45 to 60 days between when petitions are in and when the election takes place is a very questionable affair. It is a long period of time you are asking people to petition far in advance. You are asking—you are establishing a procedure where someone who just rises from the ranks later doesn't have as much opportunity to become a candidate as others. The whole purpose of petitioning is merely to establish inefficient ballots. Originally in this country ballots were open affairs where the voter came in and put down the name of whomever he chose on the ballot. In many States, it is still that the voter can put whatever name he wants and no official ballot exists, but you have procedures on which to print a ballot at public expense. If your procedures are on how to print the ballot at public expense, the whole question of legitimate candidates is capricious. I mean, there is no such thing as an illegitimate candidate because there is no one in the District of Columbia prior to election day who can make such declaration. Just because I do not get 500 people to sign a petition yesterday does not mean I will not be elected by acclamation tomorrow.

So the whole question of petitions is in question and certainly the length of time between when the petitioning takes place and when the election takes place is definitely in question.

Mr. FAUNTROY. May I just ask this point? Are you suggesting that there be no period, or a shorter period? What are you suggesting?

Mr. KAMINS. The period should be as short as possible and the whole question of petitions should be put into doubt. What you want from petitions, and what petitions give you is the question. If your purpose in petitions is to keep so-called capricious candidates out, you would have to define them for me and find out if it actually does that.

Mr. DANIELS. Can we assume that if some petition requirement is maintained—and as you saw earlier in the testimony, we are reviewing that question, and we have asked that the Board of Elections and both the Democratic and Republican parties give us their

views on that question—but assuming that some petition requirement is retained, would you still be opposed to lengthening the time period beyond 15 days?

Mr. KAMINS. Yes, I would. It is very difficult to get together a campaign of any sort and the closer it is to election the easier it is to do so. I am not in favor of limiting access to the balloting process to the voters.

Mr. FAUNTROY. I just wonder whether or not given people with limited amounts of money and time and staff resources, to get these signatures, if the signatures are required—I am just wondering whether that doesn't really penalize that kind of candidate to limit the period over which he must secure the signatures. Doesn't it really operate in favor of those who have money and staff to secure at reasonable hours, signatures that a less fortunate candidate might not be able to get?

Mr. KAMINS. Perhaps I haven't been clear, but I am not talking about limiting the petitioning time. I am talking about limiting the gap between when the petitions go on file and the actual election.

In terms of the candidate with few resources, one of the purposes of petitioning in the past was to keep them off the ballot. I think it is obviously a hypocritical question to concern yourself about these people while you continue your petitioning requirements, though.

Mr. FAUNTROY. You may proceed.

Mr. KAMINS. OK, we are definitely in favor of the allowing of voluntary workers. In fact, we would like to see it expanded perhaps to a requirement to a clause in the law allowing, as some other States do, candidates for parties to secure deputy registrars and send them into the field. This is presently not done in the District. There is very limited registrars and it takes a great deal of pressure to get a registrar out somewhere.

We seem to be opposed to this part about giving the Board a specific regulation authority other than what is included in Section 5(d) which we interpret to be broad enough for their purposes should they wish to employ it, which we haven't seen. At the present time they do write the regulations in a very limited fashion and it is even coded in the District of Columbia Register in Title 37. In the past they have written them to apply to all areas of the law. This particular clause seems to imply a special obligation of the Board which may very well interfere with the rights of certain people to get on the ballots. It seems unduly vague.

Again, we get to the numbers—well, we said that.

Now in terms of the party runoff, we seem to have no thoughts on it either way. In terms of the general election runoff, I am extremely concerned about an apparent conflict of interest here. Mr. Fauntroy is introducing a bill which makes it easier for him to get elected. I am not sure on the exact percentages, but any time that we are setting up a situation where less than a plurality candidate can be elected, it is questionable, and especially in the District where we elect one candidate who is supposed to, but unable to represent us in Congress because he can't vote. And in fact, he tries to represent a District much too large in comparison to other districts and members in the House of Representatives. But to limit his representation to even fewer is ridiculous and to do it in such a way that might in fact cut into the

very little self rights of suffrage the District has in terms of it being in the present situation introduced by someone who represents well, Mr. Fauntroy, what is your vote? Was that somewhere around 44%.

Mr. FAUNTROY. Yes. I won 44% in the primary, 62% of the whole city, losing the ward and district that have a particular ethnic characteristic.

I wanted to inform you that this bill was not drafted by me. It was introduced on request. That does not suggest in any way a conflict.

You understand what introduced on request means?

Mr. WOOD. We understand that. We also understand that it has your name on it and also you have the right to alter the bill. In fact, we understand that very well. We also understand for the past two elections we also had five candidates run in the election for non-voting delegate, so the possibility of having a candidate win with less than 40% is very real, if you have five strong contenders. I mean, it is not a question of well we have a two party system. We have three very strong parties and always have had at least two independents in a race.

Mr. FAUNTROY. I think that item is worthy of further consideration. It doesn't apply to the Chairman of the Committee, however. I mean, the fact was I won with seven candidates in the race by a relatively substantial percentage.

Mr. KAMINS. We have also watched the eroding of the requirement of plurality in the elections in the District from originally over 50% to 40% and now to the proposal of a simple plurality. This seems questionable, especially when the people of the District of Columbia have never been consulted on the matter.

Mr. FAUNTROY. Are you aware that we had a 50?

Mr. KAMINS. The original requirement was higher than 40%.

Mr. FAUNTROY. When.

Mr. KAMINS. The original Elections Act. This was part of the amendment done last year.

Mr. FAUNTROY. No, that is not true. The delegate race has always been 40%.

Mr. KAMINS. Oh, then I stand corrected. It must be the School Board race they are changing. Sorry. The other thing is the question of the two-party system that Mr. Martin alluded to. It is not inherently in the American way of life that we must have a two party system and that is he only system that works. I would not be in favor of any changes in the law that would tend to construct such a system.

In terms of expanding the number of days for the appeal on a challenged ballot, I want to put this in perspective. We want to amend subsection (e) of section 9 of the act to strike out seven and insert 10. This has to do with how many days the Board has to respond to a challenged ballot.

Under the present procedures under the law, the voter who arrives to vote and who is denied the right to vote for any reason is allowed to request a challenged ballot. He is given the challenged ballot, and files it. He has 3 days in which to appeal the denial to vote, in which case the Board looks at the challenged ballot and has 7 days to respond. The Board has—and this is one of the best things they have done—made this appeal automatic by giving him the challenged ballot. When

he receives the challenged ballot, he fills in the ballot envelope and it is automatically appealed.

To require the voter to make a second step of appeal when he thinks he has already done it by receiving the challenged ballot seems an undue qualification in the law. I would like to see that corrected and eliminated at which time I have no objection to changing the length of time the Board has to respond as long as it doesn't affect when they certify the voter's future right to appeal in court.

We are opposed to changing the non-presidential primary for the simple reason that it would be very confusing for the voter to have primaries 1 year in May and 1 year in September. I think if you are going to want people to come in regularly to the polls, you are going to have to make such a thing a regular thing so that you can't bounce it around. People get to remember those days, they get to see November as election day, and it is very important to get them out to the polls and to leave it at the same time. It is also very hard on the candidate if he knows he has 3 or 4 months to campaign and 2 years later he doesn't.

Mr. WOOD. I would also say in regard to that that the September primary could significantly affect the rights of independent candidates to gain ballot status. If they are going to do that they would have to declare way in advance in the summer rather than waiting until traditionally maybe after the primary to see if they want to enter into the race or not. If you only have the period between September until November, I don't really feel that that places an independent candidate on a viable level with the so-called regular candidates.

Mr. KAMINS. An extension of that is that if you change your filing deadline to 60 days prior to the election, the independent candidate would have about maybe a week to petition.

Mr. FAUNTROY. What is the assumption? Is it that the independent candidate wouldn't decide whether he was the best man for the job until after the primaries?

Mr. WOOD. Yes, that is our contention.

Mr. KAMINS. Somewhat oversimplified. It is not deciding whether he is the best man for the job, but deciding whether or not he or she wishes to enter the race.

Mr. FAUNTROY. What would be the purpose of entering the race, if he weren't concerned about the issues and policies and the ability to implement those policies?

Mr. KAMINS. I think it is naive to believe that people aren't entering the race for personal gain, and whether or not you have a chance of getting elected is a big factor.

Mr. FAUNTROY. This is what puzzles me. You mentioned earlier there was no need to eliminate so-called capricious people. Do you think elections should be a forum for other than the establishment of public policy makers?

Mr. KAMINS. An election is a method not just of establishing policy makers, but of establishing policy and from the public so that it can be a forum for things, but I am not sure whether that has a bearing on this.

Mr. FAUNTROY. No, I was puzzled about why an independent candidate would not, during the course of evaluating the issues and policies characterize the candidates, you know, in the primary process, and

would not be able to determine before a primary election whether or not he was going to enter the general election.

Mr. KAMINS. Because the primary reduces what ends up in the general election. If a Democratic primary has, and I am going to use labels that have very little meaning—has a great liberal running and a great conservative running, and if an independent would normally support the conservative if the liberal were nominated, he would suddenly have a reason to enter that campaign since by District law also the conservative would be prohibited by that law from entering the campaign, which is something of questionable value.

Mr. DANIELS. Aren't you asking for an advantage for an independent candidate? For example, a Republican candidate has to make a decision as to whether he is going to run for office before he knows who the Democratic candidate is going to be. The Republican primary will presumably be held on the same day as the Democratic primary and as a result, for instance, a man seeking the Republican nomination is going to have to run without knowing who his counterpart is going to be in the Democratic party. I assume that is true in the Statehood Party as well, or will be should you arrive at the point where in fact you have a contest for your party's nomination. As I understand it you are entitled to under the law now.

Mr. WOOD. That is correct.

Mr. DANIELS. So it seems to me you are giving an advantage to an independent candidate that in fact a member of your own party or a member of the Democratic and Republican parties doesn't have.

Mr. WOOD. Well I really object to having the availability or access to the ballot frozen in for such a long distance before the election comes up. I think generally when people start to campaign for elections, issues do get raised and public awareness starts to evaluate the people who are in the race. There are instances, in many jurisdictions, where candidates who are running are less than sufficiently answering the questions that people have raised, and there is no provision for any one else to enter the race. Let's say if you have frozen access to the ballot in July and I come along and want to raise some significant issues in August there is no way that I can gain ballot status to compete with you because you have frozen the deadline, whereas if you have a more flexible system which would allow people to sort of rise up and campaign and gain ballot status during the actual campaign period, I see nothing wrong with that. I don't think people are going to become confused because they have 10 candidates on a ballot, I mean if you have gone out and raised the significant issues, people are going to be aware of that and they are not going to be confused because of 30 names.

Mr. FAUNTROY. Mr. Hogan?

Mr. WOOD. There are a few other points I think we would like to get into.

Mr. FAUNTROY. Sorry, go ahead.

Mr. WOOD. I think we would be interested in seeing a provision added for recall of school board members. We see no reason why this hasn't been done. It is common practice in other States. As a matter of fact I think the Governor of Arizona is right now subject to recall proceedings, so it is not something ancient that hasn't been used.

I think 4 years is perhaps too long a time for a person to be elected without having to come before the people in some sort of manner to justify himself or herself.

Mr. KAMINS. One thing on the question that came up when Mr. Barry was here about the times between when School Board members are elected and when they take office. I am not sure, I think it is about two and one-half months which may be overly long. That time should not be reduced so as to prevent court challenges, which take a long period of time. There is an alternative which would be to place these people on a temporary or interim basis subject to challenge so that they can take office immediately but still be subject to challenge and it is written into the law. They are challengeable. So that the court in dealing with this would not have to revoke their election, which is a very difficult thing to get a court to do. But if it is written into the law that this type of challenge is possible, then you could proceed to challenge.

Mr. HOGAN. Let me see if I understand what you have stated here when you started out. You have no evidence of any fraud in any election?

Mr. WOOD. We are not charging a specific individual or individuals or parties with fraud. What we are saying is if these procedures are allowed to be lax, especially in times like these, then there is something wrong.

Mr. HOGAN. You are talking about mainly the integrity of the system?

Mr. WOOD. We are talking about the integrity, the security of the system, and possibly if someone wanted to perpetrate fraud, there is ample procedures in which they could do so.

Mr. HOGAN. Well, have you brought these to the attention of the Election Board itself?

Mr. WOOD. That is correct, many many times.

Mr. HOGAN. Well, we don't have your statement here. You are both reading off of something, what is it?

Mr. KAMINS. We are reading off of parts of different things. These are pieces from lawsuits, filed against the Board. Specifically a great deal is from a lawsuit that was thrown out of court because the person bringing it could not pay the filing fee and the court decided that he was affluent enough to do so regardless of the fact that he was unemployed and his mother was ill.

Mr. HOGAN. Does what you have there, is that your substantiation as to the lack of integrity in the system?

Mr. WOOD. Well, I would just say that the lawsuit was brought as a result of a lack of compliance or a lack of in any way answering questions raised by the citizens. That was the next step that we could take, that is, we could go to the Board. The Board either did not answer or refused to answer the complaints which were lodged.

Now as Mr. Kamins has stated earlier on the record, these are not new violations. Violations as far as we are concerned have been documented since 1971.

Mr. HOGAN. Yes, I understand that, but you made some specific allegations here. Is the information you are reading from there, does that substantiate some of what you are saying here that, let's say, minority members should have available to them in this hearing?

Mr. WOOD. Oh, well, we intend to submit this for the record later.

Mr. KAMINS. We will submit it in full for the record.

It might be helpful to keep in mind when something has to go to a lawsuit in the District of Columbia, the District of Columbia's Administrative Procedures Act provides all agencies of government shall have standard procedures for a review of decisions.

The Board of Elections has not done so, and they have been requested to do so and they have been requested for these procedures and they have not provided them. This resulted in one case of a lawsuit not being acceptable by the court of appeals because the action of the Board was not officially recorded, since it wasn't recorded, although it happened, it was not reviewable by court. I mean, we have run into problems like that. The material we have read from here is sworn to. There are many thing we have affidavits to and we have other types of evidence. There are some things we haven't even mentioned yet.

Mr. HOGAN. But it is your position that all of these incidents you are talking about here, that the Board is aware of them?

Mr. WOOD. Well, we feel we can substantiate that by affidavit or by other methods.

Mr. KAMINS. One of the exhibits we have here is a copy of testimony made before the Board after the November elections which delineates telling them things like whole lists of things, in addition to the oral testimony which was made, which was over and above those things. And during that hearing they held after the November 1971 election we actually made materials and props available to demonstrate how properly to construct a ballot box, to demonstrate the number of superfluous ballots laying around, to demonstrate the problem of improper seals. In fact, in the primary election, they did a number of these things, but by the 1972 general election, they had reverted back to the old procedures.

In many cases, they changed their procedures. The Board had come up with an excellent procedure for sealing ballots, which required once you break the seal you need the signature of watchers to reseal it. They reverted back to using masking tape, which they need in the 1972 election. We know members of the staff who admit to opening boxes whenever they were not sure whether the counters did it right.

Mr. FAUNTROY. I would like to have submitted for the record these things you are referring to.

I assure you that members of the committee were not aware of the kinds of dangers which you have pointed out here. We would certainly like to take a look at your record there.

I have one question in regard to this. Of the problems which you have identified, which in your judgment could be addressed by legislation?

Mr. KAMINS. All of them.

Mr. FAUNTROY. How would you propose doing that?

Mr. KAMINS. Very often many States have quite a thick and heavy body of election law especially pertaining to the protection and security of ballots, the integrity of ballots and things like numbering ballots, things like how you seal ballots, things like how you transport them, things like what the construction of the machinery is, how you

protect electronic machinery. Most of this can be handled by statute. I am not in favor of giving the Board the general regulatory authority on this. They have not demonstrated they can handle it. There has been no such demonstration.

Mr. HOGAN. Could I ask one question? Do you happen to know for instance, whether Maryland or Virginia has statutory provisions covering the integrity of the data processing equipment?

Mr. KAMINS. I am not sure whether they even use data processing equipment.

Mr. HOGAN. I am not either.

Mr. KAMINS. As far as I know, there is only one other place that does, and that is Los Angeles County.

Mr. HOGAN. Is there a California law that protects this?

Mr. KAMINS. I have not been able to find it, but there is a California law that deals specifically with voting machines, and some of this can be brought out.

There is one other thing to finish my answer to Mr. Fauntroy, which is if you strengthen the right of the partisan watchers to participate in this process, and if you add procedures for complaints and procedures for hearings, the Board can be kept more aware of this, the Congress can be kept more aware of what is going on and this would open access to the courts quicker and more efficiently.

As long as we as partisans are kept impotent to the process, we have to go to the courts in very strange fashions to get around the fact that the Board has not complied with the laws.

Mr. FAUNTROY. With all of those frightening loopholes you outlined there, I am sort of happy partisans were participating in watching over those balloting boxes.

Mr. KAMINS. Well, we can't prove that that ever happened. We try to watch out for it.

I can give you a guess that in 1971 the cost of running was \$5,000 but by the general election of 1972 it had risen to \$13,000 and, as we all know, specific candidates spend significantly more than that.

Mr. FAUNTROY. Well, I am with you on that subject, because that might be in my interest.

Well, anyway, thank you for your statements.

We are going to leave the record open for a week for any testimony which anyone would like to submit.

The hearing is adjourned.

[Whereupon, at 12:45 p.m., the subcommittee recessed, subject to the call of the chair.]



...and electronic machinery. Most of this can be handled by statute. I am not in favor of giving the Board the general regulatory authority in that they have not demonstrated they can handle it. There has been a demonstration.

Mr. Hines: Could I ask one question? Do you happen to know for instance whether there is an or - giving the statute provisions covering the majority of the data processing equipment?

Mr. Hines: I am not sure. I think they are under the process of

...the Board is not doing.

Mr. Hines: As far as I know, there is only one other place that

...and that is Los Angeles County.

Mr. Hines: Is there a law that protects this?

Mr. Hines: I know not lawfully in that there is a California law that deals specifically with voting machines and some of this

...the Board is not doing.

Mr. Hines: I think it is under the process of

...the Board is not doing.

Mr. Hines: I think it is under the process of

...the Board is not doing.

Mr. Hines: I think it is under the process of

...the Board is not doing.

Mr. Hines: I think it is under the process of

...the Board is not doing.

Mr. Hines: I think it is under the process of

...the Board is not doing.

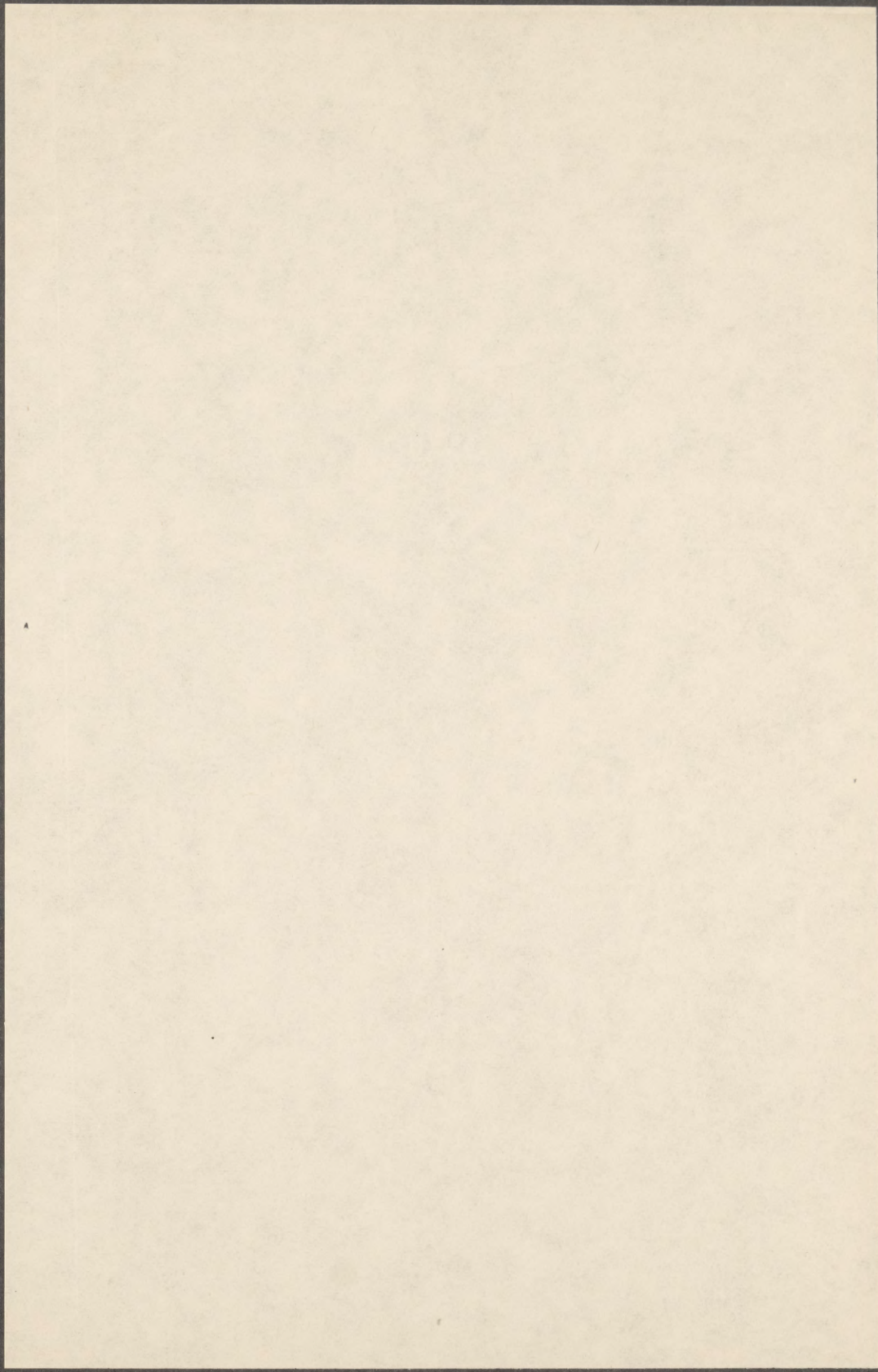
Mr. Hines: I think it is under the process of

...the Board is not doing.

Mr. Hines: I think it is under the process of

...the Board is not doing.

Mr. Hines: I think it is under the process of



THE UNIVERSITY OF CHICAGO
LIBRARY