

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

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IN THE MATTER OF: :  
 :  
Giant of Maryland, LLC :  
t/a Giant #2379 : Protest  
3336 Wisconsin Avenue, NW : Hearing  
Retailer DR - ANC-3C : (Status)  
License No. 95376 :  
Case #14-PRO-00060 :  
 :  
(Application For a New :  
License) :  
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September 10, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- MIKE SILVERSTEIN, Member
- HECTOR RODRIGUEZ, Member
- JAMES SHORT, Member

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Motion to Dismiss ANC-3C:

Stephen O'Brien, applicant . . . . .	.4/39
Board Questions: . . . . .	.10
Carl Roller, ANC-3C. . . . .	.21
Board Questions: . . . . .	.24
Margaret Siegel, ANC-3C. . . . .	.38
Board Questions: . . . . .	.43

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

(10:24 a.m.)

CHAIRPERSON MILLER: All right.

We can get back to our other Protest Hearing cases.

I'm going to call the Giant case and that is Case No. 14-PRO-00060 for Giant #2379 located at 3336 Wisconsin Avenue, N.W., License No. 95376, in ANC-3C.

MR. O'BRIEN: Stephen O'Brien for the applicant accompanied by Gary Budd, B-U-D-D, who is the Director of Non-Perishables for the Giant Group.

MR. BUDD: Good morning.

CHAIRPERSON MILLER: The Director of Non-Perishables? What's that mean?

MR. O'BRIEN: Yes. Including wine, as long as it's not left on the shelf for too long.

CHAIRPERSON MILLER: Oh, okay.

MR. O'BRIEN: Yes.

CHAIRPERSON MILLER: Okay.

1                   MR. ROLLER: Good morning, Carl  
2                   Roller, ANC-3C Chair.

3                   MS. SIEGEL: And I'm Margaret  
4                   Siegel, ANC-3C Treasurer.

5                   CHAIRPERSON MILLER: Good morning.  
6                   I'm just going to make a statement. I don't  
7                   really think this is an issue at all, but I'm  
8                   just going to say that this is in my ANC, but  
9                   I am not an ANC Commissioner. And I am  
10                  familiar with the Giant. Though 12 years ago,  
11                  I was an ANC Commissioner, at least 12 years  
12                  ago or whatever.

13                  Okay. I don't think that's a  
14                  problem for anybody, is it? It's not going to  
15                  affect my decision in this case.

16                  Okay. So I understand that there  
17                  are some motions here that you wish to argue.  
18                  There is a Motion to Dismiss ANC-3C as a  
19                  protestant. Mr. O'Brien, that is your motion.  
20                  Do you want to speak to it first?

21                  MR. O'BRIEN: Very well. I'll try  
22                  not to repeat everything that I wrote. I

1 presume the Board has had the opportunity to  
2 review the written submission.

3 This was considered, this  
4 application, which is for a DR License for the  
5 Giant Food at Wisconsin and Newark, N.W.  
6 There were two applications in front of the  
7 Board and the ANC. One application was for a  
8 Class B License, which was protested, not by  
9 the ANC, but by another party. The other  
10 party withdrew the protest, because the Class  
11 B application is not before the Board at all,  
12 at this point.

13 The Class DR application was  
14 protested on a split vote by the ANC at its  
15 July meeting. The actual date of the meeting  
16 escapes me. I don't think it's relevant.

17 On July 24th or I should say by  
18 letter dated July 24th, the ANC protested the  
19 Class DR License application on grounds which  
20 I will characterize, and of course the letter  
21 speaks for itself, as dissatisfaction or  
22 displeasure with the notion that shoppers in

1 the supermarket might be able to have beer and  
2 wine with them as they shop in the aisles of  
3 the store.

4 I will point out that the relevant  
5 regulation allows consumption, in this case,  
6 on the premises and does not limit it to any  
7 particular portion of the premises. And I  
8 will tell you that other supermarkets in the  
9 city presently allow this, including the Whole  
10 Foods over at 15th and P. And, in fact, the  
11 Giant, recently reopened Giant, store at City  
12 Market, 8th and O, N.W.

13 The letter submitted on July 24th,  
14 in my view, accurately characterizes what was  
15 discussed at the ANC meeting. That is an  
16 aversion to the concept of shopping inside the  
17 store. To my recollection, there was no  
18 discussion at the ANC meeting at all as to  
19 external effects of that.

20 In other words, how does that  
21 ability to consume alcoholic beverages while  
22 shopping for groceries somehow impact the

1 neighborhood peace, order and quiet or  
2 pedestrian/vehicular safety?

3 In my recollection, there is no --  
4 there was no such discussion at the ANC  
5 meeting. Now, the protest deadline in this  
6 case was January 28th. Again, the first  
7 protest letter, the one I call the active one,  
8 was submitted dated January -- July 24th. Did  
9 I say January a minute ago?

10 CHAIRPERSON MILLER: Yes.

11 MR. O'BRIEN: I meant to say July.  
12 The protest deadline was July 28th. The first  
13 letter was submitted with a date of July 24th.  
14 I characterized that letter as accurately  
15 reflecting what was voted on at the ANC  
16 meeting.

17 Between the 24th of July and the  
18 July 28 protest deadline it is apparent that  
19 the ANC became aware that the protest -- first  
20 protest letter dated July 24th was legally  
21 deficient for it did not recite statutory  
22 grounds, such as peace, order and quiet or

1 vehicular and pedestrian safety.

2 Thus, a second protest letter  
3 dated July 28th is submitted. That letter,  
4 and this is my characterization, plugs in the  
5 statutory grounds.

6 Now, the foundation of our motion  
7 is that an ANC can only act at a public  
8 meeting. And ANCs are subject to the Open  
9 Meetings Act. And thus, the only legitimate  
10 protest from an ANC is what was voted on at  
11 the ANC meeting.

12 And as a factual proposition, I  
13 asserted in my motion that peace, order and  
14 quiet and vehicular and pedestrian safety were  
15 not at all voted on at the ANC meeting, much  
16 less even discussed.

17 Now, I recognized in my motion  
18 that the minutes of the meeting might be  
19 necessary to resolve this case to confirm my  
20 representation of my recollection. And this  
21 ANC did not meet in August. It will adopt its  
22 minutes at its September meeting, which is

1 some time after today.

2           However, with very, very  
3 commendable candor, Chair Roller did advise  
4 legal staff and I'm reading from his email to  
5 Mr. Berman dated August 22nd, I'm reading it  
6 only in part, one sentence. "What I can do at  
7 this point is stipulate that the statutory  
8 phrases were not used during the public  
9 meeting." And in context the statutory  
10 phrases mean peace, order and quiet and  
11 vehicular/pedestrian safety.

12           So the bottom line, I don't think  
13 we have to wait for the minutes. The chair of  
14 the ANC again very fairly and honestly has  
15 acknowledged that the ANC did not vote to  
16 protest this application on vehicular/  
17 pedestrian safety or peace, order and quiet  
18 grounds.

19           And it's for that reason the  
20 second protest letter dated July 28th is  
21 deficient and thus this protest should be  
22 dismissed.

1                   CHAIRPERSON MILLER: Okay. Thank  
2 you. Before we hear from the ANC, I would  
3 like to ask some questions and other Board  
4 Members may as well while it is fresh in my  
5 mind, the arguments that you have just made.

6                   So, Mr. O'Brien, I want to ask you  
7 since when do we look at minutes as opposed to  
8 a resolution? It seems to me when we are  
9 dealing with these proceedings, we look at  
10 what the ANC actually passes, not all the  
11 discussion.

12                  MR. O'BRIEN: I haven't seen a  
13 resolution.

14                  CHAIRPERSON MILLER: Okay. So  
15 that's why you --

16                  MR. O'BRIEN: I have seen a letter  
17 or two letters --

18                  CHAIRPERSON MILLER: Okay.

19                  MR. O'BRIEN: -- from the ANC  
20 Chair to the ABC Board. I don't think either  
21 of those letters contained a "block" that we  
22 sometimes see that at a certain meeting the

1 following resolution was adopted and then a  
2 resolution is set forth. I haven't seen that  
3 in this case.

4 CHAIRPERSON MILLER: Are you --  
5 and certainly the ANC can clarify this when we  
6 get to the ANC, but the first letter, was that  
7 voted on at the ANC meeting?

8 MR. O'BRIEN: I think the first  
9 letter, generally speaking, accurately  
10 characterizes what happened at the meeting.

11 CHAIRPERSON MILLER: You said  
12 there was a split vote?

13 MR. O'BRIEN: Yes. I think it was  
14 4-2, although --

15 MS. SIEGEL: It was 5-3.

16 MR. O'BRIEN: 5-3. Thank you.

17 CHAIRPERSON MILLER: Okay. All  
18 right. Then unless you know -- I mean, is it  
19 your understanding that that was voted on at  
20 the meeting and the vote was 5-3?

21 MR. O'BRIEN: There was a vote  
22 taken at the meeting, 5-3, to protest the

1 application. And I'm paraphrasing now.

2 CHAIRPERSON MILLER: Okay.

3 MR. O'BRIEN: Because the five who  
4 voted did not like the concept of alcoholic  
5 beverages being carried by patrons while they  
6 shopped in the store aisles. And that, I  
7 think, is what is set forth in the original  
8 protest letter.

9 CHAIRPERSON MILLER: Okay. So we  
10 would look to the language of the protest  
11 letters to see if we agree with the  
12 characterization.

13 MR. O'BRIEN: Yes, but --

14 CHAIRPERSON MILLER: Or it doesn't  
15 matter. My question was that that's like the  
16 resolution and that's what they voted on.

17 MR. O'BRIEN: Yes.

18 CHAIRPERSON MILLER: Okay.

19 MR. O'BRIEN: But, Madam Chair, in  
20 further answer to your question, now that we  
21 have a stipulation from the ANC that the  
22 statutory phrases were not used at the public

1 meeting. Thus, we know now that the ANC did  
2 not adopt a resolution to protest this  
3 application on either peace, order and quiet  
4 or vehicular/pedestrian safety grounds.

5 CHAIRPERSON MILLER: Is it your  
6 argument that to protest a license under our  
7 statute, you have to use the words peace,  
8 order and quiet exactly or else it's  
9 deficient?

10 MR. O'BRIEN: Yes.

11 CHAIRPERSON MILLER: I mean,  
12 peace, order, quiet or one of the other  
13 categories? You actually have to use that  
14 language? For instance, if you describe  
15 something that would be understood to disturb  
16 peace, order and quiet, that wouldn't be  
17 sufficient?

18 MR. O'BRIEN: I don't -- yes. My  
19 position is that the ANC -- and there is case  
20 law on this and I don't have a citation for  
21 you. It's the ANC's written recommendation  
22 that governs, not oral --

1 CHAIRPERSON MILLER: Okay.

2 MR. O'BRIEN: -- opinions and  
3 things like that. When I say governs, I mean,  
4 it's entitled to great weight. If the ANC is  
5 going to protest on peace, order and quiet or  
6 vehicular/pedestrian safety grounds, yes, it  
7 is my position that it is incumbent upon them  
8 to so state at the time they take the vote.

9 And in fact, I observed that the  
10 statute requires that the -- I can find a  
11 citation here for you in a moment. The  
12 statute requires that protest submissions in  
13 deed recite statutory grounds.

14 I can find that cite for you  
15 quickly if you would like?

16 CHAIRPERSON MILLER: Okay, yes.

17 MR. O'BRIEN: It's a protest of an  
18 ABC application, Madam Chair, "must be  
19 grounded upon one or more of the statutory  
20 appropriateness standards" and that's in the  
21 regulations of 23 DCMR 1605.2.

22 In other words, yes, the magic

1 words have to appear. They cannot be  
2 inferred.

3 CHAIRPERSON MILLER: So my  
4 question is if one of the appropriateness  
5 standards is peace, order and quiet and  
6 someone were to say in their resolution or  
7 their letter that they are protesting because  
8 something going on inside an establishment is  
9 going to be extremely noisy, that we would  
10 have to reject that petition because they  
11 didn't say peace, order and quiet?

12 MR. O'BRIEN: Yes. And that is  
13 what is required by 23 DCMR 1605.2.

14 CHAIRPERSON MILLER: Okay. I  
15 don't necessarily read that.

16 MR. O'BRIEN: I'm sorry?

17 CHAIRPERSON MILLER: I don't  
18 necessarily read it that way, but --

19 MR. O'BRIEN: I did not bring a  
20 copy of the regulation with me.

21 CHAIRPERSON MILLER: Oh, I have  
22 it.

1                   MR. O'BRIEN: But I think the  
2 language is mandatory.

3                   CHAIRPERSON MILLER: It says "All  
4 protests shall be in writing, shall be  
5 received by the Board prior to the end of the  
6 protest period and shall state as grounds for  
7 the protest why the matter being objected to  
8 is inappropriate under one or more of the  
9 appropriateness standards set out in D.C.  
10 Official Code 25-313 and 25-314 in Section 400  
11 of the Title."

12                   That's what you are referring to?

13                   MR. O'BRIEN: Yes, that's what I'm  
14 referring to. And the language is mandatory.  
15 The protest must set forth one of the  
16 statutory grounds. The ANC -- the protest  
17 that the ANC voted on did not.

18                   MEMBER SHORT: Madam Chair, for  
19 the record?

20                   CHAIRPERSON MILLER: Go ahead.

21                   MEMBER SHORT: What was that code  
22 again?

1 CHAIRPERSON MILLER: 1605.2 in our  
2 regulations.

3 MEMBER SILVERSTEIN: Which refers  
4 to?

5 CHAIRPERSON MILLER: Which refers  
6 to D.C. Code 25-313 and 314 and 400.

7 MEMBER ALBERTI: Yes.

8 MR. O'BRIEN: For clarity, 313,  
9 314 are the Statutory Appropriateness  
10 Standards.

11 CHAIRPERSON MILLER: Yes, right.

12 MEMBER ALBERTI: And the statute  
13 you just read is 623 what?

14 MR. O'BRIEN: 1605.2.

15 MEMBER ALBERTI: Okay.

16 CHAIRPERSON MILLER: .2.

17 MR. O'BRIEN: Which that's a  
18 regulation.

19 MEMBER ALBERTI: Thank you. It's  
20 the regulation, yes. I'm sorry. Regulation.  
21 I got it. Thank you. I'm familiar with this.  
22 I just want to make sure I know where they

1 are.

2 CHAIRPERSON MILLER: I just have a  
3 couple more questions and then I'm going to  
4 defer to my Board Members.

5 MR. O'BRIEN: Certainly.

6 CHAIRPERSON MILLER: I was just  
7 curious, you know, you said that this, I  
8 forget what you call it, shopping, drinking  
9 and shopping or whatever, I don't know, is  
10 allowed or occurs in other supermarkets,  
11 Safeway or whatever.

12 MR. O'BRIEN: Yes, it does.

13 CHAIRPERSON MILLER: Did those  
14 supermarkets have settlement agreements with  
15 respect to the conditions under which they --

16 MR. O'BRIEN: I do not know.

17 CHAIRPERSON MILLER: Okay.

18 MR. O'BRIEN: I didn't --  
19 actually, the -- no, the settlement agreement  
20 for Giant store at 8th and O does not have a  
21 settlement. I'm sorry. Giant store at 8th  
22 and O does not have a settlement agreement.

1                   CHAIRPERSON MILLER:  And they have  
2                   that?

3                   MR. O'BRIEN:  And they have that.

4                   CHAIRPERSON MILLER:  Okay.

5                   MR. O'BRIEN:  Because it's  
6                   permitted by the regulation.

7                   CHAIRPERSON MILLER:  Okay.  All  
8                   right.  Others?  Mr. Silverstein, it looks  
9                   like you have a question.  Do you?

10                  MEMBER SILVERSTEIN:  I have  
11                  several questions.  May we ask questions of  
12                  the ANC, at this time?

13                  CHAIRPERSON MILLER:  Well, they  
14                  didn't get to make their argument yet.

15                  MEMBER SILVERSTEIN:  Evidentiary.  
16                  My question would be --

17                  CHAIRPERSON MILLER:  Okay.

18                  MEMBER SILVERSTEIN:  -- at this  
19                  point, we are trying to figure out exactly  
20                  what was in here.  Do you have a recording of  
21                  your meeting?

22                  MR. BUDD:  There may be an audio

1 recording. We do not, as a practice, the ANC  
2 does not make a recording, but there is  
3 frequently a reporter from the Northwest  
4 Current who is present and our administrator  
5 may have actually been able to, out of the  
6 courtesy from the Current, obtain a copy of  
7 that recording.

8 I'm trying to -- actually just  
9 yesterday, I was trying to look into that and  
10 ascertain whether we have a copy available to  
11 us.

12 MEMBER SILVERSTEIN: Doesn't the  
13 Open Meetings Act require you to have a  
14 recording?

15 MR. BUDD: I don't think it -- I  
16 don't believe it requires an audio recording.  
17 We keep contemporary -- we have an  
18 administrator who keeps contemporaneous notes  
19 and uses those to construct the minutes.

20 MEMBER SILVERSTEIN: And you  
21 cannot -- okay. Well, fine. Nothing further  
22 at this point.

1                   CHAIRPERSON MILLER: Okay. So is  
2 there any specific questions to the licensee  
3 based on their presentation?

4                   MEMBER SHORT: Yes, I have one.

5                   CHAIRPERSON MILLER: Yes, okay.

6                   MEMBER SHORT: I would just like  
7 to know at the 8th and O store, have there  
8 been any complaints about the drinking of  
9 alcohol or the permission to drink alcohol in  
10 the store? Has it caused any problems there?

11                  MR. O'BRIEN: No. And as -- at  
12 the ANC we had the general manager of the 8th  
13 and O store there who represented to the  
14 meeting that --

15                  CHAIRPERSON MILLER: Right.

16                  MR. O'BRIEN: -- no problems  
17 whatsoever have been experienced.

18                  MEMBER SHORT: Thank you.

19                  CHAIRPERSON MILLER: Okay.  
20 Others? All right. So why don't we turn to  
21 the ANC then and hear from you?

22                  MR. ROLLER: All right. Well,

1       thank you. At the outset, I just want to  
2       acknowledge I am something of an imperfect  
3       messenger. I was one of the three  
4       Commissioners who voted against this, so I am  
5       here in my capacity as Chair doing my best to  
6       represent the majority.

7                       CHAIRPERSON MILLER: Okay.

8                       MR. ROLLER: And Commissioner  
9       Siegel is one of those Commissioners who voted  
10      in the five member majority.

11                      I think, Madam Chair, your  
12      questions essentially go to the heart of it.  
13      I don't believe there is -- there is no  
14      disagreement that the magic words of peace,  
15      order and quiet or vehicular/pedestrian  
16      safety, those phrases were not used during the  
17      public meeting. I am happy to stipulate and  
18      concede that point.

19                      The ANC's point, and I think I  
20      articulated this in our opposition to the  
21      motion, is that the substance of the reasons  
22      why we objected and filed the protest which I

1 think counsel for Giant effectively concedes  
2 between the original protest letter and the  
3 revised are the same and accurately reflect  
4 the discussion that happened at the open  
5 meeting.

6 The revised protest letter was a  
7 response to information we received from a  
8 Member of the ABRA staff that that language  
9 needed to be used. I revised the letter to  
10 accommodate those instructions. And if the  
11 law requires those magic words to have been  
12 articulated during the open meeting, I'm  
13 willing to defer to the Board's judgment on  
14 what that law is.

15 As a matter of policy, the ANCs  
16 being what they are, I think that would be a  
17 bad law, but as a lawyer, I recognize there  
18 are sometimes bad laws.

19 But if the statute, which I don't  
20 have in front of me, or the regulation says  
21 that there -- a protest has to be based for  
22 reasons under one of the following, I would

1 argue that reasons under the following does  
2 not mean those magic phrases have to be used.

3 That the reasons argued or  
4 presented, if they fall under those  
5 categories, have been presented. And that  
6 anything that follows is just administrative  
7 act of putting those objections and those  
8 concerns into the context of formal written  
9 requirements.

10 CHAIRPERSON MILLER: Okay.  
11 Anything else? I have a question about that.  
12 Okay. Given that you articulated, the ANC  
13 articulated, their concerns, you know, and  
14 there is that one issue well, do you have to  
15 say those magic words or not.

16 Okay. Let's say you don't and  
17 it's assumed that you are concerned about  
18 peace, order and quiet when you are talking  
19 about this conduct in the establishment. Can  
20 you address whether this still is a  
21 protestable issue, whether it needs to -- or  
22 you need to develop or whatever how it will

1 impact the neighborhood or the locality within  
2 which the establishment is located?

3 MR. ROLLER: Given that this is an  
4 application for a new license and not a  
5 renewal --

6 CHAIRPERSON MILLER: Yes.

7 MR. ROLLER: -- I think it would  
8 be very challenging. And I don't have the  
9 background in dealing with these, but I think  
10 it would be very challenging to articulate  
11 evidentiary things that I can point to to say  
12 these are the bad things that will happen  
13 because it's essentially, in a way, trying to  
14 predict the future.

15 I respect counsel pointing to two  
16 other establishments in the District where  
17 this is happening. Not being intimately  
18 familiar with those neighborhoods, all I can  
19 say is I know what the characteristics of our  
20 neighborhood are.

21 We have a playground just a block  
22 away. We have very dense, primarily

1 residential communities with lots of young  
2 families in the area. We have got lots of  
3 dogs walking around. There is a dog park.  
4 Schools, we have got a number of schools in  
5 the immediate vicinity.

6 CHAIRPERSON MILLER: What's the  
7 connection between what goes on as far as  
8 carrying drinks around a supermarket and the  
9 effect on kids on the playground or, you know?

10 MR. ROLLER: Sure. Well, as we  
11 put in the revised protest letter and trying  
12 to break it down into the two categories, that  
13 I'm aware of, the concerns with respect to the  
14 interior of the grocery store -- and again,  
15 I'm trying to represent someone else's  
16 argument.

17 CHAIRPERSON MILLER: Okay.

18 MR. ROLLER: I'm trying to do it  
19 faithfully. It's that you are essentially  
20 turning an environment that has traditionally  
21 been one without alcohol into another place in  
22 which alcohol has been consumed. Whereas bars

1 prohibit minors from entering the premises,  
2 this is a grocery store. There are going to  
3 be babies. There are going to be minors going  
4 up and down the aisles.

5                   Whereas a bar a recovering  
6 alcoholic has the option to not go in there.  
7 A recovering alcoholic has to be able to buy  
8 groceries and without -- I would think the  
9 argument goes, without the expectation of  
10 having to deal with a situation where people  
11 are consuming alcoholic beverages.

12                   In terms of the exterior -- oh,  
13 I'm sorry. And just to further refine that  
14 point, at the public meeting, counsel for  
15 Giant was asked what's the training going to  
16 be involved in terms of making sure that  
17 people under age aren't going to be getting  
18 access to these two glasses of wine or beer  
19 that are being served per customer and their  
20 response was that the people at the cafe  
21 selling these two glasses will have training  
22 to identify minors.

1                   There was no representation that  
2 other store staff would receive similar  
3 training and thus be able to be policing  
4 consumption in the aisles. In terms of the  
5 exterior, I think what we have here is under  
6 the proposal what is functionally a bar or  
7 restaurant serving alcohol where people can  
8 consume up to two glasses a person within the  
9 period of time that they are buying groceries,  
10 load the groceries into the car and drive off  
11 down streets that border, as for an example,  
12 this playground.

13                   Well, it's just generally  
14 Wisconsin and Massachusetts Avenues both in  
15 close proximity. We have a number of  
16 collector streets, such as Macomb. There is  
17 a fair amount of vehicular and pedestrian  
18 traffic in the neighborhood. And so you have  
19 got people who are drinking and getting in  
20 their cars and going off.

21                   CHAIRPERSON MILLER: Okay. Thank  
22 you. I have one other question and then I'm

1 going to turn to my other colleagues.

2 As far as knowing what is the ANC  
3 document to give great weight to or that had  
4 the vote, this July 23, 2014 letter, was that  
5 voted on or was there a resolution that you  
6 don't have?

7 MR. ROLLER: So it's a very good  
8 question, Madam Chair. The issue which I  
9 alluded to in the protest letter is that going  
10 into the meeting, I don't think there actually  
11 was an expectation of a protest. That the  
12 news that this would be the style of service,  
13 that consumption would be allowed throughout  
14 the entire store, rather than just in the  
15 cafe, came to us as a surprise.

16 The resolution was offered by  
17 Commissioner Silvera, who is traveling now out  
18 of the country. He was at the meeting, but  
19 now he is out of the country. So there  
20 resolution was presented orally. It was not  
21 reduced to writing. And to the best of my  
22 recollection, the resolution was to the effect

1 of I, Commissioner Silvera, move to protest  
2 the license for the reasons articulated.

3 The motion was seconded, voted on  
4 and then I did my best efforts to reduce the  
5 reasons that were discussed at the meeting  
6 into the original protest and then  
7 subsequently the revised protest letter.

8 CHAIRPERSON MILLER: Okay. And  
9 there is no -- you have never got the  
10 recording of the resolution as articulated and  
11 voted on?

12 MR. ROLLER: I am checking with  
13 our administrator to see if we have that  
14 recording.

15 CHAIRPERSON MILLER: Okay.

16 MR. ROLLER: I don't know for  
17 certain one way or the other, at this time.

18 CHAIRPERSON MILLER: But it's your  
19 position that the letter of July 23rd reflects  
20 accurately that resolution?

21 MR. ROLLER: Well, it would be my  
22 position that both accurately reflect, but,

1       yes.

2                   CHAIRPERSON MILLER:   But the  
3       second letter, was there a vote on the second  
4       letter?

5                   MR. ROLLER:   No, ma'am.

6                   CHAIRPERSON MILLER:   No.   You just  
7       thought that was administerial change?   Okay.  
8       Got it.

9                   MS. SIEGEL:   And excuse me, Madam  
10      Chair, the Commissioners were copied on drafts  
11      of the letter, so we all had a chance to  
12      provide some additional information or -- so  
13      that we -- the -- while there wasn't a formal  
14      vote on the revised letter, everyone did have  
15      a chance to review it.

16                   CHAIRPERSON MILLER:   Okay.   Okay.  
17      All right.   Thank you.   Mr. Short?

18                   MEMBER SHORT:   Yes.   I would just  
19      like to ask in that same area, let's just say  
20      blocks or a block, are there other business  
21      establishments that sell alcohol?

22                   MR. ROLLER:   There are, I believe,

1 two liquor stores. There is Burka's at Idaho  
2 and Wisconsin. And then there is another  
3 liquor store, the name of which I don't  
4 recall, on Macomb Street. Then there are a  
5 number of -- there are one or two bars/  
6 taverns and then there are a number of  
7 restaurants that serve wine, beer and some  
8 cocktails.

9 MEMBER SHORT: At those  
10 restaurants, are children allowed to go in  
11 restaurants where they are serving alcohol?

12 MR. ROLLER: In the restaurants,  
13 yes, sir, they are.

14 MEMBER SHORT: And do people leave  
15 there after drinking and drive past that same  
16 playground you just mentioned?

17 MR. ROLLER: I would assume some  
18 of them do.

19 MEMBER SHORT: Well, that's all I  
20 have. Thank you very much, Madam Chair.

21 CHAIRPERSON MILLER: Okay.  
22 Others? Mr. Alberti?

1 MEMBER ALBERTI: Hi, Commissioner.

2 I'm sorry, I didn't catch your name.

3 MR. ROLLER: That's quite fine,  
4 sir. I'm sorry. First name Carl last name  
5 Roller, like roller skates.

6 MEMBER ALBERTI: Okay.  
7 Commissioner Roller, I hear all your arguments  
8 and I empathize with them. I'm an ANC  
9 Commissioner. I have dealt with alcohol  
10 beverage issues, so I empathize with them.

11 But I have to agree with Mr.  
12 O'Brien that I believe I'm legally bound to  
13 only consider what is represented in your  
14 protest letter.

15 I can't consider additional  
16 arguments you make today or additional  
17 arguments you make in a revised letter.

18 However, I do disagree with Mr.  
19 O'Brien in that I don't think the magic words  
20 have to be there. I don't have -- don't think  
21 you need to state or paraphrase the criteria  
22 for a protest as articulated in the statutes

1 in your letter. All right.

2 So it seems to me that in your  
3 original letter, the basis that you represent  
4 for your protest is that the staff will be  
5 untrained to identify underage individuals,  
6 not sufficiently trained for underage  
7 individuals given that they are going to be  
8 dispersed throughout the -- people will be  
9 dispersed throughout the store and people are  
10 able to hand it off to underage individuals.

11 Am I correct in interpreting that  
12 from what I read here? I'm not going to  
13 reread what is in your letter, but I think  
14 that that is what is being said in your  
15 letter.

16 So for both parties, what it comes  
17 down to me is deciding whether that concern,  
18 and that concern only, because that's all we  
19 have in your letter, goes to one of the  
20 standards for a protest. Do you want to speak  
21 to that?

22 MR. ROLLER: I think what -- the

1       only thing that I would say, sir, is I think  
2       that would be an understandable approach. I  
3       actually apologize. I do not have a copy of  
4       my own letter in front of me, it's my error.

5                   MEMBER ALBERTI: Could someone  
6       provide him with that?

7                   MR. ROLLER: I --

8                   MEMBER ALBERTI: The letter, do  
9       you have an extra copy? I have written on  
10      mine, but here you can have my copy.

11                  MR. ROLLER: Okay.

12                  MEMBER ALBERTI: And I'll just  
13      borrow Mr. Rodriguez' letter. All right. And  
14      I think it's like in the third paragraph where  
15      I'm focusing. Mr. O'Brien, do you have a  
16      copy?

17                  MR. O'BRIEN: You know, I --

18                  MEMBER ALBERTI: It --

19                  MR. O'BRIEN: -- don't see my  
20      copy. I mean, looking for it, so I can use  
21      it, I can't find my copy.

22                  MEMBER ALBERTI: You are usually

1 so prepared, I assumed that you would have it.

2 MR. O'BRIEN: Maybe it was written  
3 in invisible ink. I don't know.

4 MEMBER ALBERTI: This is the  
5 original of July 23rd.

6 MR. O'BRIEN: I'm sure it is.

7 MEMBER ALBERTI: All right.

8 MR. ROLLER: I think what I would  
9 say, sir, is you were the experts in terms of  
10 what falls under the articulated statutory  
11 reasons. My personal feeling, as a layman, is  
12 that concerns about consumption of alcoholic  
13 beverages next to families accompanied by  
14 minors and recovering alcoholics goes towards  
15 peace, order and quiet that one would expect  
16 within a grocery store.

17 I think there is the point about  
18 the minors. I'm sorry, the consumption of  
19 minors. And you know, past that, if the Board  
20 felt it was appropriate to limit its review to  
21 that particular letter, I would agree with  
22 you. Those are the only two points

1 articulated there.

2 I don't want to put words in Mr.  
3 O'Brien's mouth, but I think the context of  
4 what he has argued though, the way I have  
5 interpreted it, I'm sure people disagree with  
6 me now, is that the substance of the revised  
7 letter is not a matter of protest or the  
8 motion to dismiss either. It's the use of  
9 those particular phrases.

10 MEMBER ALBERTI: Yes, and I have  
11 told you how I view that.

12 MR. ROLLER: I understand.

13 MEMBER ALBERTI: Both parties can  
14 respond to that. Okay.

15 MR. ROLLER: That's all I would  
16 say, sir.

17 MEMBER ALBERTI: Thank you. Thank  
18 you very much. You look like you want to say  
19 something.

20 MS. SIEGEL: I just wanted to add  
21 that --

22 MEMBER ALBERTI: So I'll just

1 entertain it.

2 MS. SIEGEL: -- during the  
3 discussion --

4 MEMBER ALBERTI: And I'm sorry,  
5 your name again?

6 MS. SIEGEL: I'm Margaret Siegel.

7 MEMBER ALBERTI: Siegel?

8 MS. SIEGEL: I'm also a  
9 Commissioner and Treasurer --

10 MEMBER ALBERTI: All right,  
11 Commissioner. Thank you.

12 MS. SIEGEL: -- of ANC-3C. A  
13 couple of points. One is that the -- we  
14 assumed, now we have learned incorrectly, that  
15 alcoholic beverages would only be consumed in  
16 the cafe in the store. And there were not  
17 objections to serving alcoholic beverages to  
18 be consumed and monitored within the cafe  
19 within the store. So that was one issue that  
20 was discussed.

21 We also raised the number of  
22 potential compromises with Giant. What if you

1       tried this?  What if you tried that?  Because  
2       we were trying very hard to work with them to  
3       accommodate their desire to create this  
4       atmosphere in the store at the same time that  
5       we were reflecting the concerns of our  
6       constituents, who did not want to see  
7       alcoholic beverages throughout the store.

8                   MEMBER ALBERTI:  Thank you --

9                   MS. SIEGEL:  You're welcome.

10                  MEMBER ALBERTI:  -- for that,  
11       Commissioner.  I have no further questions of  
12       protestants.  But I wouldn't -- would like Mr.  
13       O'Brien, at some point, to have the  
14       opportunity to respond to my views on this.

15                  CHAIRPERSON MILLER:  Okay.  Why  
16       don't we do it right now?

17                  MR. O'BRIEN:  At the pleasure of  
18       the Chair.

19                  CHAIRPERSON MILLER:  Yes.  Go  
20       right ahead, sir.

21                  MR. O'BRIEN:  Thank you.  All  
22       right.  With respect to whether the magic

1 words must appear, the exception will soon  
2 swallow the hole. Anybody can write down the  
3 words peace, order and quiet if they are  
4 worried about somebody sneezing too loud in  
5 the store and that was the grounds for the  
6 vote. No one would say that was a protestable  
7 issue.

8 But one could just say oh, well,  
9 that relates to peace, order and quiet. I say  
10 the magic words must appear in the ANC's  
11 Resolution because the ANC cannot protest on  
12 peace, order and quiet grounds or vehicular/  
13 pedestrian safety unless the ANC has so voted.

14 The Regulation 1605.2 says that  
15 the magic words, indeed, must appear in the  
16 letter. And given the Open Meetings Act  
17 requirement, the ANC cannot simply plug it in.  
18 I very facetiously said it can't be done in  
19 the living room later and maybe it was the  
20 kitchen, I'm not sure, but, yes, the magic  
21 words must appear.

22 Number two, with respect to the

1       ANC's real objection here, the one that was  
2       discussed at the meeting is an aversion to  
3       what is permitted by the regulation. In other  
4       words, it's a quarrel with the legislative  
5       judgment that this is permissible and that  
6       goes to the Chair's question, I believe,  
7       earlier.

8                        Their concern, the ANC's concern,  
9       about what happens in the store does not  
10      relate to peace, order and quiet until it is  
11      articulated that what happens in the store is  
12      affecting the locality, section, portion, its  
13      environment outside. And none of that was  
14      discussed and I don't think Chair Roller  
15      maintains differently. No such issues were  
16      discussed at the ANC meeting.

17                      It was five Commissioners don't  
18      like the idea that shoppers should be able to  
19      consume beer and wine, even though the Council  
20      said that it's okay.

21                      Third, and I think that's where,  
22      by that, I mean, the magic words, this motion

1 should stop. But if there remains some sort  
2 of concern regarding what actually was  
3 discussed, and I say nothing was discussed  
4 that wasn't in that first letter, the exterior  
5 effects that we heard about, playground, dog  
6 parks and schools, none of that was discussed  
7 at the ANC meeting.

8           And what it is, the reason it  
9 appears in the second letter is Commissioner  
10 Roller's very valiant effort to salvage on  
11 behalf of his Commission what was a defective  
12 proceeding in the first place.

13           And the one thing I suppose the  
14 Commission could have done when it realized  
15 that the first protest letter was never going  
16 to pass mustard, it could have called a  
17 special meeting. Now, I'm not saying that  
18 would have been practical. We are talking  
19 about a period of days here between the  
20 meeting and the -- but that was the way that  
21 it could have been remedied.

22           And finally, I guess we can leave

1 to another day the discussion as to whether  
2 ABRA's staff should be taking sides --

3 CHAIRPERSON MILLER: Yes.

4 MR. O'BRIEN: -- in a contested  
5 matter. Mr. Alberti, I want to refer to you.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER ALBERTI: I don't, but I  
8 don't think that this is --

9 CHAIRPERSON MILLER: I don't think  
10 we are getting into that.

11 MEMBER ALBERTI: -- I'll let the  
12 Chair decide.

13 MR. O'BRIEN: Okay.

14 MEMBER ALBERTI: But personally, I  
15 don't think that this is the venue to discuss  
16 that.

17 CHAIRPERSON MILLER: Right.

18 MR. O'BRIEN: And that's why I  
19 said we can wait until another day.

20 CHAIRPERSON MILLER: Let's focus  
21 on these issues and let's say that I just want  
22 to follow-up on your last argument. Let's say

1 we go beyond the first issue whether you have  
2 to say the magic words or not. I think we  
3 have heard enough about that, both sides how  
4 you interpret that statute.

5 If you go beyond that though, I  
6 want to ask you where in the legislative  
7 history does the Council bless this shopping  
8 and drinking?

9 MR. O'BRIEN: I don't have a  
10 legislative history for you. The regulation  
11 says at the premises.

12 CHAIRPERSON MILLER: At the  
13 premise, okay.

14 MR. O'BRIEN: It does not say at a  
15 narrowly-defined or delineated corner of the  
16 premises. And this Board, I believe, from  
17 media reports, if from no other source, is  
18 well-aware that this practice is ongoing.

19 So if this Board -- this is lawful  
20 conduct that we propose to engage in here.  
21 And if this Board were to say well, then we  
22 are going to say oh, you can't serve or you

1 can't allow consumption in the store aisles,  
2 well, then you have to pull the plug on  
3 another Giant, on Whole Foods and I believe  
4 there is at least one Safeway that does it  
5 also.

6 CHAIRPERSON MILLER: Okay. I  
7 think there is something in between lawful and  
8 where conditions can be put on activities in  
9 ABC-licensed establishments.

10 MR. O'BRIEN: Right.

11 CHAIRPERSON MILLER: A lot of  
12 things are lawful that, you know, you get  
13 limited. Hours can be lawful to a large  
14 extent, but then they are limited. Right?

15 MR. O'BRIEN: Yes, but conduct  
16 which is lawful cannot be used as a ground for  
17 finding inappropriateness. That's the Upper  
18 Georgia Avenue Planning Commission v. ABC  
19 Board case, it's at 500 A.2d. I forget the  
20 page number.

21 CHAIRPERSON MILLER: I'm sorry,  
22 what?

1                   MR. O'BRIEN:  It's the Upper  
2                   Georgia Avenue Planning Commission v. ABC  
3                   Board case.

4                   CHAIRPERSON MILLER:  Okay.

5                   MR. O'BRIEN:  It's at 500 A.2d and  
6                   I just forget the page number off the top of  
7                   my head.  I did not cite it here.  But if  
8                   conduct is lawful, it itself cannot be the  
9                   grounds for finding inappropriateness.

10                  CHAIRPERSON MILLER:  But if the  
11                  conduct is lawful say to have an establishment  
12                  open until 3:00 in the morning, don't we often  
13                  find it may be inappropriate in certain  
14                  circumstances that it be open that late and so  
15                  we limit it?

16                  MR. O'BRIEN:  Well, what the Board  
17                  does in a case like that is grants the license  
18                  with conditions as a way of trying to strike  
19                  a middle ground.

20                  The Upper Georgia Avenue Planning  
21                  Commission case was nude dancing.

22                  CHAIRPERSON MILLER:  Oh, right.

1 Okay.

2 MR. O'BRIEN: Okay. And the  
3 Board, the first time it ruled, said we don't  
4 think nude dancing is appropriate here. And  
5 the Court of Appeals sent it back and said at  
6 the time of that case, nude dancing was  
7 lawful. And you can't say because I want to  
8 do something that is lawful, that there are  
9 still inappropriate.

10 CHAIRPERSON MILLER: Okay. Are  
11 there other questions?

12 MEMBER ALBERTI: Yes.

13 CHAIRPERSON MILLER: Okay. Mr.  
14 Alberti?

15 MEMBER ALBERTI: Mr. O'Brien,  
16 well, it seems like a lot of this discussion  
17 has gone to trying the case and I don't think  
18 we -- that's where we should be going. I  
19 mean, I want to focus just, for everybody's  
20 edification, on the issue before us is how we  
21 interpret this letter. That's really the  
22 issue before us.

1 MEMBER RODRIGUEZ: Yes.

2 MEMBER ALBERTI: Not what is  
3 lawful, what the legislation says, what the  
4 merits of a protest might be. So but in terms  
5 of the magic words, let's say for example  
6 someone has the letter and says hey, you know,  
7 because of the layout of this establishment,  
8 there are going to be cars going in and out of  
9 the parking lot and people parking in such a  
10 way that will endanger the people on the  
11 street, but they never say that the issue is  
12 vehicular and pedestrian safety.

13 All right? So they never use the  
14 magic words. Should I discount that?

15 MR. O'BRIEN: The regulation  
16 requires you to.

17 MEMBER ALBERTI: Okay. That's  
18 your interpretation.

19 MR. O'BRIEN: 1605.2.

20 MEMBER ALBERTI: Okay. Well,  
21 that's --

22 MR. O'BRIEN: It says "shall

1 recite."

2 MEMBER ALBERTI: I'm not going to  
3 argue, but I will tell you that's where we  
4 differ.

5 CHAIRPERSON MILLER: Yes.

6 MEMBER ALBERTI: All right. So  
7 all right. Given for a moment that I don't  
8 believe -- let's assume that I'm looking at  
9 this and I'm not saying that the magic words  
10 have to be there, would you argue that in  
11 general concerns about underage drinking don't  
12 go to concerns about peace, order and quiet?

13 MR. O'BRIEN: Concerns about  
14 underage drinking?

15 MEMBER ALBERTI: Yes, underage  
16 service, underage people having access to  
17 alcohol, that that would not go to the issue  
18 of peace, order and quiet?

19 MR. O'BRIEN: No, actually, I  
20 don't think it does.

21 MEMBER ALBERTI: And why not?

22 MR. O'BRIEN: Now, if you could

1 show -- if you could draw a link between  
2 service of underage patrons within a place and  
3 some detrimental effects experienced in the  
4 surrounding neighborhood, then, yes.

5 But I think when we -- that  
6 hypothetical blurs the licensing and  
7 enforcement issues. Let us say  
8 hypothetically, we had a bar that made a habit  
9 of serving underage. However, the underage  
10 were brought in by a bus every night,  
11 unloaded, the underage going to drink to a  
12 large extent and they are all ushered onto the  
13 bus through a garage, so they can't even yell  
14 and scream in the brief period of time between  
15 the front door and the bus.

16 Now, that's not disturbing peace,  
17 order and quiet. It's a big time enforcement  
18 problem. But that really makes the point  
19 here. It is not what goes on inside the  
20 establishment. It is the effect of what goes  
21 on inside the establishment on the  
22 surroundings, that's what appropriateness is

1 all about.

2 MEMBER ALBERTI: Thank you.

3 MEMBER RODRIGUEZ: Madam Chair?

4 CHAIRPERSON MILLER: Yes?

5 MEMBER RODRIGUEZ: Mr. O'Brien,  
6 you know, some things are lawful, but  
7 sometimes they are very awful. You know, I  
8 don't want to be poetic, but really. And so  
9 the question is something can be lawful, but  
10 what about the wishes of the community within  
11 which that law is applied?

12 Does the community have a right?  
13 Does the community -- where does the -- where  
14 do the rights of the community begin in this  
15 issue?

16 MR. O'BRIEN: It begins with  
17 election of its representatives through the  
18 Council. And it was the Council that passed  
19 this regulation. Actually, typically  
20 regulations originate at the Board and are  
21 adopted or ratified or approved, whatever you  
22 want to call it by the Council.

1           My understanding is that this came  
2 directly from the Council. The -- so there is  
3 the regress. If the citizens at-large or the  
4 community does not like a law, then go to the  
5 Council and have it changed, but the Board, as  
6 a creature of statute, is required to enforce  
7 the law as it is presented by the Council, by  
8 the legislature. So the recourse is there.

9           Once upon a time, farther back  
10 than I would like to admit that I personally  
11 remember, instead of having the enumerated  
12 appropriateness standards, peace, order and  
13 quiet and vehicular/pedestrian safety, it  
14 simply said whether it is appropriate -- the  
15 statute said whether it is appropriate taking  
16 into account the nature of the business, its  
17 location and the wishes, and I'm not sure the  
18 word wishes was in there, but the desires or  
19 the opinion of the surrounding community. And  
20 that was so vague as to be utterly  
21 unenforceable.

22           So I hope I have answered your

1 question. If the community doesn't like  
2 something that is lawful, that's what we have  
3 the Council for.

4 MEMBER RODRIGUEZ: Well, the Board  
5 has a say as well.

6 MR. O'BRIEN: I never want to be  
7 in a position of challenging the authority of  
8 a tribunal. But the Board is not a Court of  
9 Equity. The Board is required -- as an  
10 Administrative Agency, the Board is required  
11 to operate within the bounds set forth in the  
12 statute and regulations.

13 The Board cannot impose, for lack  
14 of a better word, frontier justice.

15 CHAIRPERSON MILLER: Okay. Mr.  
16 Silverstein?

17 MEMBER SILVERSTEIN: This question  
18 is for both gentlemen and the lady and  
19 gentlemen as well and it deals with due  
20 process rights and specificity.

21 If you are charged with a crime,  
22 do you not have the right to know what that

1 crime is in specificity, so that you can argue  
2 that you are not guilty?

3 MR. ROLLER: Yes.

4 MEMBER SILVERSTEIN: Mr. Roller?

5 MR. O'BRIEN: I'm sorry, I thought  
6 you were pointing at me.

7 MEMBER SILVERSTEIN: Mr. Roller?

8 MR. ROLLER: My knowledge of  
9 criminal law as an employment lawyer is  
10 limited, but I would say generally yes, sir,  
11 in the context of if you were charged with a  
12 crime --

13 MEMBER SILVERSTEIN: As an  
14 employment lawyer --

15 MR. ROLLER: -- for your defense--

16 MEMBER SILVERSTEIN: As an  
17 employment lawyer --

18 MR. ROLLER: Yes.

19 MEMBER SILVERSTEIN: -- if an  
20 employer has been charged with some sort of  
21 wrongdoing or wrong act, do they not have a  
22 right to be told exactly what that act is,

1 exactly why it is illegal, so that they might  
2 argue to defend themselves?

3 MR. ROLLER: Actually, sir, I  
4 would say no. That -- in a complaint, you  
5 have to provide a reasonable notice to the  
6 employer to be able to investigate and respond  
7 to the charges, but you do not have to  
8 articulate each and every particular fact that  
9 gives rise to the illegal conduct.

10 MEMBER SILVERSTEIN: But do you  
11 have to state what law you are in violation of  
12 and why?

13 MR. ROLLER: In the Court  
14 pleadings, yes, sir, you do.

15 MR. O'BRIEN: In answer to that, I  
16 don't think one can charge administratively or  
17 sue in Court for sexual harassment period.  
18 One has to say on such and such a date.

19 MEMBER SILVERSTEIN: Right.

20 MR. O'BRIEN: Or on multiple  
21 occasions, employee A, etcetera, did something  
22 to employee B. There has to be some

1       specificity --

2                   MEMBER SILVERSTEIN: Right. But--

3                   MR. O'BRIEN: -- in order that one  
4       can respond.

5                   MEMBER SILVERSTEIN: But don't you  
6       have to say you did so because it's in  
7       violation of this law, of a specific law? You  
8       can't go into Court and say so and so acted  
9       bad or, you know, does there not have to be a  
10      statute so that the person who is the  
11      defendant or the applicant or whatever can say  
12      no, I'm not in violation of this particular  
13      law?

14                  MR. O'BRIEN: Yes. With the very  
15      minor caveat that law can also consist of  
16      common law.

17                  MEMBER SILVERSTEIN: Exactly.

18                  MR. O'BRIEN: But yes, there has  
19      to be a ground for a complaint. A legal  
20      ground for a complaint.

21                  MEMBER SILVERSTEIN: And --

22                  MR. O'BRIEN: You did X and I'm

1 entitled to redress for your doing X because  
2 it violates something. The something has to  
3 be identified.

4 MEMBER SILVERSTEIN: What I'm  
5 getting to is the specificity of the  
6 accusation or in this case the protest. I  
7 don't know that there is a recording. Minutes  
8 are not available. And I haven't seen the  
9 initial what the specific protest is. This  
10 is, you know, forgive me for using the term,  
11 but, nailing the jello to the wall. Mr.  
12 Roller?

13 MR. ROLLER: Well, what I would  
14 suggest, sir, is that when going to a Superior  
15 or District Court and filing a complaint,  
16 frequently, a complainant will have a civil  
17 action cover sheet. And the cover sheets  
18 specify which law, which statute are you  
19 bringing a complaint for. That helps steer a  
20 layperson who may not have the assistance of  
21 counsel.

22 In this case, I'm not aware that

1 ABRA or the Board has a version of a civil  
2 cover sheet. ANCs do not have the funds to  
3 hire lawyers. We have to make due with the  
4 resources we have available.

5 And the action of a cover sheet,  
6 we did the best that we could. We were then  
7 informed by ABRA staff of certain requirements  
8 and we made an effort to comply with those.

9 We are by definition -- I do  
10 understand your point, but we are by  
11 definition generalists. We are not conversant  
12 with the requirements of each and every single  
13 Agency of the District of Columbia.

14 And respectfully, sir, I think it  
15 would be an unfair burden to place on the ANCs  
16 to require them to do that and then  
17 simultaneously deny them the ability to  
18 respond to inquiries and requests of those  
19 agencies to then try to comply.

20 I think this is a different --  
21 administrative agencies and bodies are  
22 intentionally different than Courts of Law to

1 allow a degree of informality and fluidity to  
2 help lay people who are not necessarily  
3 experts in those areas of the law to comply  
4 with the substance rather than the latter.

5 And I think that's what we are  
6 trying to do.

7 MEMBER SILVERSTEIN: Okay. I  
8 would point out that we do provide, this  
9 Agency does, orientation sessions for ANC  
10 members. We do provide those to help. I'm an  
11 ANC Commissioner and I deeply appreciate the  
12 work that you all do.

13 And working together would be  
14 helpful then if you folks would attend the new  
15 session. And that is one of the things that  
16 we go through as the protest process, the  
17 magic words, and why they are there. Thank  
18 you.

19 MR. ROLLER: Thank you, sir.

20 CHAIRPERSON MILLER: I have a  
21 follow-up question for Mr. O'Brien.

22 If the ANC in their July 23rd

1 letter had said that they are protesting based  
2 on this, you know, shopping and -- sorry, I  
3 don't know how to characterize it, shopping  
4 and drinking or whatever, in the supermarket  
5 based on peace, order and quiet, would that  
6 have met the requirements, in your view?

7 MR. O'BRIEN: Yes.

8 CHAIRPERSON MILLER: As opposed  
9 to --

10 MR. O'BRIEN: That would have  
11 gotten us past the magic word requirement.  
12 However, this motion would still be before the  
13 Board because -- and then we would be looking  
14 at the -- listening to what might exist or  
15 looking at the minutes, because I would say  
16 that the people are in quiet argument, which  
17 clearly -- any protest based on peace, order  
18 and quiet is talking about the surroundings of  
19 the business.

20 CHAIRPERSON MILLER: So --

21 MR. O'BRIEN: They are not talking  
22 about what goes on inside.

1                   CHAIRPERSON MILLER:  -- that would  
2                   be your argument.  That was what I was asking  
3                   you about before, whether it is a protestable  
4                   issue if they don't make that linkage, right,  
5                   to the outside, right?

6                   MR. O'BRIEN:  No.  And that's --

7                   CHAIRPERSON MILLER:  Is that --

8                   MR. O'BRIEN:  I meant when I said  
9                   the exception swallowing the hole.  I mean,  
10                  the ANC -- Office of ANCs can simply put out  
11                  a memo to all ANCs and say put whatever you  
12                  want in a protest letter.  Just make sure you  
13                  say peace, order and quiet at the end of it.  
14                  That's the exception swallowing the hole.

15                  And here what was discussed did  
16                  not -- at the meeting --

17                  CHAIRPERSON MILLER:  I just don't  
18                  -- I just wanted to --

19                  MR. O'BRIEN:  Okay.

20                  CHAIRPERSON MILLER:  -- I don't  
21                  want to prolong this too much.

22                  MR. O'BRIEN:  Very well.

1                   CHAIRPERSON MILLER: But the way I  
2 saw it was there were two -- at least two  
3 issues. One is whether you have to use those  
4 magic words. Two, whether it is a protestable  
5 issue getting beyond that.

6                   But you get into this like looking  
7 at the minutes of what was discussed and I  
8 don't ever really recall us going into what is  
9 discussed at ANC meetings really. What we  
10 look at usually is their resolution, what they  
11 are authorized to present to the Board. We  
12 don't go into the weeds that way.

13                  MR. O'BRIEN: I seem to recall one  
14 previous case years ago where an ANC  
15 resolution submitted to the Board did not  
16 accurately reflect what happened at the  
17 meeting.

18                  CHAIRPERSON MILLER: Okay. So you  
19 -- that --

20                  MR. O'BRIEN: But by and large,  
21 yes. By and large, when one gets a resolution  
22 from the ANC, it is not a factual challenge as

1 to whether that is what happened at the  
2 meeting.

3 CHAIRPERSON MILLER: Okay.  
4 Others? Okay. I think that we have had an in  
5 depth discussion on this. So I think the  
6 intent of this Board would be to look at this  
7 later in the day when we have a chance and  
8 hopefully rule on the issue on our agenda  
9 later this afternoon. That's what we would  
10 hope to do, schedule permitting.

11 I think we don't have time, at  
12 this point, to deliberate. We have one more  
13 morning status and then we have a Show Cause  
14 Hearing.

15 MR. ROLLER: Madam Chair, can I  
16 just --

17 CHAIRPERSON MILLER: Do you have a  
18 question? Yes?

19 MR. ROLLER: Scheduling question.

20 CHAIRPERSON MILLER: Yes.

21 MR. ROLLER: My understanding is  
22 the legal discussion later today is an open

1 meeting, but does not require the presence of  
2 the parties?

3 CHAIRPERSON MILLER: Oh, exactly.

4 MR. ROLLER: Right. Okay.

5 CHAIRPERSON MILLER: Because we  
6 are not exactly sure what time it's going to  
7 occur.

8 MR. O'BRIEN: It's not actually an  
9 open meeting, is it?

10 CHAIRPERSON MILLER: Yes. Oh,  
11 well, we are going to deal with it on the  
12 agenda. There is a motion on the agenda and  
13 we will vote on the motion and address it,  
14 yes, on the agenda. We just don't know what  
15 time that is going to be.

16 MR. ROLLER: Okay. We understand.

17 CHAIRPERSON MILLER: There may be  
18 a closed pre-meeting.

19 MR. O'BRIEN: Deliberation.

20 CHAIRPERSON MILLER: Deliberation.  
21 Actually, maybe I should read --

22 MR. O'BRIEN: Very well. Well,

1 I'm sure staff will advise both Commissioner  
2 Roller and me of what the Board decides to do  
3 later today.

4 CHAIRPERSON MILLER: Later today  
5 or early tomorrow, yes.

6 MR. O'BRIEN: I didn't mean to say  
7 staff is going to advise us today. Staff will  
8 advise us of what the Board does today.

9 CHAIRPERSON MILLER: It could be  
10 this evening.

11 MR. O'BRIEN: It could be. Maybe  
12 not.

13 CHAIRPERSON MILLER: Okay.

14 MR. O'BRIEN: I'm sure it will be  
15 in the coming days.

16 CHAIRPERSON MILLER: Hopefully.  
17 Yes, either later today or tomorrow hopefully.

18 MR. O'BRIEN: Okay. Thank you  
19 very much.

20 CHAIRPERSON MILLER: Because we  
21 know this is coming up.

22 MEMBER ALBERTI: Madam Chairman,

1       may I just add one thing? Commissioners,  
2       there will be a transcript of the open meeting  
3       later today.

4                   MS. SIEGEL: Thank you.

5                   MEMBER ALBERTI: If you are  
6       curious --

7                   MR. ROLLER: Sounds great.

8                   MEMBER ALBERTI: -- you can join  
9       us if you like.

10                  MS. SIEGEL: Let me just say we  
11       are looking into the question of recording all  
12       of our meetings in the future, because we  
13       understand the problems that can arise.

14                  MEMBER ALBERTI: Okay.

15                  MS. SIEGEL: So thank you.

16                  MEMBER ALBERTI: Thank you for  
17       that.

18                  MR. ROLLER: And may I approach to  
19       return your copy, sir?

20                  MEMBER ALBERTI: You can have it.

21                  MR. ROLLER: Okay.

22                  MEMBER ALBERTI: I have -- there

1 was --

2 MR. ROLLER: Okay.

3 MEMBER ALBERTI: They kindly gave  
4 me an extra copy. Thank you.

5 MR. ROLLER: Thank you very much.

6 MEMBER ALBERTI: Thank you.

7 CHAIRPERSON MILLER: Okay. I  
8 expect that there will probably be a pre-  
9 meeting discussion on this issue, so I think  
10 I will take a vote on the closed meeting on  
11 this matter.

12 MEMBER ALBERTI: I think we have  
13 already done that when we --

14 CHAIRPERSON MILLER: When?

15 MEMBER ALBERTI: -- last -- when  
16 we announced that there would be a closed  
17 meeting on our agenda.

18 CHAIRPERSON MILLER: Oh.

19 MEMBER ALBERTI: To consider our  
20 agenda.

21 CHAIRPERSON MILLER: Okay.

22 MEMBER ALBERTI: As we always do.

1                   CHAIRPERSON MILLER: Good. You're  
2 right. Good.

3                   MEMBER ALBERTI: So I think it is  
4 taken care of.

5                   CHAIRPERSON MILLER: We can move  
6 on. Thank you very much.

7                   MR. O'BRIEN: Thank you.

8                   MS. SIEGEL: Thank you.

9                   MR. ROLLER: Thank you.

10                   (Whereupon, the Protest (Status)  
11 Hearing in the above-entitled matter was  
12 concluded at 11:25 a.m.)

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<b>A</b>			
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