

MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING
November 4, 2015

The District of Columbia Board of Elections (“the Board”) held its Regular Monthly Meeting on Wednesday, November 4, 2015 in the Board’s Hearing Room, located in Suite 280 North, One Judiciary Square, 441 4th Street, N.W., Washington, D.C. 20001. The Board’s Chairman, Deborah K. Nichols, was present, as was Board Member Stephen Danzansky. Also present on the dais were Kenneth McGhie, the Board’s General Counsel, Cecily Collier-Montgomery, the Director of the Office of Campaign Finance (“OCF”), and Clifford Tatum, the Board’s Executive Director.

Chairman Nichols called the meeting to order at 10:39 a.m.

The meeting agenda was approved and adopted.

The minutes of the last regular meetings on August 5, 2015 September 2, 2015 and October 7, 2015 were moved for approval and adopted without objection.

Mr. Tatum reported an update on canvass cards. After the November 2014 General Election, the Board sent canvass cards to approximately 280,000 voters that did not participate in the election to ascertain their voting status. 46,899 cards have been returned thus far: 40,293 were undeliverable; 1,901 were voters who have moved within the District of Columbia; 2,327 were voters who have moved outside the District of Columbia; 269 were deceased voters; 21 were returned with name changes; and 875 were returned with no changes. Canvass is continuing on an ongoing basis.

Mr. Tatum reported on the status of filed recall petitions. 1) ANC 5E02 Commissioner Christy Davis— petition was submitted with 136 signatures with only 91 valid signatures failing to qualify for consideration. 2) ANC 5D03 Commissioner Adam Roberts—petition was submitted with 33 signatures and rejected out of hand for an insufficient number of signatures filed.

Chairman Nichols inquired of the General Counsel how long an individual would have to wait in order to re-file another recall petition in the event their initial submission was rejected.

Mr. McGhie presented the initiative “Public Accountability Safety Standards Act of 2016 for the District of Columbia” for a proper subject hearing. Mr. McGhie summarized an opinion given by the office of the Attorney General with respect to the measure. The Attorney General opined: “if the Measure were to become law, it would violate the U.S. Constitution and the District of Columbia Home Rule Act (HRA). Thus the measure is not a proper subject of Initiative.” Mr. McGhie then introduced Staff Attorney Rudolph McGann to present the opinion of the General Counsel’s Office.

Mr. McGann noted that the PASS Act presents an improper subject for initiative because it violates the U.S. Constitution and the Home Rule Act, and it improperly appropriates funds by

establishing an unfunded program that cannot function as intended without forcing the Council to appropriate for an unknown expense.

Mr. John Cheeks, the proponent of the measure, came forward and asserted that the District of Columbia has a drug epidemic inside its government that must be fixed and corrected. He went on to assert that the proposed measure does not violate the HRA or any constitutional rights. Mr. Cheeks also claimed the federal government would be responsible for any and all costs associated with the program. Mr. Cheeks requested a continuance to respond to the comments submitted by the Attorney General.

Chairman Nichols granted a continuance until close of business on Friday, November 6, 2015 to file a response.

Mr. McGhie presented final rulemaking to amend chapter 1-3, 5-11, and 14-17 to bring the rules in conformity with the Voter Registration Access and Modernization Amendment Act of 2014, which became effective of February 26, 2015. The Presidential Primary and local elections will be moved to the second Tuesday in June; and thereafter will be the first Tuesday in September.

BOARD ACTION: The Board approved the proposed regulations as final to be published in the D.C. Register.

Mr. McGhie presented the litigation status of cases involving the Board:

Wingo v. D.C. Board of Elections involves a challenge to the Board's formulation of the short title and summary statement for Initiative 76, the District of Columbia Minimum Wage Act. The Board filed a summary judgment motion on Friday October 9, the Plaintiff's opposition was filed October 26, the Board's reply is due November 9, and the Plaintiff's final reply is due November 23.

Ms. Collier-Montgomery announced the statistics for OCF as follows:

- October 1 was the filing deadline for R&E reports of the Constituent Services Programs: 13 required filers; all filed timely.
- October 1 was the filing deadline for R&E reports of Statehood Fund Programs: 3 required filers; all filed timely.
- October 10 was the filing deadline for R&E reports of PACs and PCCs: 67 required filers; 56 timely filed; 11 failures to file. PCCs referred for failure to file include: Bell for Ward 8; Whittaker for Ward 4; Barry for Council; Tolliver for Ward 4; Abraham for Ward 8; Anderson for Ward 4 Council; and Trayon White for Ward 8. PACs referred for failure to file include: Gertrude Stein; Youth Action PAC; D.C. Republican Committee; and D.C. Chamber of Commerce.
- Committees registered to participate in the 2015-2016 election cycle during October include the following: Ed Furtillo for Council 2016 Ward 7 registered October 8; Residents for Robert White At-Large Exploratory Committee registered October 19.
- OCF held three entrance conferences on October 8, 2015 there were 5 participants October 19, 2015 there were 7 participants, and October 29, 2015 there was 1 participant. The names of the participants will be posted at the OCF website for review.

- OCF Audit Branch conducted 117 desk reviews and the full field audit of Gray for Mayor is ongoing.
- The full field audit of the D.C. Proud Inaugural Committee is ongoing.
- The ongoing full field audits of newly elected officials are as follows: LaRuby May 2015; Brandon Todd for Ward 4; Brianne for D.C.; and Charles Allen for Ward 6.
- The Periodic random audits of the continuing committees Barry for Council, and Morgan vs. D.C. are ongoing.
- Periodic ongoing random audits of PACs include the following: Eric Jones 2014; Fresh PAC; and the Libertarian Party of D.C.

Mr. Sanford presented the statistics from the Office of the General Counsel of OCF.

- The General Counsel received 4 cases from the Reports Analysis and Audit Division.
- The Office completed 2 informal hearings and issued 11 orders including the following: 1 orders for failure to timely file a report in which fines totaling \$1, were imposed; 7 failure to timely file reports in which no fines were imposed; and 1 orders for failure to file additional requested information in which no fine was imposed; 2 orders affirming prior orders were issued were vacated based upon payment performance.
- During the month of October 2015, OCF imposed fines against the following respondents: the Barry for Council Committee, \$1,500.
- OCF collected \$355 dollars in fines from the following respondents: \$200 from Committee to re-elect Marck Jones; \$155 Ward 6 Democrats.
- The OGC carried a total of seven open investigations and no new investigations were opened during the month.

Chairman Nichols put on the record that Mr. Trayon White paid all of his fees incurred on his behalf in connection to his recount effort.

Ms. Dorothy Brizill raised five issues with the Board: The Board's website needs to be maintained and periodically reviewed. No indication of the Board's response to the auditor's report issued earlier this year. Chairman Nichols responded that the Board is preparing a response that will be provided as soon as it is available. The Executive Director position is available, but as this is a personnel matter, the Board is not inclined to discuss the matter. To date, Mr. Tatum has not indicated his final date of service nor submitted a letter of resignation notwithstanding the Board press release indicating he is resigning. Ms. Brizill wants to know what the preparations for the 2015 election cycle and where the Board stands procuring new machines. To date the council has not given funds for the acquisition of new machines. Ms. Brizill asked the General Counsel to change the regulations with respect to the handling of complaints because she feels uniformed regarding the status of investigations.

There being no further business before the Board, the meeting adjourned at 11:25 a.m.