

MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING
April 3, 2019

The District of Columbia Board of Elections (“the Board”) held its Regular Monthly Meeting on Wednesday April 3, 2019 in the Board’s Hearing Room, located in Suite 750, 1015 Half Street, S.E., Washington, D.C. 20003. The Board’s Chairman Michael Bennett was present, and Board Members Dionna Lewis and Michael Gill also attended. Additionally present on the dais were Kenneth McGhie, the Board’s General Counsel; Cecily Collier-Montgomery, Director of the Office of Campaign Finance; and Alice Miller, the Board’s Executive Director.

Chairman Bennett called the meeting to order at 10:58 a.m.

- **BOARD ACTION:** agenda and minutes from last meeting were adopted.

Ms. Collier-Montgomery gave the Director of Campaign Finance report:

- OCF has added the Fair Elections Program Division to our monthly report so that, in the future, I will be reporting each month on the activity of the Fair Elections Program Division.
 - The Division met with the Public Finance Planning Committee on March the 14th, 2019. The purpose of that meeting was to introduce the Fair Elections Program manager, Erick Jackson, to the members of the Planning Committee and discuss proposed rule changes to the Fair Elections Amendment Act.
 - The Fair Elections Division, conducted training for our trainers involving 12 members of our staff on March 21, 2019.
 - Also met with the Executive Director of the Office of Advisory Neighborhood Commissions to seek the agreement of coordination with Mr. Simon with respect to the Advisory Neighborhood Commissions outreach planned beginning in April through October of 2019.
 - On March 18, OCF completed the selection process for the new positions for the Fair Elections Program the Fair Elections program manager, the information technology specialist and three auditor positions.
- OCF anticipates that the system will be available for public use by June the 3rd. And that will be in time for the first filing, which would occur on July the 31st 2019, assuming that anyone registers for the program.
- On March 18, OCF completed the the recruitment process for the new audit positions in the division. The Council included 5 new positions for the Fair Elections Program.
- OCF also met with our vendor on March 27 to view the interim e-filing system for the Fair Elections Program scheduled for testing on May 15. We anticipate that the system will be available for public use by June the 3rd. And that will be in time for the first filing, which would occur on July the 31st 2019.
- The proposed Chapters 43 and 44 of the Board's regulations adopted by the Board, as proposed, at the last Board meeting, were published in The Register on March 22 for public

comment. Those regulations are the chapters that will implement the Fair Elections Program.

- There were 26 referrals which were made to the general counsel for failure to file the January 31st report of receipts and expenditures.
- During the month of March one new committee registered with the Office, the Recall Committee for Jack Evans, and they registered on March 18, 2019.
- The audit branch conducted 51 desk reviews. Those were desk reviews of political action committees, and principal campaign committees.
 - The full field audit of Sheika Reed for Ward 1, which was initiated on August 29, 2018.
 - The D.C. Proud 2019 Inaugural Committee. The audit notification letter was issued on March the 27th '19. And the financial records are due from the committee on April 22, 2019.
 - four full field audits which we initiated of newly elected officials and those officials were elected to the School Board during the 2018 election.
 - Frazier O'Leary, for Ward 4, initiated 3/4/19
 - The Committee to Elect Zachary Parker 2018, initiated 3/5/19
 - Jessica Sutter for School Board, SBOE, initiated 3/5/ 2019.
 - Emily for Education initiated 3/4/ 2019.
 - The periodic random audits include: Economic and Protection Party -- we're waiting for the records; the Ward 7 Democrats, which was initiated on March 11, 2019 and ABC of Metro Washington DC PAC, was initiated on March 5, 2019.
 - OCF issued one audit of the AFSCME PAC on February 21, 2019.

William SanFord presented the report of the General Counsel.

- During the month of March 2019, the Office of the General Counsel received 30 referrals. 26 of the referrals were from the Public Information and Records Management Division, and 4 referrals were transmitted from the Reports Analysis and Audit Division.
- The Office of the General Counsel completed 6 informal hearings, and issued 7 orders, which included the following: 4 orders regarding failure to timely file reports of receipts and expenditures were issued, reports in which no fines were imposed. 2 orders regarding failures to timely file reports of receipts and expenditures in which fines that totaled \$3,500.00 were imposed. One order which was issued arising from an investigation in which a fine of \$4,000 was imposed. However, that fine is subject to a reduction of \$2,000 in the event that the respondent in this case attends ethics training within the prescribed time period.
 - \$1,600 was imposed against George Jackson for Mayor; A fine of \$1,900 was imposed against the D.C. Recovery Act. A fine of \$4,000 was imposed against council member Brandon Todd.
- During the month of March 2019, the Office of the General Counsel completed OCF formal investigation 2018-002. The Complainant in this matter was Emily Naden. The complaint was filed on December 4, 2018. The Respondent was Brandon Todd, council member. The infraction was inappropriate use of government resources, and the order was issued on March 18th, 2019.

Ms. Miller presented the Executive Director's Report.

- We are well underway with the information and implementation of our new voter registration System. We held a kickoff meeting on March 26 for our senior staff and Board members.
- We participated in several outreach activities over the past month and engaged a few new partners with registration activities. Those partners include So Others May Eat; the Salvation Army Turning Point Center for women and children; Goodwill Excel Center, a center for adult students and the Court Services and Offender Supervision Agency, CSOSA.
- The outreach division also works with the League of Women Voters and attends our naturalization -- the naturalization ceremonies monthly at the United States District Court. This month, we have been asked by Judge Sullivan to deliver the welcome address to the incoming citizens. Rachel Coll will represent the Board.
- CHAIRMAN BENNETT: For the record, with regard to the new voter registration system, in the process of implementing the new system, one of the things we want to do is make sure we clean up the database that currently exists, but at the same time we got to make sure that we don't lose any critical data or any voters' registration in the process of cleaning out those records. When the new voter registration comes online, it will be run concurrently with the old system to ensure that we don't lose any critical data.

Mr. McGhie presented the General Counsel's report.

- The first thing I have on my agenda is adoption of petition to recall the Jack Evans Ward 2 council member.
 - Adam Eidinger is the proposer of the recall, Donald Dinan represents council member Jack Evans' matter.
 - Sherri Kimbel. She is the Director of Constituent Services. And she writes, "I am greatly disturbed by the wording in the recall petition by Jack Evan stating that Evans' staff is corrupt and insinuating that we solicited funds for him. "This besmirched my reputation. I have done anything remotely corrupt. I understand that this is the statement of those soliciting signatures and I am concerned that if it goes out from BOE there is a complicit perception that BOEE approves this statement.
 - MR. EIDINGER: Okay, well for starters, we don't mean any specific staffer and their language. This is clearly, as it's written, this statement I've proposed here is not the Board of Elections. There's ample evidence that staff was directed by Jack Evans to solicit employment by workers for the DC government that actually sent these emailed which had been FOIA'd and had been in The Washington Post.
 - CHAIRMAN BENNETT: Just for the record, let the record reflect, though, that while the Board had no control over what you put in your documents and, in particular, this petition, as you indicated in your, I think, very first couple sentences, this is not a statement that we adopt in any way. We also don't have the authority to control nor to strike, whatever you happened to put in the petition.

- MR. DINAN: His staff would lose their jobs the same day he loses his job. The office would be shut down. So to recall him is to remove him and his staff from their current positions. The vast majority of the people are completely, completely innocent. These people, most of whom are young, look, they're -- they don't want their careers destroyed.
- MS. DIENER: Good morning. Thank you. My name is Robin Diener. I'm a teacher of adult literacy. And I'm very interested in words and how things are written. This statement that we wrote says, he, Jack Evans, has corrupted his office and his staff by using them. So they're not saying the staff is corrupt or has done anything independently on their own as individual workers.
- MR. DINAN: we want it on the record that we totally and adamantly object and remark those statements that were just made. This notice of intent to recall, must be dismissed. We say that for the following reasons. It is clear, under D.C. law, that the petitioner, the person who file the Notice of Intent has to be a registered voter in the Ward for which the council member is to be recalled, in this case, Ward 2. Mr. Eidinger has listed his address in his notice as 2448 Massachusetts Avenue, NW, which is in Ward 2. However, Mr. Eidinger owns a home at 1858 Mintwood Place, NW. Mr. Eidinger also, at the Office of Tax and Revenue, has claimed and is receiving the homestead deduction. Of course, it would be illegal for someone to take a homestead deduction if they didn't live there. Therefore, on the face of these two documents, the one claiming the homestead deduction at the house that he owns and presumably lives, which is in Ward 1, contrasted with the petition, we would submit on just these two documents that there is a severe, severe issue as to whether the petitioner is a registered voter in Ward 2.
- MR. EIDINGER: Well, I would like to respond about a couple of them, at least, because I have my voter registration card right here and it says 2448. And I think there are some really simple explanations to these outrageous allegations that I am doing something incorrect here.
- CHAIRMAN BENNETT: But let me state -- hold -- if you could stop one second. And what the concern is, is to make sure -- I mean, he made some significant allegations relative to your petition and to your -- not just your credibility, but to a number of different areas where there are issues associated with your -- with the legality of your activities. Our General Counsel is concerned about is just to make sure that you're aware that whatever you say today is, indeed, on the record.
- MR. EIDINGER: So, yes, I was a Ward 1 voter until April of 2018 when I started renting a house in Salisbury, Maryland to do political work. And I was not employed in Maryland. I am still employed in the District of Columbia. I never gave up two residences in D.C. One is 1858, which is where many of these documents are listed because I've owned the property since 1999 -- 1858 Mintwood Place. And then, since 2013, I've rented a house, which was used as a home office, on Massachusetts Avenue, 2448. Well, on the question of the homestead deduction, I have not filed my 2018 taxes yet. So I haven't actually made this transition to the 2448. At least for tax purposes, it has not been filed yet. I have a renter's insurance

- policy here for 2448 Massachusetts Avenue, NW. I have a have a water bill for 2448 Massachusetts Avenue, NW. I'm in the process of changing my ID right now.
- MS. COLLIER-MONTGOMERY: Yes, I asked Wesley Williams, who is the manager of our public information records division to come to the meeting. And basically, they did, in fact, register. The committee registered, filed the statement of organization, but they have not filed the verified statement of contributions.
 - CHAIRMAN BENNETT: Okay we are back in session from the adjournment. We had opportunity to discuss this carefully. And so at this point, we're going to have to reject the petition because you just haven't met the Office of Campaign Finance filing requirements.
 - MR. EIDINGER: I just want to say, for the record, the Board didn't do anything wrong here, okay? This was a matter, a life and death matter that Robin was going through and was unavailable at this time.
 - MS. DIENER: Well, for my part I acknowledge I did wrong here. And thank you for your indulgence and the fact that we can move forward. We'll just do that. So thank you.
 - So the petition is rejected based on the failure to properly file with the Office of Campaign Finance.
- Proposed rulemaking to amend the Chapter 5 voter registration. The purpose of the amendment to subsection 511.2 is to enumerate the agencies that serve as voter registration agencies in the District of Columbia.
 - **BOARD ACTION:** The Board accepted the proposed rulemaking.
 - Emergency of proposed ruling. It's a Chapter 5 administration. The first notice of emergency of proposed rulemaking to adopt the minutes to Chapter 5 on the registration. It was published in the DC Register on December 28th. The purpose of the proposed amendment was to provide means for voters who are victims of covered offenses or covered employees as defined in the Address Confidentiality Act of 2018 to make their voter records confidential. Initially had proposed this as an emergency of proposed rulemaking. During the comment period, we received comments from the mayor's newly created office dealing with Address Confidentiality. They requested that some additional provisions be put in.
 - **BOARD ACTION:** The Board accepted the proposed rulemaking.
 - Proposed rulemaking to amend Chapters 30, 34, 37, and 99 of DCMR, and these are the proposed rulemaking as promulgated by the Office of Campaign Finance. That chapter is amended to include Fair Elections Committees and their requirements, just like all these chapters are taking amended to cover the provisions of the Fair Elections Program.
 - **BOARD ACTION:** The Board accepted the proposed rulemaking.
 - Litigation status update. The Board is in court on Graham v. D.C. Board of Elections. That was a case dealing with the referendum measure. Proponents of the referendum filed a referendum on October 31st to suspend an act of the Council.
 - On December 4 the Court entered in a letter modifying a summary statement of referendum 008. On December 12 the Court entered an order permanently enjoining the Court from taking any action on the referendum. On December 13 the interveners filed a notice of appeal to the Court of Appeals seeing permanent

injunction that was entered by the Court on December 12 and on December 17 the Board also filed its notice of appeal seeking review of the permanent injunction.

- There is a matter still pending in Superior Court in reference to Count 2, which is the proper subject matter determination the Court did not rule on. All the parties agreed voluntarily to dismiss that matter. There is no more issue in Superior Court dealing with whether or not it's a proper subject for an initiative. Still understanding are the issues before the Court of Appeals that deal with the notice and standing.

Ms. Dorothy Brizill presented public matters:

- I have reviewed the order that your office issued regarding Brandon Todd, OCF 2018-002, in which you have made a determination that he used government or council resources to assist a political campaign in Ward 4.
 - Do you know whether or not Mr. Todd has agreed to pay the fine, whether or not he's appealing and whether or not he plans to take ethics training?
 - MR. SANFORD: The respondent in this matter, council member Todd, has 15 days from the date of receipt of the order to appeal the decision of the Office of Campaign Finance. And he has an additional ten days from that date to pay any outstanding fines. Those periods are still pending and so we would have, I believe, until the end of this week to file his appeal and possibly an additional ten days from this Friday to pay the fine.
 - With respect to his responding to the order, which was entered by the Office of Campaign Finance and whether he was inappropriately using staff to respond to questions about that order.
 - MS. COLLIER-MONTGOMERY: Okay, so what I was indicating was that our statute addresses the use of government resources to support candidates or to oppose candidates for office. And so I was saying that I didn't think that that conduct would necessarily -- or that act -- would fall within the parameters of our statute.

There being no further business before the Board, the meeting adjourned at 1:02 p.m.