

**MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING
December 5, 2019**

The District of Columbia Board of Elections (the Board) held its Regular Monthly Meeting on Thursday, December 5, 2019 in the Board's Hearing Room, located in Suite 750, 1015 Half Street, SE, Washington, D.C. 20003. Board Chairman Michael Bennett and Board Member Michael Gill were present. Also present on the dais were the Board's Executive Director, Alice Miller, the Board's General Counsel, Terri D. Stroud, and the Director of the Office of Campaign Finance (OCF), Cecily Collier-Montgomery.

CALL TO ORDER (10:53 a.m.)

ASCERTAINMENT OF QUORUM

- Board Member Michael Gill and Board Chairman Michael Bennett constitute a two-member quorum to conduct business.

ADOPTION OF AGENDA/APPROVAL OF BOARD MINUTES

- **BOARD ACTION:** The Board unanimously adopted the agenda and minutes from the last meeting held on November 14, 2019.

BOARD MATTERS

- No Board matters.

IDENTIFICATION OF PUBLIC MATTERS

- Moved by Chairman Bennett to the end of the agenda.

OCF NOVEMBER 2019 REPORT (DIRECTOR COLLIER-MONTGOMERY)

- **Fair Elections Program (FEP)**
 - New Registrants:
 - Committee to Elect Renee Bowser, Ward 4, November 7.
 - Friends of Christina Henderson, Council Member at Large, November 8.
 - Lance Reid 2020, Ward 8, State Board of Education, November 14.
 - There is a listing of all FEP registrants on the OCF website. There currently are 22 candidates registered in the FEP and 9 candidates registered to participate in the traditional program.
 - Issuance of Matching Payments:
 - John Fanning, \$4,200, issued November 5.
 - Jordan Grossman, \$572.55, issued November 5.
 - Patrick Kennedy, \$2,505, issued November 15.
 - Green for Ward 7, \$20,000 base payment and \$25,065 matching payment, issued November 22.

- FEP issued four status reports for candidates who have indicated an attempt to seek certification in the program, but who have to date not met the threshold requirements.
- FEP Outreach
 - On November 20, 2019, the FEP staff appeared at a meeting of the D.C. Federation of Civic Associations.
- FEP Statistics
 - In Fiscal Year 2019, five candidates were FEP-certified, and FEP authorized the issuance of matching payments and one-half of base payments totaling \$368,615.00.
 - To date in Fiscal Year 2020, there are six candidates who are certified in the program, and FEP has issued a total of \$73,901.55.
- Interpretive Opinions
 - On November 21, FEP issued an interpretative opinion concerning the eligibility of candidates who have unresolved fines and penalties in the OCF.
- **Public Information and Records Management (PIRM)**
 - Filings in the month of November:
 - November 1 Reports of Receipts and Expenditures (R&E) due for newly-registered Legal Defense Committee
 - 1 filer, filed timely
 - One referral to the OCF OGC
 - Six new Candidates and Committees registered with OCF in November:
 - Dr. Pauline Reid, Let's Reid 2020, Ward 8 State Board of Education, November 5;
 - Renee Bowser, Committee to elect Renee Bowser, Ward 4 City Council, November 6;
 - Christina Henderson, Friends of Christina Henderson, At Large City Council, November 8;
 - Eric Rogers, Committee to Elect Eric Rogers, At Large City Council, November 14;
 - Vincent Gray, Vincent Gray 2020, Ward 7 City Council, November 14;
 - Paul Strauss, Paul Strauss Committee for U.S. Shadow Senator, November 26.
 - Entrance conferences for new candidates and committees were held on November 7 & November 20 with 11 participants whose names will be posted at the OCF website by close of business today.
- **Reports Analysis and Audit Division (RAAD)**
 - Conducted 11 desk reviews of financial reports.
 - One referral to the OCF OGC
 - Two ongoing full field audits:
 - The Committee to Elect Zachary Parker 2018, initiated on March 5.
 - Emily for Education, initiated on March 4.

- Two ongoing periodic random audits:
 - Re-elect Brandon Todd 2020 PCC, initiated September 4;
 - Phil’s Fund Constituent Service Fund, initiated November 11.
- Three audits issued during November:
 - D.C. Democratic State Committee PAC, issued November 15;
 - Ward 3 Constituent Service Fund, issued November 22;
 - Evans Constituent Service Fund, issued November 22.
- RAAD issued the audit report of the Gertrude Stein PAC on October 24.
- **OCF Office of the General Counsel (OCF OGC)**
 - Received two referrals
 - Completed eight informal hearings
 - Issued eight orders:
 - Six orders for failure to timely file R&E reports; no fines were imposed.
 - Two orders that vacated notices of hearings, and statements of violations.
 - During the month of November 2019, OCF OGC collected a total of \$7,450 in fines.
 - \$7,150, McDuffie 2018 PCC;
 - \$200, Renee Bowser for Ward 4 Council Committee;
 - \$100, Gayle Carley for Ward 5 PCC.
 - OCF retained one open investigation into a complaint filed by ANC Commissioner Edward Hanlon on September 5 alleging that the following ANC Commissioners used the government ANC Twitter account to promote the candidacy of a candidate for Ward 2, City Council:
 - Daniel Warwick, SMD 2B02
 - Aaron Landry, SMD 2B04
 - Randy Downs, SMD 2B05
 - Matthew Sampson, SMD 2B01
 - Mike Silverstein, SMD 2B06
 - Kari Cunningham, SMD 2B07
 - OGC issued 2 interpretive opinions:
 - **Opinion Number 2019-02**—Requested by Erik Jackson, program manager of FEP. The issue was whether applicants for the FEP with unresolved fines were eligible for certification. The determination based upon the law was that those applicants who had unresolved fines and penalties could not achieve certification until those fines and penalties are resolved.
 - **Opinion Number 2019-033**—Requested by Mark Rodeffer, Chair of the Sierra Club. The issue was whether the Sierra Club could sponsor one or more forums with candidates for public office in the District of Columbia. Based upon the information provided, they were free to host those forums.
 - There were no show cause proceedings.

EXECUTIVE DIRECTOR'S NOVEMBER 2019 REPORT (EXECUTIVE DIRECTOR MILLER)

- **Polling Place Relocations (Mr. Arlin Budoo)**
 - **Proposed**
 - Precinct No. 105, Benning Park Recreation Center will be unavailable due to extensive renovations for the upcoming 2020 presidential primary election. We propose relocating to St. John's Baptist Church located at 5228 Call Place S.E.
 - **Final Approval**
 - Precinct No. 14, St. Thomas Episcopal Church relocated to the M.A.A. Carriage House meeting space due to construction to the church. We propose relocating back to the church, located at 1517 18th Street, Northwest using the multipurpose room.
 - Precinct No. 54, West Education Campus is undergoing construction. We propose relocating to St. Luke's Baptist Church, located at 1415 Gallatin Street, Northwest using the fellowship hall. It is accessible with a few modifications.
 - **BOARD ACTION:** The proposed relocation of precinct 105 was approved unanimously, and notice will be published in the D.C. Register for a 30-day comment period. The proposed relocation of precincts 14 and 54 were approved as final.
- **Certification of Petition Verification Results for Recall measure of Jack Evans, Ward 2 Member of the Council District of Columbia**
 - The Board conducted its verification process and determined that the petition did not contain a sufficient number of verified voters for the measure to achieve ballot access.
 - Executive Director Alice Miller recommended that the Board reject the petition because it does not contain the minimum requirement of valid registered voters' signatures from Ward Two; it contained 3,385 valid signatures - 1064 below the minimum requirement of 4,949.
 - Board Member Gill made a motion to accept the Executive Director's recommendation.
 - Recall proposer Adam Eiding stated that he believed that there are significantly less registered voters in Ward Two than the 49 thousand plus indicated on the Board's voter rolls, so the petition should not have been required to contain 4,949 valid signatures to be deemed numerically sufficient for ballot access. He asked the Board not to certify the petition's insufficiency at this time, but to allow him to present more evidence that the minimum signature requirement for the petition was too high.
 - Mr. Eiding also indicated that he should have been allowed the opportunity to cure address mismatch issues as is the case with nominating petitions.
 - Board Member Gill expressed his viewpoint that, while the concerns raised regarding the petition circulation process may be valid, it would be unfair to all parties involved to depart from the rules and process at this

juncture, particularly in light of the fact that the proposer was aware of the numerical requirement at the onset of the process.

- **BOARD ACTION:** The Board unanimously approved the Executive Director's recommendation to reject the recall petition as numerically insufficient.
- Ms. Miller acknowledged the staff who worked tirelessly on this verification process during the Thanksgiving Holiday.
- **Voter Education and Outreach Division (VEOD)**
 - In the month of November, VEOD staff participated in ten outreach events
- **Voter Registration List Maintenance**
 - Board processed 7,297 updates and new registrations.
 - Board mailed 64 letters to individuals who remained registered on the rolls with an 1800 date of birth. In response, 52 individuals provided their correct dates of birth. The Board received information that the remaining 12 individuals were deceased.
- **Voter Registration System Update**
 - Staff is still conducting user acceptance testing to verify compliance of features with the RFP with respect to functionality and readiness.

BOE OGC NOVEMBER 2019 REPORT (GENERAL COUNSEL STROUD)

- **Litigation Status**
 - **William Hunt v. the D.C. Board of Elections.** This matter was filed in US District Court on October 18, 2018 and is a complaint regarding the counting of write-in votes cast in the November 6, 2018 General Election. Mr. Hunt was a Mayoral write-in candidate in that election, and he filed a complaint asking the court to require the Board to count the write-in votes cast in the Mayoral contest.

Briefing in the case is complete and we are awaiting the court's order on the Board's motion to dismiss.
 - **James Butler v. the D.C. Board of Elections.** This is an action to compel the Board to accept the DC Term Limits Campaign Initiative and treat it as a proper subject. A conference for this matter took place on July 19. Dispositive cross-motions for summary judgment were due on November 21, 2019, at which time the Board filed its motion for summary judgment, but Mr. Butler did not.
 - **Graham v. the D.C. Board of Elections.** This matter involves the Board's appeal of a permanent injunction that was entered by the D.C. Superior Court on December 12, 2018 prohibiting the Board from taking any action on Referendum 8. Briefing in the case is complete, and the Court of Appeals has ordered the case be scheduled for oral argument as soon as the calendar permits.

- **Phillip Hammond v. the D.C. Board of Elections.** This is an appeal of Board Order 19-32, upholding the resolution issued by ANC 7B which found no vacancy in the office of Advisory Neighborhood Commissioner for ANC SMD 7B04. On September 6th, the Court of Appeals consolidated this case with **Robin Marlin v. the D.C. Board of Elections** (see below). On October 9, 2019, the Court issued a briefing schedule ordering the Appellants to file the appendix and their brief on November 18th, and the Board's response would be due on December 18th in both of these matters. The Appellants have not filed their briefs, and have been ordered by the Court to do so by no later than December 16.
- **Robin Marlin v. the D.C. Board of Elections.** This is an appeal of Board Order 19-33, upholding the resolution issued by ANC 7B which found no vacancy in the office of Advisory Neighborhood Commissioner for ANC SMD 7B05.
- **Review of Notice of Intent to Recall ANC Villareal Johnson, ANC SMD 7B05**
 - Filed by Ms. Donna M. Robinson on November 13.
 - Commissioner Johnson timely filed a response on November 21.
 - The proposer has 60 days to circulate the petition and must file it no later than 5:00 pm on February 3, 2020.
 - The petition must include signatures of 10% of the registered voters pursuant to the official count of registered voters in the SMD issued 30 or more days prior to submission of the petition.
 - The most recent count indicates that the petition would require 161 signatures.
 - Ms. Robinson adopted the petition.
 - **BOARD ACTION:** The motion to accept the recall petition as written was unanimous.

PUBLIC MATTERS

- **Michael Sindram**
 - Raised the rejection of the recall petition of Councilmember Evans. He expressed a desire to get the recall effort back on track.
- **Dorothy Brizill**
 - Sought clarification of Board Member Gill's comments during the discussion on the certification of the Jack Evans recall petition. She asserted that the Board's role is to implement and uphold existing election and campaign finance law, and not to make election law policy.
 - Mr. Gill thanked Ms. Brizill for her comments and assured her that his comments regarding the petition circulation process were only his personal viewpoints.
- **Nikolas Schiller**
 - Served as the Director of the Committee to Hold Jack Evans Accountable.
 - Stated that the Board is open to lawsuits from the disability community due to there being no forms for an affidavit of attestation for petition signers with disabilities. Any person unable to sign a petition cannot file a form granting a third party power to act on their behalf.

- The Board’s ADA Coordinator, Ms. Terrica Jennings, stated that there is an all-purpose affidavit of assistant form on the website, and that the Board is in the process of reviewing all forms on the website to make them more accessible.
 - Stated that the voter rolls for students at Georgetown and George Washington Universities are woefully inadequate. He asserted that he has a list of 1,122 “ghost voters” that cannot be found by any campaign. These voters, according to Mr. Schiller are all former students who have since graduated and moved out of the area but are still on the voter roll, which inflates the voter roll and thus the number required to meet the 10% threshold.
- **John Capozzi**
 - Attested that as a circulator he documented how many registered voters no longer live at the largest building in the ward, 450 Massachusetts Avenue NW.
 - Contends that the number of signatures submitted on the Evans recall petition would constitute 10% of voters in the ward absent this excess of registered voters who no longer live there.
 - Mr. Gill encouraged Mr. Capozzi to follow up with a written response so the Board.
- **Kristin Furnish**
 - Stated that she knocked on numerous doors as a petition circulator only to find the residences were AirBnB addresses where the owner no longer lived on the premises.
- **Robin Diener**
 - Served as Treasurer for the recall effort, and sought clarification of Mr. Gill’s comments regarding FEP funds going to circulators. He wanted to assure Mr. Gill that no money went to circulators.
 - Mr. Gill clarified that he was not referring to this recall effort when making his comments.
 - Commended the staff of the Board for their exquisite performance in processing the recall effort.
- **Eleanor Ory**
 - Expressed concern regarding the accuracy of the voter roll. She believes that her signature was challenged and fears mistakes happened in verification due to mismatched addresses on the voter roll.
 - Requested that the Board include information about the petitioning process in all voter outreach.
- **Adrian Salsgiver**
 - Asserted that the recall committee did collect signatures from 10% of the voters in the ward.
- **Chris Otten**
 - Questioned the Board’s standard for reviewing signatures, stating that, with respect to illegibility, signatories could possibly not write as clearly as possible outside in the cold on a clipboard as they could at a desk.
 - Took umbrage to being accused of forgery on some of his petitions.
 - Stated that many deceased spouses were still on the voter roll.

- **Allen Roth**
 - Expressed concern for the amount of resident turnover in English-basement style apartments. He asserted the number of duly registered voters is lower because former residents no longer live at their registered addresses.
- **Debby Hanrahan**
 - She believes the problem is an inflated voter roll.
 - Updating the voting rolls is a very important function of the Board.
- Chairman Bennett acknowledged that maintenance of the voter roll is a front-burner issue for the Board, and indicated that the Board's newly-acquired voter registration system will provide an additional opportunity to do a better job of maintaining the voter roll.
- Chairman Bennett announced the proponents of the recall have a verbal order that was issued by the Board, and that the written order with the memorandum supporting the decision and the order will be issued on or before December 18.

Adjournment (12:55 p.m.)