

MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING

May 4, 2022

The District of Columbia Board of Elections (the “Board”) held its Regular Monthly Meeting on Wednesday, May 4, 2022 via Zoom. Board Chairman Gary Thompson, and Board Members Karyn Greenfield and Mike Gill were present. The Board’s Executive Director, Monica Evans, General Counsel, Terri D. Stroud, and the Director of the Office of Campaign Finance (“OCF”), Cecily Collier-Montgomery, were also present.

CALL TO ORDER: (10:35 a.m.)

ASCERTAINMENT OF QUORUM:

- Board Chair Thompson and Board Members Greenfield and Gill constituted a quorum.

ADOPTION OF AGENDA/APPROVAL OF MINUTES

- **BOARD ACTION:** The Board unanimously adopted the agenda and minutes from the last meeting held on April 6.

BOARD MATTERS

- None.

DCBOE EXECUTIVE DIRECTOR’S APRIL 2022 REPORT (EXECUTIVE DIRECTOR MONICA EVANS)

- **Voter Education and Outreach Division (VEOD)**
 - During the month of April, VEOD conducted 26 outreach or recruitment events on behalf of the agency. VEOD conducted an additional 22 events that targeted seniors. Twenty-one events were held in Wards 7 and 8. In addition to providing voter education and engagement services, VEOD conducted Election Worker Recruitment and Voter Registration events.
- **Voter Services Division (VSD)**
 - The Voter Services Division discontinued use of the Integrity voter registration system as of April 1. Since then, it has used its new system, Voter Focus, to process and maintain voter information. Voter Services is currently processing new voter registrations. To date, it has registered 1,910 new voters, processed 700 voter registration changes, and mailed out 2,610 voter registration cards.
 - Because we are within the 90-day window before the June primary, no voters will be moved from ‘active’ status to ‘inactive’ status until after the election.

- **Online Voter Registration**
 - The Board’s online portal gives the same functionality as a mobile app. Residents can use a cell phone, tablet, laptop, or desktop computer to register to vote. To date, 3,933 voters have used the portal.
 - Under the National Voter Registration Act (“NVRA”), voter registration agencies (“VRAs”) must provide voter registration services to make it easier for all Americans to register to vote and to maintain their registration. The Board has reached out to all 16 of the District’s VRAs, and has trained staff in 13 of them.

- **Update on Preparations for the June 21, 2022 Primary Election**
 - The Board received 23 challenges to the nominating petitions submitted by candidates vying to be placed on the ballot for the June 21, 2022 Primary Election (“the Primary Election”). Determinations have been made in all of them and orders are available on the Board’s website.
 - Mail-in ballots for the Primary Election will be sent out to every registered voter affiliated with the four major parties. The Board will continue to work with K & H Mail House to prepare the ballots for mailing.
 - The ballot lottery was held on Friday, April 29, and ballot proofing took place on Saturday, April 30. The ballot was finalized and sent to K & H Mail House for processing, and should be mailed out to voters beginning on May 16. Final ballot mailing should occur by June 10. Anyone who does not receive their ballot by June 16 should plan to vote in person.
 - There will be 40 early vote centers, and 90 election day vote centers. Residents should check the Board’s website for more details. Early voting takes place from June 10-19. There is no voting on June 20 in observance of the Juneteenth holiday.
 - Mail-in ballot drop boxes will be open beginning on May 27. Voters can deposit ballots at any vote center during early voting and on election day, or they can send their ballots to the Board via the U.S. Postal Service.
 - Election worker training began on March 22. The Board plans to recruit and train between 2,000-2,500 election workers for the Primary Election. To date, the Board has trained 1,435 election workers. Election workers are using the Board’s online training portal to supplement in-person training.
 - A “Ready. Set. Vote” mailer went out in March. Households should have received them as of last week. The Board will mail a total of three postcards to every voter for the June primary. The “Hill Rag” newspaper featured a full page

advertisement regarding the June primary. The voter guides go to the printer on May 9. The Board is creating additional content for print, radio, and TV advertising.

DCBOE GENERAL COUNSEL’S APRIL 2022 REPORT (TERRI STROUD)

- **Adoption of the Petition to Recall of Holly Muhammad, Advisory Neighborhood Commissioner for Single Member District (“SMD”) 8A01**
 - Mr. Donohue filed an Intent to Recall Commissioner Muhammad on March 22, and Commissioner Muhammad timely filed her response on April 1. Both submissions were within word count limitations. D.C. Official Code § 1-1001.17(e) requires the Board to prepare a petition that the proposer must then adopt as his own. Mr. Donohue adopted the petition as prepared by the Board. Assistant Registrar of Voters Marissa Corrente informed Mr. Donohue of the deadline by which to file the petition and the signature requirements for ballot access. The Board entertained comments from Mr. Donohue, Commissioner Muhammad, and others regarding the recall effort.

- **Motion to Intervene in the Challenge to Initiative Measure No. 82 filed by James Bagwell (Attorney: Richard Bianco)**
 - A challenge was filed alleging that the petition submitted in support of Initiative Measure No. 82 did not contain enough valid signatures of duly registered voters in Wards 2, 5, 7 and 8, and that the measure was therefore ineligible for ballot access. Attorney Richard Bianco filed a motion to intervene in the challenge, claiming that his client did not have the opportunity to inspect the petition during the challenge period. Through counsel, Initiative Measure No. 82 proposer Ryan O’Leary filed an opposition to the motion to intervene. Andrew Kline, counsel for challenger Valerie Graham, indicated his support for the intervention and Mr. Bianca’s request for another 10-day period to inspect the petition.
 - The Board indicated that it would vote to enter into Executive Session to deliberate on the motion to intervene after completing all items on the agenda.

- **Rulemaking to Title 3 of DC Municipal Regulations**

The General Counsel requested that the Board approve the submission of the following rulemaking measures to the DC Register for publication:

- Final Rulemaking
 - Amend Chapters 5, 7, 10, 14-15, and 99 to conform regulations to the provisions in the Initiative and Referendum Process Improvement Amendment Act of 2020. (A notice of emergency and proposed rulemaking with respect to this rulemaking was published in the DC Register on March 11. The Board did not receive any written comments,

and no substantive changes were made to the regulations as proposed.)

- Emergency and Proposed Rulemaking
 - Amend Chapters 7, 8, and 99 to have them more accurately reflect the Board’s current election and post-election practices and procedures.
 - Amend Chapter 30 (Campaign Finance Operations: Committees, Candidates, Constituent Service Programs, Statehood Funds) to place it into conformance with the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124, 59 DCR 1862 (March 9, 2012)); as amended by the COVID-19 Response Supplemental Emergency Amendment Act of 2020, effective April 10, 2020 (D.C. Act 23-286; 67 DCR 4178 (April 17, 2020)).
 - **BOARD ACTION:** In response to General Counsel Stroud’s request, the Board unanimously moved to approve the submission.
- **Litigation Status**
 - **Long vs DCBOE**
 - This matter was filed in D.C. Superior Court on July 2, 2021, and is a civil complaint seeking \$10,000.00 in damages. Petitioner Jason Christopher Long claims negligence and unjust enrichment stemming from the 2020 election cycle. He alleges that the Board issued him a check without informing him not to deposit it, then had the payment stopped, causing him a returned check fee and a negative balance.
 - The Office of Financial Resource Management (“OFRM”) handled payments to poll workers in this matter. The Office of the Attorney General (“OAG”), which serves as counsel for OFRM, represents the Board in this matter. The hearing has been continued until June 17.
 - **Henderson vs DCBOE**
 - Kathy Henderson filed a recall petition against Sydelle Moore, ANC Commissioner for SMD 5D05. The petition was rejected because of an insufficient number of signatures. Ms. Henderson appealed the matter to the D.C. Court of Appeals (“DCCA”). On March 23, the DCCA issued an order requesting that the Board submit a designation of record by May 23.
 - **Public Interest Legal Foundation (PILF) vs Monica Evans**
 - This matter was filed in the United States District Court for the District of Columbia under the National Voter Registration Act (“NVRA”). The suit

alleges that the Board is out of compliance with the NVRA's public records provision.

- PILF requested records from the Board. The Board denied this request because federal law prohibited public disclosure of the types of records sought.
- The OAG filed a motion to dismiss on February 3, and PILF filed their opposition on February 17. A reply was timely filed on March 17. The Board is waiting to hear next steps in this matter.
- **McDuffie vs DCBOE**
 - On April 21, Mr. Kenyan McDuffie appealed to the DCCA the Board's April 18 order upholding a qualifications-based challenge filed by Bruce Spiva against Mr. McDuffie's petition submitted in support of his candidacy for the office of Attorney General in the Primary Election. The Board upheld the challenge based on its determination that Mr. McDuffie did not meet the qualifications to hold the position of Attorney General. Mr. Spiva intervened in the matter on April 22. Between April 25 and 26, the matter was fully briefed, which included the Board's submission of a motion for summary affirmance of its order. On April 27, a three-member panel heard oral argument. On April 28, the DCCA granted the Board's motion for summary affirmance. On that same date, Mr. McDuffie filed a petition for a rehearing *en banc* and a motion to stay the DCCA's order. On April 29, the Board and intervener filed responses to the petition, and on April 30, the DCCA denied the petition for rehearing *en banc*, and denied the motion for stay as moot.
- **Candon vs DCBOE**
 - This appeal was filed in the DCCA in response to an April 22 Board order upholding the challenge filed by Denise Reed to the nominating petition submitted by MaryEva Candon in support of her candidacy for the office of National Committeewoman to the Democratic State Committee for the Primary Election. The Board upheld the challenge on the grounds that the petition did not contain the requisite number of signatures for ballot access. Ms. Candon filed her appeal on April 25. On April 26, the DCCA directed her to file a statement outlining how the Board erred in rejecting her nominating petition by 4 p.m. that day. Ms. Candon did not meet that deadline. On April 27, the DCCA denied her appeal. Ms. Candon filed a motion to reinstate the matter, but the DCCA denied that motion on April 28.

- **Jenkins v DCBOE**

- This was a consolidated appeal filed in the DCCA in response to two Board orders issued on April 22 upholding challenges filed by Lisa Gore and James Harnett to Leniqua'Dominique Jenkins' nominating petition in support of her candidacy for the office of At-Large member of the DC Council for the Primary Election. The Board upheld the challenges on the grounds that the petition did not contain the requisite number of signatures for ballot access. Ms. Jenkins filed her appeal on Apr 27. On the same day, the Board filed a motion to dismiss the appeal as untimely. On April 28, the DCCA dismissed her appeal.

OCF APRIL 2022 REPORT (DIRECTOR COLLIER-MONTGOMERY)¹

2022 Election Cycle Debates

The OCF will conduct debates in the contested races for the offices of Mayor on May 16, Attorney General on May 17, Council Chair on May 18, and At-Large Member of the Council on May 19. All debates will take place from 7:00 p.m. to 8:30 p.m. These debates will be conducted using a virtual platform. Recordings will remain online through the remainder of the calendar year.

Community Outreach

During the month of April, information on the Agency's TCFP and FEP was discussed at five neighborhood events.

Fiscal Year 2023 Proposed Budget Request

On April 7, the OCF presented testimony on the Fiscal Year 2023 Budget Request of the OCF of \$7,473,090.00 before the Committee on the Judiciary and Public Safety of the Council of the District of Columbia.

FAIR ELECTIONS PROGRAM DIVISION (FEP) REPORT AS OF APRIL 2022

During the 2022 Election Cycle, the total sum of \$8,594,293.68 has been authorized for disbursement to the 33 Candidates certified in the FEP to participate in the June 21 Primary Election, and the November 8 General Election.

- During the 2022 Election Cycle, 10 candidates were certified in the FEP for the 2022 Election Cycle, and disbursements were authorized from the Fair Elections Fund to 39 Participating Candidates during the month of April.

¹ These minutes contain a condensed version of the OCF April 2022 Report. The full version of this report can be found at <https://ocf.dc.gov/release/office-campaign-finance-statistics-april-2022>.

PUBLIC INFORMATION AND RECORDS MANAGEMENT DIVISION (PIRM) REPORT FOR APRIL 2022

- **New Candidates/Committees**
 - There were no new Candidate registrations during the month of April 2022.
- **Traditional Program Candidates**
 - There are 63 Traditional Program Candidates (60 Primary and 3 General).
- **FEP Candidates**
 - There are 42 registered FEP Candidates (37 Primary and 5 General).
- There are two active independent expenditure committees.
- There are four active initiative committees.
- There is one active political action committee.
- Nineteen Candidates and Treasurers completed the OCF Entrance Conference Presentation in April.

REPORTS ANALYSIS AND AUDIT DIVISION (RAAD)

- **Audits Issued**
 - Three complaint audits were issued for candidates vying for nomination for the June primary.
 - Corren Brown for Mayor – Issued April 8
 - Spiva for DC AG – Issued April 22
 - Lauren Rogers for Ward 5 – Issued April 29
- **Ongoing Audits**
 - There are seven ongoing audits in the traditional program.
 - There are currently 33 ongoing Post-Election Audits of FEP candidates.

OFFICE OF CAMPAIGN FINANCE (OCF): (GENERAL COUNSEL WILLIAM SANFORD)

- **Intake/Output Report**
 - 6 hearing referrals received
 - 6 informal hearings completed
 - 6 informal hearing orders issued (This includes 4 orders in which a total of \$4,100.00 in fines were imposed, and 2 orders in which no fines were imposed.)
 - \$6,075.00 in fines were collected

Open Investigations

- NONE.

Interpretative Opinions (All Interpretative Opinions are on-line at www.ocf.dc.gov.)

- NONE.

Show Cause Proceedings

- NONE.

PUBLIC MATTERS

- Calvin Gurley:
 - Asked for help with identifying rules indicating how voters are designated as inactive.
 - Expressed that a voter who signs a petition should be considered active for purposes of signature validation, since they have the right to choose not to vote.
 - Board Response: This kind of question would seem to broaden the scope of the Board's authority but warrants another discussion.
- Sandra Seegars:
 - Stated that the 10-day period during which changes of address can be submitted in response to a challenge should begin when the candidate receives notice of the challenge instead of at the point when the challenge is filed.
 - Board Response: This would require a legislative change through the Council.
- Dorothy Brizill:
 - Asked whether the Board has engaged a PR or communications firm to help the Board with this year's elections.
 - Executive Director Evans indicated that the Board has hired a senior communications consultant.
 - Asked if the Board had engaged K&H Printers and Fort Orange Press in Albany, NY to print and mail ballots.
 - Executive Director Evans indicated that only K & H Mail House had been engaged to mail and print the ballots.
 - Asked Chair Thompson to have the public information officer do a better job of making information available, particularly in light of the Sunshine Law, which provides that citizens have a right to access certain information without filing a FOIA request.
 - Board Response: The Board indicated that it would take this request under advisement.

Motion to Intervene in the Challenge to Initiative Measure No. 82 filed by James Bagwell (Attorney: Richard Bianco) (cont.)

After completing the items on its agenda, the Board unanimously voted to enter into Executive Session to deliberate on the motion to intervene. After reconvening the meeting, the Board denied the motion on the grounds that the intervener was and is adequately represented by the existing challenger who has able counsel involved, and the facts as presented do not indicate a denial of reasonable access to the petition during the challenge period. The Board stated that a written order would follow.

ADJOURNMENT (12:49 pm)