

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

The District of Columbia Board of Elections (the Board) held its Regular Monthly Meeting on Thursday, September 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** (10:48 a.m.)

**ASCERTAINMENT OF QUOROM**

- Board Member Michael Gill and Board Chairman Michael Bennett constitute a two-member quorum until the Council moves forward with the Mayor's previous nomination or the Mayor makes a new nomination.

**ADOPTION OF AGENDA/APPROVAL OF BOARD MINUTES**

- **BOARD ACTION:** The Board unanimously adopted the agenda and minutes from the last meeting held on August 7, 2019.

**BOARD MATTERS**

- **ORDERS AND ISSUANCES:** None.

**IDENTIFICATION OF PUBLIC MATTERS**

- **Michael Sindram**
  - Requested an update on the status of the confirmation of the third Board member.

**OCF AUGUST 2019 REPORT (DIRECTOR COLLIER-MONTGOMERY)**

- **Community Outreach**
  - On August 10, OCF attended the National Capital Collaborative Back to School Festival.
  - On August 14, OCF attended the Metropolitan Police Department (MPD) Beat the Streets community outreach finale event at Bellevue.
- **Fair Elections Program (FEP)**
  - New Registrants:
    - Committee to Elect Janeese Louis George, August 5
    - Kelvin Brown for Ward 7, August 13
    - Rosenberg 2020, August 14
  - July 31 was the first filing deadline for FEP
    - Two candidates requested extensions.

- The committees that filed FEP reports are as follows:
  - Jordan Grossman for Ward 2 filed on July 31 with 427 qualified contributions totaling \$7,501.02.
  - Kishan Putta for DC 2020 filed on July 31 with 270 qualified contributions totaling \$8,943.
  - Patrick Kennedy for Ward 2 filed on July 31 with 211 qualified contributions totaling \$8,515.
  - John Fanning Ward 2 filed on July 31 with 155 qualified contributions totaling \$6,165.
  - Green for Ward 7 filed on July 31 with 57 qualified contributions totaling \$1,906.
  - Dale for DC At-Large filed on July 31 with 26 qualified contributions totaling \$1,400.
- The FEP verification process ran from August 1, through August 14. At the end of that process, OCF determined that the following three candidates: 1) met the threshold requirements for receiving base payments and having their qualified small dollar contributions matched five-to-one in public payments; and 2) submitted the required affidavit verifying that they would continue to comply with the requirements of the Fair Elections Act:
  - Jordan Grossman for Ward 2: \$87,930.10 matching funds + \$20,000 base payment
  - Kishan Putta for DC 2020: \$44,715 matching funds + \$20,000 base payment
  - Patrick Kennedy Ward 2: \$42,570 matching funds + \$20,000 base payment
- The total amount disbursed to the three certified FEP candidates on August 20, 2019 was \$235,215.
- John Fanning for Ward 2 sought certification into FEP with the July 31 submission, but he did not meet the threshold requirements and did not submit an affidavit of the treasurer and the candidate promising to comply with the requirements of the FEP. He was sent a denial letter on August 14.
- FEP compliance status reports were sent on the dates indicated to the following parties who did not seek certification:
  - Daniel Hernandez for Ward 2, August 14
  - Green for Ward 7, August 14
  - Dale for DC, August 28
- Further comments made about the FEP:
  - Base payments are only authorized in contested elections; ½ of the base payment is distributed at the point of certification as an FEP candidate, and the other ½ is distributed upon qualification for ballot access. In contrast, matching payments are available for all certified FEP candidates, contested race or not.
  - Ward candidates must present 150 qualified small dollar contributions from individual District residents with a minimum aggregate total of \$5,000.00.
  - At-large candidates must present 250 qualified small dollar contributions from individual District residents with a minimum aggregate total of \$12,000.00.
  - FEP candidates must comply with Board ballot access requirements; accordingly, the FEP is not available to write-in candidates.
  - The FEP is distinguishable from the traditional program in that FEP can contribute up to \$5000 to their campaigns, but traditional program candidates may

give unlimited amounts of money to their campaigns. When the Campaign Finance Reform Act becomes effective, however, traditional program participants will only be able to reimburse themselves a maximum of \$25,000 when their campaigns close.

- The launch of the electronic filing system was successful, particularly with respect to FEP candidates, who were able to utilize the system for the first filing deadline on July 31, 2019. The system was also helpful with the intensive FEP verification process.
- Board Member Gill observed that the funds disbursed from the FEP were, per the statute, going to individuals who have not yet qualified as candidates. He expressed his view that using funds to facilitate gathering signatures from the community in order to qualify as a candidate may strike some as odd. Board Member Gill further expressed his view that the traditional signature-gathering model of ballot access, as currently structured, is not as conducive to promoting the dissemination of contrasting ideas/points of view in the public marketplace as it is to subsidizing the signature-gathering process and creating a cottage signature-gathering industry. A potential response could be to lower the bar for ballot access and allow resources to instead be directed toward facilitating a more robust competition of ideas.
- **Public Information and Records Management Division (PIRM)**
  - Filings in the month of August:
    - Report of receipts and expenditures for Principle Campaign Committees (PCCs) and Political Action Committees (PACs) were due July 31
      - 132 required filers
      - 110 timely filed
      - 22 failures to file
    - FEP Principal Campaign Committee reports were due July 31
      - 7 required filers
      - 7 timely filed
    - Independent Expenditure Committee reports were due July 31
      - 4 required filers
      - 3 timely filed
      - 1 failure to file
    - Inaugural Committee reports were due July 31
      - 1 required filer
      - 1 timely filer
    - Initiative and Referendum Committee reports were due July 31
      - 7 required filers
      - 3 timely filed
      - 4 failures to file
    - Recall Committees reports were due July 31
      - 3 required filers
      - 3 timely filed
    - In all, there were 27 referrals to the Office of the General Counsel with respect to the failures to file the July 31 Reports of Receipts and Expenditures.
  - New candidates and committees who registered during August:

- Robert White, Friends of Robert White, City Council at-large, registered on August 1.
- Kelvin Brown, Kelvin Brown for D.C. Council, Ward 7, registered on August 2.
- Janeese L. George, Committee to Elect Janeese Lewis George, City Council, Ward 4, registered as an FEP candidate on August 5.
- Robert Lee, Candidate for Mayor, registered on August 20.
- Entrance conferences for new candidates and committees were held on the following dates with the participants indicated:
  - August 5, 2019:
    - Barbara Celeste Summers, Candidate, Mayor
  - August 14, 2019:
    - Anthony Lorenzo Green, Candidate, Green for Ward 7
    - Ajoke Williams, Treasurer, Green for Ward 7
    - Mitchell Tropin, Treasurer, SEIU, Local 500 PAC
    - Clayton Rosenberg for Ward 7, Candidate, Rosenberg 2020
    - Nathaniel H. Moone, Treasurer, Rosenberg 2020
    - Kelvin Earl Brown, Candidate, Treasurer, Kelvin Brown for D.C. Council Ward 7
    - Janeese Lewis George, Candidate, Committee to Elect Janeese Lewis George
    - Latifa Lyles, Treasurer, Committee to Elect Janeese Lewis George
  - August 28, 2019:
    - Arrus Von Grill, Treasurer, Friends of Robert White
- **Reports Analysis and Audit Division (RAAD)**
  - Conducted 119 desk reviews of reports filed during the month.
  - There are two ongoing field audits:
    - The Committee to Elect Zachary Parker 2018, initiated on March 5
    - Emily for Education, initiated on March 4
  - There are three periodic random audits of July 31, 2019 filings submitted by the following:
    - Reelect Brandon Todd 2020 PCC, initiated September 4
    - Gertrude Stein PAC
    - D.C. Democratic State Committee PAC
  - There were three audits issued in the month of August that are now available for review on our website:
    - The D.C. Young Democrats PAC, initiated on August 15
    - The D.C. First PAC, initiated on August 14
    - The D.C. Proud 2019 Inaugural Committee, initiated on August 30
- **OCF Office of the General Counsel (OCF OGC)**
  - There were 27 referrals from PIRM and two referrals from RAAD.
  - There were two informal hearings and seven orders issued:
    - Three orders were for failure to timely file \$500 exemption confirmations; no fines were imposed.
    - Two orders were for failure to timely file ANC summary financial reports; no fines were imposed.

- Two orders were issued granting motions or reconsiderations; no fines were imposed.
- \$300 in fines were collected:
  - \$50 was collected from the Economic Protection Party.
  - \$250 was collected from Ambrose Jr., At-large candidate.
- There were no open investigations.
- There was a request on August 6, 2019 for an interpretative opinion by Jordan Grossman for clarification on the amount that immediate family members are permitted to donate to candidates who are registered in the FEP. The interpretive opinion, which was issued on August 12, clarified that immediate family members of FEP candidates may collectively contribute a maximum of \$2500 to said candidates.
- There were no show cause proceedings.

**EXECUTIVE DIRECTOR’S AUGUST 2019 REPORT (EXECUTIVE DIRECTOR MILLER)**

- **Continuing Poll Worker Training (CPT)**
  - Phase 1 of training Precinct Captains (PCs) and Special Ballot Clerks (SBCs) took place in June, and Phase 2 began in August. To date, 97 PCs and 136 SBCs participated in CPT. A total of 27 more individuals are scheduled to be trained across both classes this coming weekend.
  - Ballot clerks will be brought in for training by the end of the year; we will target 500 clerks for CPT.
- **Voter Education and Outreach Division (VEOD)**
  - In the month of August, VEOD staff coordinated and attended 26 outreach events (including four on August 24) which were designed to identify and register eligible voters, including high school students and eligible incarcerated voters.
- **Website**
  - The Board is continuing to incorporate feedback received in response to a survey on the effectiveness of the Board’s website conducted in July 2019. Specifically, the Board will implement a FAQ in the “Voters” section of the website concerning voter registration for students, eligible incarcerated persons, and returning citizens.
  - As indicated in the Board’s previous monthly meeting, the Board of Ethics and Government Accountability (BEGA) has indicated that the Board’s website is compliant with relevant District law. However, BEGA did provide suggestions that will enhance the website’s accessibility features, and the Board is working to incorporate those suggestions.
- **Partnership with the Department of Motor Vehicles (DMV)**
  - Executive Director Miller and General Counsel Stroud met with the DMV Director and DMV senior staff to ensure that there is no disruption to the District’s automatic voter registration program as the Board transitions to its new voter registration system.

- **Implementation of New Voter Registration System**
  - Executive Director Miller pointed out that the Board is on a timeline that has been pushed back two weeks to the end of October in terms of bringing the new system online. In light of potential recall elections, the Board would rather have the system online sooner, but prioritizes accuracy and preciseness over speed with respect to the implementation of the new system.
- **New Staff Member**
  - Executive Director Miller introduced the Board's new Human Resources specialist, Ms. Francine Dease.

## **BOE OGC AUGUST 2019 REPORT (GENERAL COUNSEL STROUD)**

- **New Staff Member**
  - General Counsel Stroud introduced the Board's new law clerk, Ms. Victoria Gray. Ms. Gray is here with us pursuant to an externship at the Georgetown University Law Center where she is a third-year law student.
- **Litigation Status**
  - **William Hunt v. the D.C. Board of Elections.** This matter was filed in the US District Court for DC 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.

On July 10, Mr. Hunt filed a Motion for an Extension of Time to respond to the Board's Motion to Dismiss, which was filed on April 24, 2019, as well as a Motion to Amend the Complaint. The Board filed a reply to Mr. Hunt's motions on August 27. We are now awaiting the court's ruling.

- The Board filed an opposition to Mr. Hunt's Motion to Extend Time on July 18. On July 26, the court denied Mr. Hunt's Motion to Amend, but granted his motion to enlarge his time to file his opposition to August 23. On July 29, Mr. Hunt filed an additional Motion for Extension of Time to respond to the Board's Motion to Dismiss, as well as a motion to amend his complaint.
- **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 motions are due on November 21, 2019, at which time both parties will file cross-motions for summary judgment.
- **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

prohibiting the Board from taking any action on Referendum 8. There were mishaps with respect to the e-filing in the D.C. Court of Appeals, so opposing counsel did not receive Board and intervener filings. Opposing counsel therefore filed a motion for extension of time to file a reply to the Board's joint brief. We are awaiting the court's ruling with respect to that motion.

- **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. The Court of Appeals has given petitioner 20 days to show why the petition should not be dismissed due to being filed late. The petitioner filed a response on August 13, and the OGC is preparing a response that will be filed this week.
- **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. The Court of Appeals has given petitioner 20 days to show why the petition should not be dismissed due to being filed late. The petitioner filed a response on August 13, and the OGC is preparing a response that will be filed this week.

- **OCF PETITIONS FOR ENFORCEMENT**

- The OGC brings these eight OCF petitions for enforcement before the Board:
  - Justin Greene At-Large, (OCF Docket #17C-027) was fined \$1650 for failure to file the October 10, 2017 Report of Receipts and Expenditures (R & E Report). Relevant individuals failed to appear at either of two prehearing conferences scheduled for July 11 and August 9. The party was notified of this hearing by mail on August 30, but is not present today.
  - Justin Greene At-Large, (OCF Docket #18C-002) was fined \$1400 for failure to file the January 31, 2018 R & E Report. Relevant individuals failed to appear at either of two prehearing conferences scheduled for July 11 and August 9. The party was notified of this hearing by mail on August 30, but is not present today.
  - Toliver for Ward 4, (OCF Docket #18C-003) was fined \$2150 for failure to file the February 16, 2018 R & E Report. Relevant individuals failed to appear at either of two prehearing conferences scheduled for July 11 and August 9. The party was notified of this hearing by mail on August 30, but is not present today.
  - Committee to Elect Khalid Pitts, (OCF Docket #18C-005) was fined \$2150 for failure to file the February 16, 2018 R & E Report. Relevant individuals failed to appear at either of two prehearing conferences scheduled for July 11 and August 9. The party was notified of this hearing by mail on August 30, but is not present today.
  - Patterson for Ward 8, (OCF Docket #18C-007) was fined \$2150 for failure to file the February 16, 2018 R & E Report. Relevant individuals failed to appear at either of two prehearing conferences scheduled for July 11 and August 9. The party was notified of this hearing by mail on August 30, but is not present today.

- Justin Greene At-Large, (OCF Docket #18C-018) was fined \$1,000 for failure to file the May 10, 2018 R & E Report. Relevant individuals failed to appear at either of two prehearing conferences scheduled for July 11 and August 9. The party was notified of this hearing by mail on August 30, but is not present today.
- MMC Foundation, (OCF Docket #18C-021) was fined \$500 for failure to file the March 10, 2018 R & E Report. Mr. Manley is now in compliance with his filings, and he attended a scheduled pre-hearing conference on July 11, 2019, but noted that he could only afford payments of around \$5 a month.
- MMC Foundation, (OCF Docket #18C-001) was fined \$1050 for failure to file the January 31, 2018 R & E Report. Mr. Manley is now in compliance with his filings, and he attended a scheduled pre-hearing conference on July 11, 2019, but noted that he could only afford payments of around \$5 a month.
- Chairman Bennett noted for the record these individuals received notice less than a week before the proceeding. He encouraged the Office of the General Counsel to be flexible relative to giving folks an opportunity to be heard if they so choose.
- **BOARD ACTION:** The Board moved that the OGC could proceed with the petitions to D.C. Superior Court for enforcement provided that the individuals are given an opportunity to appear before the Board if they so choose.

## PUBLIC MATTERS

- **Michael Sindram**
  - Requested clarification regarding Mr. Gill's earlier comments on the ballot access process, *i.e.*, nominating petition signature gathering.
    - Board Member Gill stated that he was merely observing that the current ballot access process is problematic in that it does not encourage candidates to actively campaign for widespread, grass roots support as much as it encourages them to enhance their organizational signature gathering capabilities. Chairman Bennett further stated that the FEP might provide a more efficient means of determining support and getting more ideas out into the public sphere.
  - Requested update on status of third Board member
    - Chairman Bennett responded that Mayoral nominee Karen Greenfield had a confirmation hearing on July 2 in the D.C. Council Committee on the Judiciary and Public Safety (headed by Councilmember Charles Allen), and that her nomination was in a pending status. Chairman Bennett further noted that the Council returns to session September 16.
  - Requested clarification on the amount of funding available to candidates under the FEP.
    - OCF Director Montgomery explained that amounts paid out vary depending upon the office sought, and that there is a cap on the amount of matching fund payments that can be disbursed which is determined by a formula set forth in the governing statute.



- Read an article in the Washington Examiner discussing how the phasing out of Windows 7 might impact voting machines and the 2020 elections.
  - Chairman Bennett responded that the Board is preparing a response to an inquiry from Councilmember Mary Cheh regarding the Board's efforts to ensure that the Board's electoral process is safe from attempts by foreign powers to influence the outcome of American elections which will be posted on the Board's website once completed. Chairman Bennett also indicated that the Board's voting machines are closed, *i.e.*, not connected to the internet and do not run on Windows 7. He also noted that because the Board uses all paper ballots, there is a paper audit trail which further buttresses the security and integrity of the Board's process.

Adjournment (12:23 p.m.)