

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:

Janeese Lewis George,
Julia Howell Barros, Janeese
For DC and Safe and Affordable DC,
Petitioners.

Administrative Hearing
Case No. 26-065
Review of OCF Order
In 2026 FI-007

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections (“Board”) on October 7, 2026 at a hearing convened to address requests for *de novo* review of Office of Campaign Finance (“OCF”) Order 2026 FI-007 (“Order”) by Democratic Mayoral candidate Janeese Lewis George, her campaign, and Julia Howell Barros, her campaign treasurer (collectively, “Campaign”) and an Independent Expenditure Committee (“IEC”) Safe and Affordable DC (“S&A DC”). The Order found that the Campaign and S&A DC violated campaign finance laws.¹ Board Chair Gregory McCarthy and members Karyn Greenfield and Michael Wakefield presided over the hearing. The Campaign was represented by Jessica Robinson and S&A DC was represented by Joseph Steinberg. OCF General Counsel, William SanFord, and the Board’s General Counsel, Terri Stroud, were also present.

¹ Union organizations UNITE HERE Local 25 (“Local 25”), UNITE HERE and SEIU 32BJ (the “Unions”) and a political action committee Workers Vote (the “PAC”) also sought *de novo* review of the OCF Order under 3 DCMR § 3709.11 and requested that that Order be reversed. OCF argued that those entities lacked standing to seek such Board review for the reason that the regulations specify that, under the afore-mentioned regulation, only parties aggrieved by an OCF order may file for *de novo* review and the respective entities were not treated as parties to the proceedings before OCF or in its Order and were not subjected to any penalty by the Order. The entities argued in pleadings that the Board should find that they had standing to seek *de novo* review of the Order and the issue was debated at an October 7 hearing. Given our ruling below on the Campaign’s and S&A DC’s *de novo* review requests, we deny the requests for *de novo* review of the respective entities on grounds of mootness without deciding the issue of standing.

Background

This matter concerns two issues. The first is whether OCF has proved by reliable, probative, and substantial record evidence that S&A DC's political advertising expenditures were impermissibly coordinated with the Campaign based on an inference of "coordination."² If so, S&A DC's advertising expenditures would be essentially treated as contributions to the Campaign in violation of Fair Election Program ("FEP") small donor contribution limits.³ It would also mean that S&A DC would have operated outside the parameters for IECs by failing to spend its funds independently.⁴ The second issue is whether OCF proved by substantial evidence on the record that the Campaign's reimbursement of staff obligations that were incurred on staff personal credit cards constituted a violation of a particular provision of the campaign finance statute and of OCF's regulations. The essential facts relevant to this matter are as follows:

On December 1, 2025, the Candidate registered her campaign committee "Janeese for DC" ("Committee") with OCF. The Committee thereafter filed a report of receipts and expenditures ("R & E Report") that was due by December 10, 2025. On January 8, 2026, the Committee was certified to participate in the FEP. Around that same time, two employees who would otherwise work for UNITE HERE and two employees who would otherwise work for UNITE HERE Local 25 were assigned on a full-time basis to the Campaign under contracts, and one employee who

² 3 DCMR 423.5 (OCF's burden) and D.C. Code §1-1163.35(a)(3)-(4) (applying D.C. Administrative Procedure Act's "reliable, probative and substantial evidence" standard to Board review of OCF administrative fine decisions) and 3 DCMR 428.4 (substantial evidence on the record required for Board decisions).

³ A "contribution" as a gift, payment, etc., including "[(iv)] An expenditure that is *coordinated* with a public official [candidates are public officials³], a political committee affiliated with a [candidate], or an agent of any [such] person..." D.C. Code §1-1161.01(10)(A) (emphasis added). The FEP provides that candidates for Mayor cannot accept a contribution in excess of \$200 from any particular source. D.C. Code §1-1163.32b.

⁴ An IEC is any committee, club, association, etc. that is organized for the purpose of making independent expenditures and is not controlled by or coordinated with a candidate or a candidate's campaign and does not transfer funds to or contribute to candidates or other political committees. D.C. Code § 1-1161.01(28B).

would otherwise work for SEIU Local 32BJ was assigned on a part-time basis to the Campaign under a contract.⁵ On January 20, 2026, S&A DC registered with OCF. S&A DC's offices were located at the address of one of the Unions (*i.e.*, UNITE HERE Local 25) and it was provided with communications support by Benjamin Cannon, a communications staffer for that same union, subject to firewall restrictions.⁶ Subsequently, the PAC and possibly one of the unions each contributed \$100,000 to S&A DC,⁷ and S&A DC purchased political advertisements that were supportive of the Candidate on a number of occasions.⁸ Both the Committee and S&A DC filed R & E Reports that were due by January 31, 2026.

On or about April 21 and May 1, 2026, a D.C. voter, Kevin Sobkoviak, filed documents with OCF that OCF accepted as a formal "Complaint." Sobkoviak's Complaint raised concerns about ties between the Campaign, the Unions, and S&A DC and the level of detail in the R & E Reports. One of the Complaint's concerns was the identity of Campaign staff who, according to Campaign R & E Reports, were paid staff salary reimbursements of \$41,936.57, \$31,399.87, and \$10,901.33.

The Complaint also alleged that a "rebuttable presumption" should be drawn of improper coordination between the various entities that had some relationship to the Campaign. As noted

⁵ Generally, the contracts set monthly salary reimbursement levels to be paid by the Campaign to the respective Unions, established a period of time during which the employee would work for the Campaign, described the Campaign duties of the employees, and set limits on contact between the employees who were covered by the contracts and others.

⁶ Order at p. 8.

⁷ Order at pp. 8 and 27. It is unclear from the Order if SEIU Local 32BJ or another political committee, 32BJ United American Dream Fund, contributed to S&A DC.

⁸ The Order claims that \$1.09 million was spent on advertising "in support of the Campaign." Order at p. 36. With the exception of a public photograph of the Candidate included in S&A DC advertising, however, the Order does not describe the content of the advertisements or compare them to the Campaign's messaging, and OCF did not submit any advertising material into our record. As a result, it is difficult to assess whether all of S&A DC's advertising was indeed supportive of the Candidate and/or might have been influenced by the Campaign.

above, under the campaign finance laws, a candidate or campaign or other OCF-regulated entity can be treated as having accepted as a contribution funds spent by another where the expenditure was either made: (1) “[a]t the explicit or implicit direction, request, or suggestion” of the entity or (2) was made “[i]n cooperation, consultation, or concert with, or other material involvement of” the entity.⁹ Such direction, request, or material involvement of the regulated entity in the expenditure of another is often referred to as “actual or direct coordination.” The law further provides that coordination can be presumed to exist where any of four specific scenarios exist, and that the party charged with such coordination may rebut said presumption. Specifically, the statute provides that:

[t]here shall be a rebuttable presumption that a contribution or an expenditure is coordinated ... if:

- (i) The contribution or expenditure is made based on information that the [candidate, candidate’s campaign or agent] provided to the particular person making the contribution or expenditure about its needs or plans, including information about campaign messaging or planned expenditures;
- (ii) The person making the contribution or expenditure retains the professional services of a person who also provides the [candidate, candidate’s campaign or agent] with professional services related to campaign or fundraising strategy;
- (iii) The person making the contribution or expenditure is a ... independent expenditure committee that was established or is or was staffed in a leadership role by an individual who:
 - (I) Works or previously worked in a senior position or in an advisory capacity on the [candidate]’s staff or on the [candidate]’s principal campaign committee; or
 - (II) Who is a member of the [candidate]’s immediate family; or
- (iv) The contribution or expenditure is made for the purpose of financing, directly or indirectly, the election of a candidate or a political committee affiliated with that candidate, and that candidate has fundraised for the person making the expenditure.

⁹ D.C. Code §1-1161.01(10B)(A).

D.C. Code §1-1161.01(10B)(B).

OCF commenced an investigation into the Complaint's allegations and notified the Candidate and S&A DC of that investigation. The Campaign responded to the Complaint by arguing, *inter alia*, that it did "not include any facts that can support a finding of 'coordination' or give effect to a presumption of 'coordination,'" and that the staffing relationships with respect to one union's employee and the Campaign, and between a different union employee(s) and S&A DC, did not constitute coordination.¹⁰ S&A DC responded to the Complaint by stating that: (1) it did "not allege *any* facts that demonstrate coordination"; (2) its allegations as to coordination were speculative; (3) it failed to allege any of the circumstances that would support application of the rebuttable presumption of coordination.¹¹ S&A DC's response reiterated and elaborated on its position that the Complaint failed to allege facts constituting coordination or a presumption of coordination.

OCF's investigation identified thirteen Campaign, Union, PAC, and S&A DC witnesses who might have had information relevant to the Complaint's allegations. Although OCF sought responses from these witnesses to written questions by email, it received responses from only three individuals.¹² One of the three responding witnesses, Adam Yalowitz, Co-Campaign Manager and UNITE HERE deputy Research Director,¹³ stated that he had "not engaged in any discussions with anyone at the unions concerning ads supporting the Campaign." Order at pp. 17-18. Another

¹⁰ See Campaign responses to Complaint at pp. 6-7 and to its supplement at p. 3.

¹¹ S&A DC Response at p. 1 and, at footnote 2, p. 2.

¹² OCF's regulations reflect that the agency has subpoena power in addition to a host of other investigatory tools. 3 DCMR 3704.2. The regulations provide OCF with a minimum of 90 days to complete a full investigation, which period can for good cause be extended. 3 DCMR 3704.7-3704.8. It is not clear why OCF did not pursue the other potential witnesses to gather additional information or follow-up on what appeared to be gaps in information and instead issued its Order some six weeks after the Complaint was supplemented.

¹³ To be clear, UNITE HERE is not UNITE HERE Local 25.

responding witness, Campaign Treasurer Julia Howell, stated that she had “not engaged in any discussions with the Union in connection with her role with the Campaign and has not communicated with the Union in connection with her Campaign role” and “not engaged in any discussions with anyone at the Unions concerning any ads supporting the Campaign.” *Id.* at p. 20. The third responding witness, S&A DC Treasurer Kelsey Garnatz, stated that she had “not had any discussions with anyone from the Campaign about purchases for the Campaign, including campaign ads or the Campaign’s need for services, supplies ads or materials” and “she did not engage in any discussions with the Campaign in connection with her role with the Safe & Affordable DC.” *Id.* at p. 20.

On June 12, 2026, OCF issued the Order. The Order begins by describing the Complaint. It then acknowledges statements in the responses to the Complaint by the Campaign and S&A DC wherein the allegations of improper coordination were denied. Order at pp. 6-7. The Order goes on to quote the three witness statements attesting to the absence of information-sharing between the Campaign, the Unions, and S&A DC. The Order does not identify any information with respect to the Campaign’s needs or plans that was either shared or suspected of being shared with S&A DC. The Order also states that Adam Yalowitz and another Campaign employee, Samantha Miller, were reimbursed \$32,492.65 and \$82,134.87, respectively by the Campaign for personal credit card obligations that they incurred in connection with the Campaign.¹⁴ In the section of the Order titled “Conclusions of Law,” the Order concludes that coordination existed between the Campaign and S&A DC. Without identifying which of the four specific statutory presumption-of-coordination scenarios set forth in D.C. Code §1-1161.01(10B)(B) applies, the Order states:

¹⁴ Order at p. 24.

[A] presumption of coordination can be established, in light of the fact that there are five (5) Agreements, for ‘leased’ full time employees ... and one less than full time employee ... The five (5) Agreements are not signed by the ‘leased’ employee, and undated and unsigned the (sic) Firewall Policy of UNITE HERE is lacking.

The “Conclusions of Law” section also notes that S&A DC was expending considerable funds on advertisements that, according to the Order, aligned with the Campaign’s interests and that S&A DC was accepting contributions from the PAC and SEIU Local 32BJ.¹⁵ The Order notes that S&A DC’s address is the same as the address for UNITE HERE Local 25 and that Cannon worked for both entities, and it refers to the Campaign’s employment, under contract, of persons who had been working for UNITE HERE, UNITE HERE Local 25 and SEIU Local 32BJ. With regard to this presumption, the “Conclusions of Law” section of the Order describes the firewall as illusory, impossible to implement and enforce, and “virtually non-existent.”¹⁶

Second, under the heading “Impermissible Expenditure,” the Order focuses on the Campaign’s reimbursement of personal credit card expenses. It cites D.C. Code § 1-1163.08(a), which concerns making campaign expenditures out of campaign bank accounts. The Order states:

Pursuant to this investigation, the Campaign reimbursed Adam Yalowitz, a total of \$32,492.65 for Campaign expenditures made through his personal credit card, rather than by the Campaign’s debit card or check drawn from the Campaign’s designated depository account ... as required by D.C. Official Code § 1-1163.08(a) ... The violation occurred at the moment the expenditure was made through a personal credit card rather than by the Campaign’s debit card or check drawn from the Campaign’s designated depository account. The Campaign is therefore in violation of D.C. Official Code § 1-1163.08(a) with respect to the reimbursement of \$32,492.65 to Adam Yalowitz.

¹⁵ Order at p. 36 (again, it is unclear if SEIU Local 32BJ was indeed the contributor of one of the two “lavish” \$100,000 donations to S&A DC).

¹⁶ *Id.* During the subsequent Board hearing, counsel for the Campaign asserted that the firewall agreements had indeed been executed and that staff had been trained on compliance with firewall requirements and that this information would have been known to OCF had its investigation been complete.

The Order repeats the same reasoning with respect to reimbursements made to Samantha Miller.¹⁷

The Order imposes jointly on the Candidate, the Treasurer, and the Committee four \$4,000 fines totaling \$16,000.¹⁸ It also imposed a \$4,000 fine on S&A DC. The Campaign and S&A DC timely requested that OCF reconsider its Order.¹⁹ On June 23, 2026, OCF timely denied the requests for reconsideration. The Campaign and S&A DC then sought *de novo* review by this Board.²⁰ The respective requests implored the Board to vacate the Order and included multiple attachments including responses submitted to OCF questions. The Campaign argued that the Order “is factually and legally erroneous” and that its “Finding of Facts” “include findings are plainly false, assumes (or invents) facts not in evidence, and egregiously mischaracterizes statements or evidence submitted by [the Campaign], S&A DC, and/or their respective counsel.”²¹ S&A DC echoed these claims.

Despite the Campaign’s and S&A DC’s allegations of factual defects in the Order, and although OCF is required to prove on review and the Board must uphold the findings of campaign

¹⁷ Order at p. 37.

¹⁸ D.C. Code § 1–1163.35(a)(3)-(4) provides that while the Board may impose civil penalties subject to hearing proceedings, OCF (as opposed to the Board) may impose civil fines administratively for violations of the Campaign Finance Act as long as “[t]he aggregate amount of penalties imposed under the authority of this paragraph may not exceed \$4,000.” As revealed by the discussion below, it is unnecessary for us to address whether it is legally permissible for OCF to impose a \$16,000 fine.

¹⁹ See 3 DCMR 3709.15 (providing that a party adversely affected by an OCF order “may” within five days of the order seek reconsideration).

²⁰ 3 DCMR 3709.12. The Campaign’s request was filed after the deadline for seeking *de novo* review had expired. OCF moved that the Campaign’s request be denied as untimely and the Campaign has moved the Board to accept its *de novo* request under Board regulations that allow late filings upon a showing of good cause. In a separate order issued concurrent with this opinion, we have accepted the Campaign’s late-filed request for *de novo* review upon a finding of excusable neglect.

²¹ Campaign *de novo* review request at p. 2.

finance law violations based on substantial evidence, OCF did not provide to the Board the evidence that it relied upon in reaching its violation findings.

The Board's Office of General Counsel scheduled a prehearing conference in the matter on September 29, 2026. During that prehearing conference, the Board attorney assigned to the matter began by questioning OCF given that it bore the burden of proof. With respect to the fines imposed on the basis of a rebuttal presumption of coordination, the attorney pressed OCF to identify which of the four statutory grounds it relied upon, as the Order did not specify the basis for invoking the presumption. In response, OCF's General Counsel stated clearly on the record that the violation findings were based on the first presumption of coordination scenario set forth in the statute: D.C. Code §1-1161.01(10B)(B)(i). Under that provision, a rebuttable presumption of coordination is established where a "contribution or expenditure is made based on information that the [candidate/campaign] provided to the particular person making the contribution or expenditure about its needs or plans, including information about campaign messaging or planned expenditures." The Board attorney then asked OCF's General Counsel to identify the evidence showing that information about the Campaign's needs and plans was provided to the person making the S&A DC advertising expenditures. OCF's General Counsel pointed to no specific information about the Campaign's advertising needs and plans that was provided to the S&A DC party who made the decision about advertising purchases. Instead, he relied on the fact that the Unions had loaned certain employees to the Campaign and that Union employees dealt with S&A DC.²²

²² During the prehearing conference, OCF's General Counsel suggested that OCF's theory of the case was premised on the assumption that the respondents in its investigation had conceded that there was a sufficient basis to draw a presumption of coordination given that they sought to rebut that presumption by relying on their firewalls with respect to the loaned employees. As a result, he indicated that the Order did not delve into the basis for drawing a presumption of coordination and instead addressed the sufficiency of the firewall. In response to OCF's claim that the parties had

The Board attorney also asked OCF to explain its apparent position that D.C. Code § 1-1163.08(a) prohibits a campaign from making reimbursements. She noted that that provision does not include the word “reimbursement” or any variation thereof and did not facially preclude reimbursements. She further expressed that, in modern times, a campaign could not operate if it could not reimburse credit card expenses. OCF’s General Counsel indicated some types of reimbursements were permissible and others were not. However, he did not point to any language in D.C. Code § 1-1163.08(a) that supported his view. The Board attorney also noted that the plain language of that provision simply limited the method of withdrawal of amounts from a campaign bank account to checks (as opposed to, for example, debit cards). While he did not deny that checks were used to reimburse Campaign staff for their personal credit card obligations, OCF’s General Counsel indicated that the violation arose when Campaign staff incurred campaign expenses on their personal credit cards rather than from the method by which the Campaign reimbursed staff.²³

At the end of the prehearing conference, the Board attorney invited the attending counsel to provide to her by the end of that day any materials or record references in follow-up to the conversations during that proceeding that they believed would assist the Board in its review. Counsel for the Campaign, S&A DC, and the Unions jointly provided references to the record

conceded that a presumption of coordination should be applied, the assigned Board attorney asked counsel for the Campaign, S&A DC, the Unions, and the Political Action Committee to comment on their position before OCF. Counsel noted their responses to the Complaint (discussed above) in which they argued that there was no evidence showing coordination, much less a presumption of coordination, and that the Complaint failed to allege facts constituting a presumption of coordination. We agree that OCF’s assumption that the Campaign and S&A DC conceded the existence of a presumption of coordination was unfounded. The parties’ point that any presumption would be rebutted by firewall practices does not constitute a concession; rather, such alternative reasoning is simply an appropriate strategy for responding to the accusations made.

²³ OCF’s General Counsel clarified during the prehearing that OCF premised two of the \$4,000 fines against the Campaign (the first and the fourth) on a violation of supposed reimbursement requirements.

before OCF that showed that their clients had not conceded that there was evidence in the record that supported finding a presumption of coordination. OCF's General Counsel sent an email identifying the laws that it was relying upon, including the entire definition of "coordination" and the statutory provision that set forth all four of the scenarios under which a presumption of coordination could be drawn. He also included in his email a reference to another statutory provision regarding the use of bank accounts and OCF regulations on the expenditure of funds, none of which discussed the reimbursement of expenditures or the use of credit cards. OCF did not submit any evidence for the Board's consideration.

Following the prehearing conference, the parties were notified that the Board would hear the matter on October 7, 2026. On the evening before the Board hearing, the Campaign submitted a summary of its position. Among other things, the Campaign noted that OCF's own regulations signal that reimbursements from campaign bank accounts to others are permissible.²⁴

At the hearing, the Board considered, *inter alia*, the merits of the violations alleged.²⁵ With respect to the issue of impermissible coordination, OCF acknowledged on the record that there was no "smoking gun," *i.e.*, no evidence of a direction or suggestion by the Campaign or material involvement of the Campaign in S&A DC's advertising expenditures such that actual or direct coordination had been shown. When pressed by the Board to point to evidence of information on the Campaign's needs and plans that was provided to S&A DC that might support finding a

²⁴ One noteworthy provision states that "[t]he candidate shall report and itemize in each disclosure statement each expenditure made ... during a reporting period: (a) The name and address of each person, including the candidate, who has made purchases on behalf of the committee ... with the expectation of being reimbursed by the committee[.]" 3 DCMR 4213.7(a).

²⁵ The OGC attorney assigned to the matter requested that the Chair admit into the record the party's pleadings/submissions, including the attachments to those pleadings/submissions. The Chair granted that request. At that juncture, the only evidence in the record before the Board was the evidence offered by the Campaign, S&A DC, and the other entities that sought *de novo* review.

presumption of coordination, OCF referred to the “totality of the circumstances,” such as S&A DC being funded by organizations that had some connection to the Campaign and the loan by some unions of staff to the Campaign.²⁶ As to the issue of the Campaign’s reimbursement of staff personal credit card obligations, OCF’s General Counsel noted that the purpose of the FEP was to limit donations to small dollar amounts in return for public funding, and he asserted that relatively high-dollar obligations incurred by the Campaign staff were inconsistent with that purpose. OCF did not request that any evidence be admitted into the record.

The Campaign and S&A DC responded to OCF by reiterating that there was no evidence of coordination or of facts supporting a presumption of coordination.

After hearing from the parties, the Board went into executive session to discuss the matter. When the Board reconvened on the record, a motion was made to find that OCF’s conclusions of campaign finance violations were not supported by substantial evidence and to reverse the fines imposed. The motion was duly seconded and passed unanimously.

²⁶ Although OCF represented at the prehearing conference that the fines for impermissible coordination were based on the statute’s first presumption of coordination scenario, OCF’s General Counsel claimed at the Board hearing that those fines were also based on the third scenario. As noted above, that scenario states in relevant part that a presumption of coordination can be drawn when the “person making the contribution or expenditure is a ... independent expenditure committee that was established or is or was staffed in a leadership role by an individual who ...[w]orks or previously worked in a senior position or in an advisory capacity on the [candidate]’s staff or on the [candidate]’s principal campaign committee[.]” There is no evidence on this record that S&A DC was established by or staffed in a leadership role by a person who worked on the Campaign. The only S&A DC staff person even identified in the Order is Kelsey Garnatz, S&A DC’s Treasurer, and there is no evidence that she worked for the Campaign. Indeed, accepting the allegations in the Order as evidence, the record shows that Garnatz never even communicated with the Campaign.

Analysis

“Any party adversely affected by any order of the [OCF] Director may obtain review of the order by filing, with the Board of Elections, a request for a hearing *de novo*.”²⁷ This means that we review OCF’s Order afresh and are not bound by OCF’s decision. *MorphoTrust USA, Inc. v. D.C. Contract Appeals Bd.*, 115 A.3d 571, 582 (D.C. 2015) (explaining that “*de novo*” means “anew” and “a non-deferential review”). Further, the Board’s regulations provide that “[i]n all cases involving violations of the Campaign Finance Reform and Conflict of Interest Act the Office of Campaign Finance has the burden of proving a violation with reliable, probative and substantial evidence.”²⁸ In light of this standard, we focus on the alleged violations that OCF associated with each fine.

The fines imposed for violations related to coordination

One of the four \$4,000 fines imposed on the Campaign was for “a violation of 3 DCMR §3711.2(l) – Accepting contributions in excess of the contribution limits[.]” Another was for “a violation of 3 DCMR 3711.4(y) – Failing to comply with Fair Elections requirements[.]” As to S&A DC, the sole fine imposed was for “a violation of 3 DCMR Section 3711(m) – Making a contribution in excess of contribution limitations.”²⁹

We understand that these fines are based on the Order’s Conclusions of Law with respect to impermissible coordination such that S&A DC’s advertising expenditures should be treated as contributions to the Campaign and S&A DC did not spend independently as is required of IECs.

²⁷ 3 DCMR 3709.11.

²⁸ 3 DCMR 423.5.

²⁹ We understand that the correct regulation section citation for this fine is 3711.2(m).

As indicated above, there is no actual or direct evidence of coordination here. The issue is whether a presumption of coordination may be drawn based upon the record.

With respect to whether there is sufficient proof here to support the application of a presumption of impermissible coordination, OCF argued that a “totality of the circumstances” standard applies for finding that a presumption of coordination should be drawn. It also indicated that the loaning of (non-IEC) employees to the Campaign supported a presumption of coordination. The statute, however, does not allow a presumption of coordination to be drawn based on a totality of the circumstances standard or because employees from a third party that is somehow connected to an IEC were loaned to a campaign. Rather, the statute sets forth four specific circumstances under which a presumption of coordination may be established. It is clear that OCF cannot unilaterally add new grounds for drawing a presumption of coordination that the Council never adopted to the statute. Instead, OCF must base its case for applying a presumption of coordination on evidence of one or more of the four scenarios that are set forth in the statute. Because the Order does not reference any of the four scenarios that permit drawing a presumption of coordination, OCF’s General Counsel was asked at the prehearing conference to nail down which of the statutory four presumption-of-coordination scenarios formed the basis of the fines at issue. OCF’s General Counsel pointed to the first scenario only.³⁰ Under that scenario, a presumption of coordination is allowed where an “expenditure is made *based on information that the [Candidate, Committee], or an agent of [the Candidate or her Committee] provided to the particular person making the ... expenditure about its needs or plans*, including information about campaign messaging or planned expenditures.” D.C. Code §1-1161.01(10B)(B) (emphasis

³⁰ While he later seemed to shift from that position, we hold OCF to that critical representation as to the basis for its case. In any event, as noted above, OCF’s indication at the Board hearing that the third scenario provided some basis for its imposition of fines for coordination is unpersuasive.

added). During the prehearing conference and Board hearing, OCF's General Counsel was pressed to point to evidence in the record that the Campaign provided information about its needs or plans to the S&A DC person who made the advertising expenditure, but did not identify any such evidence.

The record before us includes statements by S&A DC's Treasurer that she had no discussions with the Campaign.³¹ The record also includes statements from Co-Campaign manager Adam Yalowitz's and Campaign Treasurer Julia Howell Barros' indicating that they had no communications with the Unions.³² Additional statements made in response to OCF's questions show that S&A DC was located on K Street, NW, Washington, DC and that the Campaign was located at 1436 U Street, NW, Washington DC. Not only is there is no evidence here that S&A DC actually made advertising expenditures based on Campaign needs and/or plans provided by the Candidate/Campaign to the particular S&A DC person who authorized those expenditures; there is also a fair amount of evidence that directly contradicts the existence of any shared information. OCF did not identify and/or provide the Board with any information regarding the Campaign's advertising needs and plans that would have allowed us to evaluate whether those needs and plans were reflected in the advertising purchased by S&A DC. Such evidence might have supported an inference that information had been exchanged, thereby supporting a rebuttable presumption of coordination. For these reasons, there is insufficient evidence on the record to establish the existence of the first presumption of coordination scenario.³³

³¹ S&A DC's *de novo* review request at Exhibit F, Attachment A.

³² Campaign *de novo* review request at Exhibits 6 and 11. OCF did not ask if there were communications with S&A DC.

³³ Because there is no basis for applying the presumption of coordination, an evaluation of whether the firewall was sufficient to rebut such a presumption is not necessary.

Thus, at the end of the day, there is not substantial evidence on the record to support finding that a presumption of coordination should be applied here. Absent a presumption of coordination, evidence of S&A DC making advertising expenditures that can be deemed contributions to the Campaign is lacking. Accordingly, we cannot sustain the Order's imposition of two fines in the amount of \$4,000 each on the Campaign for accepting a contribution in excess of the contribution limits or its imposition the \$4,000 fine on S&A DC for making a coordinated expenditure.

The fines imposed for violations related to D.C. Official Code §1-1163.08(a) and 3 DCMR 4209.6

The Order describes one of the \$4,000 fines imposed on the Campaign as “[f]or a violation of D.C. Official Code §1-1163.08(a) – Reimbursing a staffer for payment of any expenditure that was paid by a personal credit card not affiliated with the depository for the candidate nor committee[.]”³⁴ The last \$4,000 fine imposed on the Campaign is for \$4,000 for a “violation of 3711.4(aa) – Making expenditures for any purpose prohibited under § 4209.”³⁵ During the prehearing conference, OCF's General Counsel clarified that that fine was based on the same reimbursement of personal credit card conduct that was relied upon for finding a supposed violation of D.C. Official Code §1-1163.08(a). In a follow-up to the prehearing conference with OGC, OCF's General Counsel indicated that the specific provision at issue with respect to the last fine was 3 DCMR 4209.6. That section provides that

Fair Elections Program funds may not be used for:

- (a) An expenditure for any purpose other than the furtherance of the participating candidate's nomination or election; or
- (b) An expenditure in violation of any law.

³⁴ Order at p. 39.

³⁵ *Id.*

Thus, we must first evaluate whether there is “substantial evidence” in the record to support OCF’s conclusion of a violation of D.C. Code §1-1163.08(a). That provision states in relevant part:

Each committee and each candidate accepting contributions or making expenditures, shall designate in the registration statement required under § 1-1163.07 or § 1-1163.12, one or more national banks located in the District of Columbia as the depository or depositories of that committee or candidate. Each committee or candidate shall maintain a checking account or accounts at such depository or depositories No *expenditures may be made by a committee or candidate* except by check drawn payable to the person to whom the expenditure is being made on that account or accounts, other than petty cash expenditures as provided in subsection (b) of this section.

Emphasis added. OCF’s position that a violation of this provision occurred at the moment staff incurred a credit card obligation requires treating that initial obligation as an expenditure of Campaign funds made from outside of the Campaign’s bank account. We do not find that position persuasive under the circumstances. The staff, not the “committee or candidate”, incurred personal obligations on their credit cards rather than disbursing Campaign funds at the time of purchase (hence the need for reimbursement). The employees undertaking the obligations were not in fact using campaign funds; they were obligating themselves personally. When Campaign funds were in fact disbursed to reimburse Campaign staff, they came out of the Campaign’s bank account as required by law.

Likewise, with respect to 3 DCMR 4209.6, staff used their personal lines of credit when they incurred obligations on their personal credit cards; FEP funds were only used when the Campaign reimbursed the staff. Those reimbursements covered expenses incurred in furtherance of the Campaign. Indeed, as the Campaign points out, OCF’s regulations contemplate that reimbursements are being made from campaign accounts. Although OCF’s General Counsel suggested that only certain credit and debit expenses were eligible for reimbursement, the

regulation refers only to reimbursement of “others” and does not expressly limit reimbursement to expenses incurred through campaign-associated credit or debit cards. We therefore do not find a basis in the cited statutory or regulatory language for the distinction advanced by OCF.

Moreover, the provisions relied upon by OCF do not expressly address the amount of funds being reimbursed. Although OCF’s General Counsel raised policy concerns about whether the level of the reimbursements here is consistent with the small-donor related purposes of the FEP, the statute and regulations do not impose sanctions for violations of policy. Rather, violations must be based on specific actions described in the statute or regulations. The OCF Order does identify any statute or regulation that specifically prohibits reimbursements. To the extent that OCF is concerned that the purpose of the FEP program is undermined by conduct that is not clearly and expressly prohibited by the statute or regulations, that concern is properly addressed through amendments to the applicable rules and regulations.

Accordingly, we cannot say that there is substantial evidence in the record to support finding a violation of D.C. Code § 1-1163.08(a) or 3 DCMR 4209.

Conclusion

Accordingly, consistent with the Board’s ruling at its October 7, 2026 hearing, it is this 13th day of October, 2026,

ORDERED that the June 12, 2026 OCF Order in 2026 FI-007 is hereby **VACATED**.³⁶

³⁶ We note that the parties made extensive allegations that OCF did not comply with its own procedural rules, acted without conducting a sufficient investigation, included misstatements of fact in its Order, and unnecessarily issued its decision fining the Candidate on the eve of the election, thereby arguably prejudicing her performance. They maintain procedural error warranting overturning the Order. Because we have disposed of this matter on the merits, we need not address these procedural concerns here.

We issue this written order today, which is consistent with its the Board's oral ruling rendered on October 7, 2026.

A handwritten signature in dark ink, appearing to read "G. McCarthy", is positioned above a horizontal line.

Date: October 18, 2026

Gregory McCarthy
Chair
Board of Elections