

# MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING

May 6, 2020

The District of Columbia Board of Elections (the Board) held its Regular Monthly Meeting telephonically on Wednesday, May 6, 2020. Board Chairman Michael Bennett, Board Member Michael Gill, and Board Member Karyn Greenfield were present. The Board's Executive Director, Alice Miller, the Director of the Office of Campaign Finance (OCF), Cecily Collier Montgomery, and the Board's General Counsel, Terri D. Stroud, were also present.

## CALL TO ORDER (10:06 a.m.)

## ASCERTAINMENT OF QUORUM

- Board Chairman Bennett, and Board Members Gill and Greenfield constitute a three-member quorum to conduct business.

## ADOPTION OF AGENDA/APPROVAL OF MINUTES

- **BOARD ACTION:** The Board unanimously adopted the agenda and minutes from the last meeting held on April 1, 2020.

## BOARD MATTERS

- Vote centers have been created and the program recommending that DC voters request ballots is going well; residents are making requests and ballots are going out.

## OCF MAY 2020 REPORT (DIRECTOR COLLIER-MONTGOMERY)

- OCF is continuing to operate under modified status due to the public health emergency until May 15, 2020.
- **Fair Elections Program (FEP)**
  - 44 committees are currently registered in the FEP; 38 of them are active.
  - The following six committees will be notified of their failure to meet qualifications for certification during the qualifying period which ended on March 4 for the June 2 Primary Election, and on March 18 for the June 16 Ward 2 Special Election:
    - Nate Brown 2020
    - Danielle Platt for Ward 8
    - Katherine for Ward 2
    - Vote Fria Moore 2020
    - Rosenberg 2020
    - Daniel Hernandez for Ward 2
  - There were two certifications in April:
    - Ed Lazere for DC Council At-Large was certified for the November General Election on April 30, 2020

- Fanning for Ward 2 was certified for the June Special Election on April 15, 2020
  - FEP issued five status reports to candidates seeking certification in the FEP who have not met the threshold requirements.
- **FEP Statistics**
  - As of April 30, 2020, a total sum of \$2,163,078.05 has been disbursed in base amounts and matching payments to 21 candidates certified in the FEP
    - The Committee to Elect Janeese Lewis George has received the maximum allowable cap for matching payments of \$241,055 for qualified small dollar contributions for the covered office of Ward Member of the Council during the 2020 election cycle, and has also received a base payment of \$40,000.
  - During April 2020, a total sum of \$313,387.90 was distributed in base payments and matching payments to the following FEP candidates:
    - 4/15/2020 Fanning for Ward 2 Special Election
      - \$20,000 in base amount
      - \$34,396 in matching payments
    - 4/15/2020 to Kishan for DC 2020
      - \$4,925 in matching payments
    - 4/15/2020 Jordan Grossman for Ward 2 Special Election
      - \$1,033.65 in matching payments
    - 4/15/2020 Kishan Putta for Ward 2 Special Election 2020
      - \$6,900 in matching payments
    - 4/15/2020 for Chander for Council
      - \$6,550 in matching payments
    - 4/15/2020 Friends of Christina Henderson
      - \$725 in matching payments
    - 4/15/2020 John Fanning for Ward 2
      - \$1,250 in matching payments
    - 4/15/2020 Patrick Kennedy for Ward 2 Special June 16, 2020
      - \$4,000 in matching payments
    - 4/30/2020 Ed Lazere for DC Council At-Large
      - \$ 20,000 in base amount
      - \$185,691 in matching payments
    - 4/30/2020 Janeese Lewis George
      - \$75 and \$13,893.60 in matching payments
  - Second half base amount payments of \$20,000 were made on the dates indicated to the following three candidates who achieved ballot access in the June Primary Election:
    - 4/13/2020 John Fanning for Ward 2
    - 4/13/2020 Kishan for DC 2020
    - 4/13/2020 Patrick Kennedy for Ward 2

- The FEP conducted 52 desk reviews of Reports of Receipts & Expenditures (R&E Reports) filed on the March 30, 2020 optional deadline and the April 10, 2020 mandatory filing deadline, and issued nine requests for additional information as a result of the desk reviews
- FEP attended two hearings held by the OCF Office of the General Counsel (OCF OGC) on April 29 for delinquent FEP filings:
  - Marcus Batchelor for DC
  - John Fanning for Ward 2
- **Candidates Certified in FEP**
  - 11 candidates certified in the June 2<sup>nd</sup> Primary Election
  - 4 candidates certified in the June 16<sup>th</sup> Special Election
  - 6 candidates certified in the November 3<sup>rd</sup> General Election
- **Information Published on OCF Website**
  - Updated list of the registered candidates in the Traditional Campaign Finance Program (TCFP) and the FEP
  - Election Fund Payouts
  - Audit Reports issued in April
- **Public Information and Records Management (PIRM)**
  - April Filings:
    - Constituent Service Program April 1 R&E Report
      - 9 required filers
      - All timely filed and electronically filed
    - Senator/Representative Statehood Fund Program April 1 R&E Report
      - 3 required filers
      - All timely filed and electronically filed
    - Legal Defense Committees April 1 R&E Report
      - One required filer
      - Filed timely and electronically
    - FEP April 10 R&E Report
      - 39 required filers
      - 33 filed timely and electronically
      - 3 requests for extension were granted
      - 6 failures to file
    - Optional April 30 R&E Report
      - One FEP committee filed
- **New Registered Candidates and Committees in April**
  - TCFP (3):
    - Peter Bolton, Peter Bolton for Ward 2 City Council, registered March 27
    - Ann Wilcox, candidate At-Large City Counsel, registered April 5
    - Rick Murphy, Friends of Rick Murphy, Ward 2 City Counsel, registered April 20

- Initiative Committee (1):
  - Vocational Technical Education Graduation Pathway Policy Act of 2020, registered April 30
- **Reports Analysis and Audit Division (RAAD)**
  - Conducted 34 reviews for R & E Reports filed in TCFP
    - Resolved 6 reviews
    - Issued 8 requests for additional information
  - Conducting three Periodic Random Audits of Candidates:
    - Friends of Robert White, audit records received March 16
    - Veda for Ward 7, initiated March 2
    - Committee to Elect Rogers for Council, initiated March 2
  - Conducting three Periodic Random Audits of Political Action Committees (PAC) January 31 Filings:
    - Verizon Communications Inc. Good Government Club PAC, initiated March 2
    - DC Libertarian Party, initiated March 2
    - Firefighter's Committee on Political Activity, initiated March 2
  - Four Audit Reports issued in April:
    - Re-elect Brandon Todd 2020 campaign, compliance audit issued April 6
    - DC Legal Defense Fund, preliminary audit draft report issued April 27
    - Richard Campbell Ward 8 City Counsel, compliance audit issued April 30
    - Greater Washington Board of Trade, periodic audit issued April 30
- **OCF OGC**
  - Received one referral from the PIRM division
  - Issued one order in a matter in which there was voluntary compliance prior to the issuance of the OCF order
  - Issued 27 hearing notices, including 3 first notices and 24 second notices
  - Conducted two hearings in the following matters, both of which were continued for completion at a later date:
    - Fanning for Ward 2
    - Marcus Batchelor for DC
  - Maintains one open investigation:
    - Complaint filed by the Committee to Hold Jack Evans Accountable, received February 3, 2020 against the DC Legal Defense Committee for Jack Evans alleging that the committee engaged in unlawful use of a legal defense committee
    - The matter was referred to RAAD, which completed a preliminary draft of that audit. The draft is not available to the public, but the final version will be.

## **EXECUTIVE DIRECTOR'S MAY 2020 REPORT (EXECUTIVE DIRECTOR MILLER)**

- Executive Director Miller acknowledged Board staff for their hard work during the public health emergency.
  - We have received 34,000 requests for absentee ballots, and we have mailed out 22,000 ballots, including 500 military and overseas ballots
- Voter Guides have been mailed out to party-affiliated registered voters, and each one included two absentee ballot request forms and a postage prepaid envelope
- We sent emails to 236,000 voters with emails on file that outlined the steps for requesting a mail-in ballot
- Phone Bank is operating at full force, including sending out applications and responding to election questions.
- Postcards with the dates and hours of operation for Vote Centers and deadlines for mail-in ballot requests will be sent to registered voters starting on May 12 or May 13
- May 26 is the deadline for the receipt of absentee ballot requests
- Board staff has conducted an average of four informational Webinars and Zoom meetings per week with Advisory Neighborhood Commissions (ANCs), political organizations, elected officials, candidates, civic organizations, and other entities; these meetings will continue through the end of May.
- Virtual public community meetings are held every Thursday at 10:20 am; sign-up email is [Info@votesafedc.com](mailto:Info@votesafedc.com).
- Staff participated in live on-air interviews and press conferences, including the Mayor's daily brief update
- DC Cable began running ads in mid-March
- 2.9 million digital ads have been running since late April for the Vote Safe DC campaign
- RadioOne and I-Heart Radio ads started last week
- TV and Newspaper ads start this week; TV ads will run through all Comcast supported stations
- **Poll Worker Training:**
  - 492 workers have been trained to serve at the 20 Vote Centers.
  - The trainings, which ended April 29, took place virtually in accordance with the Mayor's social distancing orders
- Logic & accuracy testing has been completed for all Vote Center voting equipment.
  - There will be 200 machines in operation, 10 at each vote center
  - All voting equipment has been programmed with information for all 144 precincts
- Ballot on demand printers will be available at all Vote Centers for voters who elect not to mark their ballots using the ExpressVote ballot marking device equipment.
- Poll Pads will be uploaded with the most recent voter registration information once the registration deadline occurs.
- Executive Director Miller acknowledged city staff for their hard work assisting the BOE with sanitization of equipment and Vote Centers.
- A double-wide trailer lavatory was obtained for warehouse workers to accommodate increased personnel and extended work hours

- The Outreach Division will provide absentee ballot request forms to nursing and senior resident facility voters that are preloaded with the voters' registration information to facilitate their ability to request their ballots
- BOE is still working with federal partners such as the FBI, the CDC, and the USPS (Mr. Ron Stroman) to ensure safety, security, and a smooth mail balloting process, with regular meetings discussing election processing, and security.

**Board Member Gill** noted that Republican voters have questioned why they are not able to cast write-in votes in certain contests. Executive Director Miller responded that the Republican party plan submitted to the BOE provided that write-in votes could not be cast in party office contests where there was a ballot access candidate.

### **BOE OGC MAY 2020 REPORT (GENERAL COUNSEL STROUD)**

- **Issuance of Petition for Initiative Measure No. 81, the “Entheogenic Plant and Fungus Policy Act of 2020”**
  - General Counsel Stroud provided procedural background concerning the measure, which was submitted by Melissa Lavasani:
    - The measure was approved as a proper subject of initiative on February 5.
    - DCBOE formulated the ballot language for the measure on February 18.
    - The formulations were published in the DC Register on February 28 for a 10-day review period where any voter could challenge the BOE formulation in DC Superior Court.
    - The formulations were deemed approved on March 9, 2020 due to the absence of any challenges.
  - **BOARD ACTION:** The Board unanimously adopted the petition, and Ms. Lavasani accepted it as her own after modifications to the font size.
  - Ms. Lavasani was advised of the signature requirements, that the 180-day petition circulation period ended on Monday, November 2, 2020, at 5:00 p.m., and that the deadline by which the petition must be received in order to be placed on the November 3, 2020 General Election ballot was Monday, July 6, 2020 at 5:00 p.m.
- **Emergency and Proposed Rulemaking**
  - **BOE:** Amend Title 3 DCMR Chapters 10 and 11 to remove prohibition against registered voters who are eligible to sign a particular initiative, referendum, or recall petition being signatories on petition sheets that they circulate
  - **OCF:** Amend Title 3 DCMR Chapters 30 and 38-42 to place the Board's regulations into conformity with the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011, as amended by the COVID-19 Response Supplemental Emergency Amendment Act of 2020:
    - Changing training for candidates and treasurers affiliated with these committees from in person to on-line, reflecting social distancing.



- BOE filed its response electronically on April 5.
    - We are awaiting the Court’s decision.
- **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.
- **Hill v. D.C. Board of Elections (Sandra Seegars Challenge)**
- **Hill v. D.C. Board of Elections (Absalom Jordan Challenge)**
  - These matters, which were consolidated, are appeals from two Board orders which denied Mr. Hill ballot access due to successful nominating petition challenges filed by Ms. Seegars and Mr. Jordan.
  - The petitions for appeal were filed in the DC Court of Appeals on April 9.
  - The Board filed motions to expedite and consolidate the cases and motions for summary affirmance on April 10.
  - All motions were granted on April 10.
  - Mr. Hill filed a motion for reconsideration on April 12.
  - The motion for reconsideration was denied on April 13.
- **Brannum v. D.C. Board of Elections**
  - This is an appeal from Board action listing Bernie Sanders as a candidate in the Democratic Presidential Preference Primary on the grounds that Mr. Sanders is not a Democrat.
  - The matter was filed in DC Court of Appeals on April 1.
  - The Board filed a motion to dismiss on April 8.
  - The motion was granted on April 10.
- **Proper Subject Hearing, the “United States Adjustment and Recovery Act for the District of Columbia” (USARADC)**
  - Proponents of the USARADC filed the measure, which seeks to enforce repayments of unpaid wages or denied benefits for DC residents who are living descendants of the Trans-Atlantic Slave Trade in the United States of America, on February 24.
  - According to its terms, the USARADC defines a group of actors who are responsible for the payment for specified injuries, and precludes payments for injury by DC residents or the District government.
  - General Counsel Stroud outlined the criteria the Board is limited to considering when it conducts proper subject analyses, explaining that the Board must refuse to accept a proposed initiative measure if it determines that the measure:
    - Conflicts with the District Charter
    - Conflicts with the US Constitution
    - Was not properly filed



- Was not accompanied by a timely filed Verified Statement of Contributions
  - Authorizes discrimination in violation of the DC Human Rights Act
  - Limits or negates a budgetary act of the DC Council
  - Appropriates funds
- The following individuals testified regarding the USARADC:
  - John Cheeks (proposer)
  - James Shabazz (Organized Vendors for Economic Corporation (OVEC))
  - William H. Jordan
  - Reginald Black (Rahlowtistry)
  - Dr. Etienne
  - Francelle Neal
  - Mark Anthony Johnson
  - Minster Frederick Norman
  - Reverend Cynthia Ashley
  - Raynelle Hall
  - Virgil Young (True Business Intelligence Corporation)
  - Michael Sindram
- General Counsel Stroud provided the OGC's Opinion on the USARADC:
  - The measure would authorize discrimination in violation of the District's Human Rights Act, as beneficiaries are determined by DNA testing.
  - The measure would negate or limit a budgetary act of the Council because it includes unfunded mandates that would interfere with an established budget act by requiring additional unforeseen expenditures for DNA testing requirements and adjudication for determining beneficiaries' qualifications.
  - The measure attempts to legislate outside of the District contrary to D.C. Official Code 1-206.02(a)3 by directing foreign corporations and nations to compensate District residents for the Trans-Atlantic Slave Trade.
  - The measure would violate the First Amendment by imposing financial sanctions for wearing certain garments, displaying certain bumper stickers, and displaying certain names on statues on private land.
  - The measure would appropriate funds in that it would require additional expenditures for new and existing programs and allocate funding for new programs, including legal representation in civil cases, body cameras worn to enforce speech censorship, and the establishment of a new office to bestow beneficiaries with recovery funds extracted from private industry.
- **BORAD ACTION:** The Board voted to enter into executive session to deliberate on the after the Public Matters section of the meeting.

## **PUBLIC MATTERS**

- **Dorothy Brizill**
  - Asked how the Board would implement the provisions of the Coronavirus Omnibus Emergency Act of 2020 that allow petition sheets for the November General Election to be distributed to petition circulators, circulated, and returned to the Board electronically. Her specific concern was about the quality of the signatures on the petition sheets.
    - The Board agreed to look into seeing if petition gatherers could be required to retain original sheets for purposes of ensuring the integrity of the signatures.
  - Asked why the USARADC was not listed on the Board's website or published in the DC Register.
    - The USARADC was published in the DC Register on April 17.
- **John Cheeks**
  - Asserted that the OGC misread the USARADC because he is not asking the District to pay for any DNA testing on any person. Instead, each person is responsible for their own DNA test.
  - Asserted that the USARADC is not asking the District to use any of their offices, but that this is a private concern with a public matter to vote on.
    - Board stated that it would take note of the issues raised.
- **Dr. Etienne**
  - Asked Board to determine why DC Attorney General Karl Racine had not issued an opinion on the USARADC, and asked the Board to request that Racine issue a written opinion
    - Board stated that it would ask for an OAG opinion in this matter.
- **Michael Sindram**
  - Stated that audit report in Jack Evans matter should be released as soon as possible in light of the upcoming election
  - Asked why Ed Lazere's name is not on the ballot in the At-large Council contest in light of him receiving public funds
  - Stated that the mailbox rule should apply to returned absentee ballots
  - Asked about write-in candidates on Republican party ballot
  - Stated that Initiative #81 is putting a chilling effect on MPD duties, and that the Board needs to review it closely
  - Requested that the Board reach out to the DC courts on his behalf and request that he be allowed to have unfettered access to retrieve records
  - Requested hard copy of the transcripts of the Board's 2020 monthly meetings
  - Cited continuing problems with his ability to participate by phone in Board meetings

**ADJOURNMENT (12:24 p.m.)**