

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In RE:
Notice of Intent to Recall Jack Evans

Administrative Hearing
No. 19-031

RE: Challenge to Eligibility to File
Notice of Intent to Recall Based
Upon Residency

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections (“the Board”) on Monday, May 20, 2019, pursuant to D.C. Official Code § 1-1001.17(b)(1)(d)(i) (2016 Repl.). It involves a challenge to the ability of Mr. Adam Eidinge r to properly commence recall proceedings against Ward Two Councilmember Jack Evans on the grounds that Mr. Eidinge r does not reside in Ward Two. Board Chairman D. Michael Bennett and Board Members Dionna Lewis and Michael Gill presided over the hearing. The subject of the recall, Councilmember Evans, was represented by counsel, Mr. Don Dinan, Esq. The proponent of the recall, Mr. Eidinge r, appeared before the Board *pro se*.

Background

On Friday, April 12, 2019, Mr. Eidinge r filed a Notice of Intent to Recall Councilmember Jack Evans (“the Notice”). Mr. Eidinge r indicated in the Notice that he resides at 2448 Massachusetts Avenue, NW, an address located in Ward Two. 2448 Massachusetts Avenue, NW is also the address listed for Mr. Eidinge r in the Board’s records.

On Monday, April 22, 2019, Councilmember Evans, through counsel, timely filed a response to the Notice. In addition, Councilmember Evans filed an Opposition to the Petition to Recall (“the Opposition”), in which he argued that the Board should reject the Notice on the grounds that it was improperly filed because Mr. Eidinge r does not actually reside at the address he provided in the Notice, but rather at an address that is not located in Ward Two.

April 24, 2019 Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel conducted a pre-hearing conference in the matter to address the residency issue raised in the Opposition on Wednesday, April 24, 2019. The Opposition contained several exhibits intended to refute Eidinge r’s claim, as indicated in the Notice, that he is a registered qualified elector in Ward Two. These exhibits included, among other things:

- 1) tax filings indicating that Mr. Eidinge claimed a Homestead Deduction for 1858 Mintwood Place, NW, Unit 4, a property located in Ward One in the District, but did not file to remove the deduction until sometime after April 3, 2019; and
- 2) newspaper articles concerning Mr. Eidinge's plans and whereabouts over the past two years.

In response to the Opposition, Mr. Eidinge presented his District of Columbia driver's license and his voter registration card - both of which list 2448 Massachusetts Avenue, NW as his residence address - as evidence of his Ward Two residency. Mr. Eidinge also stated that, in the event that the matter proceeded to a full hearing before the Board, he could produce utility bills, photographs of the interior of his home, witnesses, and other evidence to support his claim that he lives at 2448 Massachusetts Avenue, NW. He further stated that, while he was previously a registered voter in the state of Maryland, he is currently not registered in any jurisdiction other than the District of Columbia.

The pre-hearing conference concluded with no resolution. On Thursday, April 25, 2019, Mr. Dinan contacted the Office of the General Counsel and confirmed that Councilmember Evans wished to bring his challenge to Mr. Eidinge's residency in Ward Two before the Board. The hearing was subsequently scheduled for Monday, May 20, 2019.

May 20, 2019 Hearing

On Monday, May 20, 2019, the Board convened a special meeting to hear the challenge to Mr. Eidinge's residency and to issue an original recall petition form pursuant to D.C. Official Code § 1-1001.17(b)(1)(e) (2016 Repl.) if it determined that Mr. Eidinge is a qualified registered elector in Ward Two. Mr. Dinan appeared on behalf of Councilmember Evans and Mr. Eidinge appeared *pro se*.

Both parties provided additional evidence in support of their respective arguments. Mr. Dinan submitted a supplemental filing to the Board which included, among other things, a business tax registration for Mr. Eidinge's business, Mintwood Strategies, and a D.C. Water bill for property located at 2448 Massachusetts Ave, NW. Mr. Dinan relied on this documentation, as well as evidence previously submitted, to argue that Mr. Eidinge is not an actual resident of Ward Two and is therefore ineligible to file the Notice.

Mr. Eidinge also submitted a supplemental filing to the Board which included documents intended to rebut Councilmember Evans' contention that he was not a resident of Ward Two. These documents included copies of his driver's license, voter registration card, renter's insurance statement, and utility bills. In addition, Mr. Eidinge called several witnesses who testified under oath that he lives at 2448 Massachusetts Ave, NW.

Discussion

In order to properly file a Notice of Intent to Recall, the proposer must include an affidavit that each proposer is "a registered qualified elector in the election ward of the elected officer whose

recall is sought, if that officer was elected to represent a ward.”¹ A “registered qualified elector means a registered voter who resides at the address listed on the Board’s records.”² If a proposer of a recall against an official elected to represent a ward is determined not to be a registered qualified elector in the same ward as the elected official, then the proposer’s Notice of Intent to Recall is improperly filed and must be rejected.

Ward Two Councilmember Evans has challenged Mr. Eidinger’s ability to properly commence recall proceedings against him on the grounds that Mr. Eidinger is not a registered qualified elector in Ward Two. Accordingly, he bears the affirmative duty of establishing the truth of his assertion.³ Councilmember Evans has not met this burden.

The primary evidence that Mr. Eidinger presented in support of his Ward Two residency was his D.C. driver’s license, which indicates that he resides at 2448 Massachusetts Avenue, NW. He also provided his voter registration card, his renter’s insurance statement, utility bills, and testimonial evidence, all of which buttressed his claim that he resides in Ward Two at 2448 Massachusetts Avenue, NW. In response, Councilmember Evans did not refute the legitimacy of the documentary evidence Mr. Eidinger produced. Rather, he argued that Mr. Eidinger changed his address to 2448 Massachusetts Avenue, NW with the D.C. Department of Motor Vehicles and other agencies in order to effectuate a “quixotic, gadfly’s quest” to begin recall proceedings against him.

Moreover, none of the documents Councilmember Evans offered to bolster his challenge to Mr. Eidinger’s Ward Two residency - tax filings, utility bills, and media reports – served to establish that Mr. Eidinger does not actually reside in Ward Two. At best, they establish that Mr. Eidinger may have resided in Ward One, or elsewhere, at some point prior to filing the Notice. For example, Councilmember Evans offered tax filings indicating that Mr. Eidinger claimed a Homestead Deduction for 1858 Mintwood Place, NW, Unit 4, a property located in Ward One. However, documentary evidence produced also indicated that Mr. Eidinger filed to remove the deduction and paid the associated penalties prior to filing the Notice.

Councilmember Evans has not established the truth of his claim that Mr. Eidinger is not a registered qualified elector in Ward Two. Therefore, the Board finds that Mr. Eidinger properly filed the Notice. Because the Notice was properly filed with the Board of Elections, it is hereby,

ORDERED:

- 1) that the Notice is “ACCEPTED” pursuant to D.C. Official Code § 1-1001.17(e); and
- 2) that an original petition form in support of the recall be issued forthwith.⁴

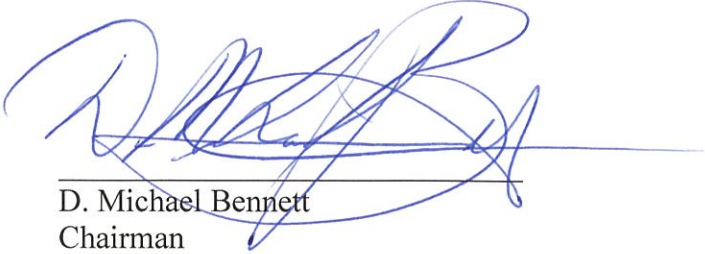
¹ D.C. Code § 1-1001.17(b)(1)(D)(i).

² D.C. Code § 1-1001.02(20).

³ 3 DCMR 424.1.

⁴ The original petition form was issued to Mr. Eidinger at the hearing on Monday, May 20, 2019 after the Board issued an oral decision from the dais.

Date: May 29, 2019



D. Michael Bennett
Chairman