

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In the Matter of Ballots)	
Cast in the Name of)	Administrative
Barbara Duncan)	Order #24-017
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (“the Board”) on August 2, 2024, upon a recommendation by the Board’s General Counsel that the Board take civil enforcement action against Barbara Duncan based on stipulated facts concerning Ms. Duncan’s voting a ballot in both Maryland and the District of Columbia during the 2020 General Election (“the 2020 GE”). Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. The Board’s General Counsel, Board staff, Barbara Duncan, and her counsel, Carmen Mitchell, Esq., were also present.

Background

As a result of a Voter Participation Project report issued by the Election Registration Information Center (“ERIC report”), the Board’s Office of General Counsel (“OGC”) became aware of evidence that a ballot was cast in the name of Barbara Ann Melvin Mason Duncan in the November 3, 2020 General Election in the District of Columbia and in the name of Barbara Ann Melvin Duncan in the same election in Maryland. This evidence suggested a violation of D.C. Official Code §1-1001.09(g)(1) (“No person shall vote more than once in any election[.]”). Such a violation would fall under the Board’s authority to impose, upon the recommendation of the

General Counsel, civil fines of up to \$2,000 for each violation of “any provision” of the elections laws and/or provide a basis for criminal referral to prosecutorial authorities.¹

OGC Investigation

In response to this information, OGC investigated the casting of 2020 GE ballots in the name of Barbara Duncan. As part of its investigation, OGC reviewed voter file materials from both the Board and the Maryland Board of Elections that indicated that an individual named Barbara Duncan cast ballots in both the District of Columbia and Maryland during the 2020 GE. The signatures contained on the documents reviewed, all of which were associated with an individual named Barbara Duncan, appeared to be consistent with one another and with other signatures associated with the voter in the Board’s records. After reviewing these materials, OGC attempted to schedule a prehearing conference with Ms. Duncan on Thursday, August 24, 2023, but was unable to do so due to service issues.

December 6, 2023 Board Meeting

On December 6, 2023, during its regular monthly meeting, the Board held hearings concerning individuals who had allegedly voted in multiple jurisdictions during the 2020 GE. While the Board could have taken action in the matter at the December 6, 2023, proceeding, the Board decided to defer action to allow the Office of General Counsel additional time to serve Ms. Duncan. In anticipation of further proceedings, the General Counsel entered into the record at the December 6, 2023 meeting the evidence pertaining to Ms. Duncan’s matter. These materials consisted of:

- 1) A Maryland voter registration record indicating that a voter with her name and a July birthdate;
- 2) A D.C. voter registration record indicating a voter with the same name and birthdate;

¹ See D.C. Code §1-1001.18(a)-(b) (civil penalty authority and procedures).

- 3) A signed Maryland Voter Authority Card indicating that an individual with the same name and birthdate voted in person in Maryland on October 26, 2020;
- 4) A record extracted from our Poll Pad that indicates that an individual with the same name and birthdate checked in to vote at Benning Stoddert Community Center on November 3, 2020;
- 5) The signature from the Poll Pad associated with the aforementioned record, indicating that an individual with the same name checked in to vote during that election.

The General Counsel also introduced an affidavit from Mr. Mohammad Maeruf, who is the Board's Agency Supervisory Information Technology Specialist, in which he attested to the authenticity of the records indicated.

Prehearing Conferences

Subsequent to the December 6, 2023 meeting, OGC successfully served Ms. Duncan and held a prehearing conference on February 5, 2024. During this conference, Ms. Duncan, through her counsel, acknowledged that she had voted in both Maryland and D.C. in the 2020 GE. However, she asserted that her actions were not intentional. According to Ms. Duncan, she believed she was casting the D.C. ballot on behalf of an elderly, immobile friend, for whom she held Power of Attorney. She presented documentation confirming that a Power of Attorney had been granted to her in 2017², along with a sworn statement explaining that she had no intention of violating the law.³ Specifically, Ms. Duncan averred that when she went to the vote center on November 3, 2020, she "had no other motive than to assist [her friend]" and that she "was not

² The completed power of attorney outlines the scope of authority granted to Ms. Duncan. The form specifies the powers conferred upon Ms. Duncan, including the ability to conduct real property, banking, and other financial transactions.

³ Ms. Duncan read her statement under oath into the record at the prehearing conference and also introduced her friend's D.C. driver's license and Medicare card, a confirmation from Citibank indicating that Ms. Duncan was added as a Power of Attorney on the account, and Ms. Duncan's identification card identifying her as a retired Lieutenant in the Metropolitan Police Department.

aware of how [the] vote was recorded, and [she] would never have done anything to knowingly circumvent the voting laws in D.C.”

The prehearing conference reconvened on March 7, 2024, following an agreed upon continuance aimed at securing additional evidence to assist in verifying Ms. Duncan’s statement. Notably, the continuation was necessary to allow Board staff to investigate and verify the voting record of Ms. Duncan's friend, which formed a central part of her defense.

Stipulated Agreement

Based on Ms. Duncan acknowledging voting in both Maryland and D.C. during the 2020 General Election, her statements regarding the circumstances surrounding such double voting, including her indicating that she had not intended to violate voting laws, and her general cooperation in resolving the matter, OGC offered Ms. Duncan the opportunity to enter into a stipulation, and she agreed to do so. The stipulation outlined the agreed-upon facts and the terms under which the OGC would limit its recommendation of enforcement action to the imposition of a civil fine.⁴ The stipulated facts are as follows: Ms. Duncan checked in to vote at the Benning Stoddert Vote Center under her own name. During the check-in process, she interacted with a registration clerk who accessed her voter registration information on a Poll Pad, an electronic voter check-in device. The clerk entered Ms. Duncan's information, causing a voter confirmation screen to display Ms. Duncan’s name, address, date of birth, and other information specific to Ms. Duncan. After Ms. Duncan confirmed the accuracy of the information, the clerk displayed the Poll Pad's signature confirmation screen to Ms. Duncan. That screen contained Ms. Duncan’s name and address, as well as an oath stating: “I swear or affirm that I reside at the address above and am eligible to vote in this election.” The screen also contained a signature line for the appropriate voter

⁴ Stipulations as to facts and evidence may be adopted through OGC prehearing conferences. See 3 DCMR § 416.

to sign. Ms. Duncan signed the signature line, after which she was given a ballot ticket to present to the ballot clerk. She then received and voted the appropriate ballot for herself. Consequently, Ms. Duncan cast a ballot in her own name in D.C. in the 2020 general election, in addition to voting in Maryland during the same election.

August 2, 2024 Board Meeting

Given the successful effort to contact Ms. Duncan and her agreement to the stipulation, the matter was set for the Board's August 2, 2024 meeting. After hearing from the General Counsel that Ms. Duncan admitted to voting in both Maryland and D.C. during the 2020 General Election and that a stipulation agreement had been reached, the Board Chair invited Ms. Duncan and her counsel, Ms. Mitchell, to respond. Ms. Mitchell, acknowledged that Ms. Duncan technically voted in two jurisdictions, as established and stipulated in the agreement. Ms. Mitchell asserted that Ms. Duncan intended to vote on behalf of a disabled, elderly voter who was 95 years old and that, at the time of the incident, Ms. Duncan was under significant stress due to spousal abuse and domestic violence. She also emphasized that Ms. Duncan's actions were not nefarious and that there was no intent to defraud the voting process as Ms. Duncan believed she was authorized to vote, and thought she had cast a ballot, on another's behalf.

With the receipt of Ms. Duncan's evidence, the record was complete. Accordingly, the Board Chair requested that the General Counsel provide the Board with her recommendation. The General Counsel stated that, based on the facts and stipulation, she recommended that the Board impose a civil fine rather than pursue criminal charges.

Discussion

The Board's General Counsel may recommend to the Board enforcement action for violations of the elections laws.⁵ Our task is to determine whether there is sufficient proof of a violation of an election law provision. Should we find such proof, we are authorized to impose a civil penalty of up to \$2,000 and/or to refer the matter for criminal prosecution. D.C. Code § 1–1001.18(a)-(b).

The evidence unequivocally demonstrates that a ballot was issued by Maryland in the 2020 GE in Maryland to Barbara Duncan and that a ballot was issued by the D.C. Board of Elections in the 2020 GE to Barbara Duncan. The evidence further shows that those two ballots were indeed cast by Ms. Duncan.⁶

Ms. Duncan's defense is that she did not intend to vote a D.C. ballot that would be counted as hers. Rather, she intended to vote a D.C. ballot that she believed would be counted as another's and she was unaware that that ballot was counted differently. We have explained that we may decline to refer a matter for criminal prosecution based on evidence of innocent intent. *See In the Matter of Ballots Cast in the Name of Hannah Brown*, BOE Case No.#23-015 (issued December 15, 2023), at 5. In a footnote in *Brown*, we explained that, with respect to felony prohibitions on voting twice, it is appropriate to conclude liability is contingent upon proof that the accused person voted knowingly, willfully, and expressly for the purpose of having their vote count more than once. *Id.* We also indicated that we would not hold the voter civilly liable where to do so would amount to imposing strict liability.

⁵ See also D.C. Code § 1–1001.05(a)(16) (authorizing the Board to “[p]erform such other duties as are imposed upon it by this subchapter”).

⁶ We take judicial notice of the fact that ballots cast in the 2020 GE in each of the relevant jurisdictions covered the election for U.S. President. Therefore, Ms. Duncan's voting in Maryland and D.C. constituted voting twice for purposes of, at least, the prohibition at D.C. Code § 1-1001.09(g)(i).

Unlike the voter in *Brown* who exercised more than due diligence to ensure that she was not voting twice, Ms. Duncan was at the very least negligent. Notably, she was provided with voting information on the Poll Pad screen that made clear that she had been checked into the polling place under her own name, not her friend's name, and that by signing the screen she would be voting for herself and not for her friend. While, on one hand, the Board finds that Ms. Duncan did not knowingly, willfully, or with intent to commit voter fraud and should not therefore be referred for criminal prosecution, on the other hand, this is not a case where imposing a fine equates to the imposition of strict liability.

Conclusion

For the reasons indicated above, it is hereby:

ORDERED that the recommendation of the General Counsel is **ACCEPTED** and that Barbara Duncan is directed to pay no later than September 4, 2024, a civil fine of \$100.⁷

The Board issues this written order today, which is consistent with our oral ruling rendered on August 2, 2024.

Date: August 22, 2024



Gary Thompson
Chairman
Board of Elections

⁷ **Payment must be made by check or money order made out to the "D.C. Treasurer."** It may be mailed to the attention of the Office of the General Counsel at the Board's offices (1015 Half Street, Suite 750, S.E., Washington, D.C. 20003) or hand delivered at that address.