

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In the Matter of Ballots)
Cast in the Name of) Administrative
Ashley Harris) Order #24-001
)

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on December 6, 2023 and January 10, 2024. It concerns an enforcement recommendation from the Board’s General Counsel. Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearings. The Board’s General Counsel and Office of General Counsel and BOE staff 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 Ashley Godwin Harris in the D.C. 2020 General Election (“GE”) and that a ballot was cast in the name of Ashley MA Harris in the 2020 GE in Florida. Such evidence of voting twice presented the prospect of violations of 52 (“Voting and Elections”) U.S. Code § 10307 (“Prohibited Acts”¹) and, as indicated below in this instance,

¹ The federal law prohibits voting more than once for, in relevant part, President and “knowingly or willfully giv[ing] false information as to his name, address or period of residence in the voting district for the purpose of establishing his eligibility to register or vote[.]” It also punishes giving false information when registering or voting. The D.C. law punishes, *inter alia*, “[a]ny person who shall … make any false representations as to the person’s qualifications for registering or voting . . . or being registered, shall vote or attempt to vote more than once . . .” or a person who

of D.C. Code § 1–1001.14 (“Corrupt Election Practices”). Violating these laws carries penalties of a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both, for each offense.

In response to this information, OGC launched an investigation into the 2020 GE ballots cast in the name of Ashley Harris. As part of its investigation, OGC obtained voter records from the Florida Department of State, held a prehearing conference, and pursued any leads that might elucidate the cause of the apparent double voting incident. After reasonably exhausting any investigative leads, the General Counsel notified the Board that this matter should be set for a hearing before the Board.

When the hearing date was confirmed, OGC notified persons known to OGC who might have an interest this matter and their counsel that the General Counsel would be presenting to the Board a recommendation as to whether to refer this matter for further investigation and prosecution. The notice, *inter alia*, advised that the recommendation would be presented at the Board’s December 6, 2023 meeting and that there would be, at that time, an opportunity to oppose any referral by presenting testimony, witnesses, evidence, and argument.

At the December 6, 2023 hearing, the General Counsel’s staff presented images of voter file materials provided by the Florida Department of State and the Board’s voter files.² The documents showed that Florida issued a 2020 GE ballot for in-person voting to Ashley Harris and that the District of Columbia issued to the same Ashley Harris a 2020 GE mail ballot.³ General

²“knowingly or willfully . . . [p]rocure[s], cast[s], or tabulate[s] ballots that are known by the person to be materially false, fictitious, or fraudulent . . .” Prosecution under these provisions may also proceed on a theory of conspiracy.

³The voter records offered at hearing by the General Counsel’s staff contained confidential information (partial SSNs, DOBs, and signatures) and therefore were offered for the Board’s review *in camera*.

³To authenticate this evidence, an affidavit was presented whereby Mohammed Maeruf, Supervisory Information Technology Specialist, averred that the documentation described above consisted of business records obtained from

Counsel's staff pointed out that the middle name for Harris in the Florida voter files is "McArthur Godwin"; whereas, the middle name for Harris in the District records is "Godwin" only. Staff also noted on the record that the D.C. ballot return envelope was issued to "Ashley *Godwin* Harris" but bears a hand-written signature that is consistent with the name "Ashley *M* Harris". In other words, as the General Counsel's staff emphasized to the Board, whoever signed the D.C. ballot return envelope evidently knew Harris well enough to substitute the letter "M" for the middle name Godwin. The General Counsel's staff also noted that the signature purportedly on the 2020 D.C. GE ballot return envelope was not consistent with samples of Harris's signature in the voter files.

The General Counsel's staff further advised the Board that Harris, during a phone call, through her counsel and in a signed, written declaration, had contended that she was in Florida at the time of the 2020 GE. To corroborate that claim, she provided documents of, for example, credit card transactions made under her name for establishments located in Florida at the time of the 2020 GE.

The General Counsel's staff explained that the undisputed evidence developed during OGC's investigation showed that (1) Elby Godwin, a relative of Harris, owned at the time of the 2020 GE the property to which Harris's D.C. ballot was mailed and (2) Elby Godwin also owned and resided at that time at an address a few doors down the street from the address shown on Harris's ballot return envelope. The General Counsel's staff relayed to the Board that, during the prehearing conference proceedings, Godwin had submitted, through his counsel, a lease agreement

the Board's voter files and from the Florida Department of State. Mr. Maeruf appeared at the hearing and adopted, under oath and on the record, that affidavit.

for the property located at the address that appeared on Harris's D.C. ballot. The lease agreement, by its terms, covered the period of the 2020 GE.⁴

At the December 6, 2023 hearing, the General Counsel's staff explained that Harris and Godwin both declined, even after being afforded an extension, to appear at a prehearing conference.⁵ Accordingly, General Counsel's staff stated that she was unable to inquire into the identity of persons who were aware of Harris's use of the middle initial "M" and who might also have had access to the property owned by Godwin where Harris's D.C. mail-in ballot was sent.⁶

At the conclusion of her presentation, the General Counsel staff's recommended referral to prosecutorial authorities for further criminal investigation. Following the presentation of the General Counsel's case, the Board Chair invited any person present who wished to address the

⁴ The declarations submitted through counsel for Harris and Godwin merely aver that documents provided by their counsel on October 13, 2023 (e.g., Harris's receipts for transactions in Florida, the lease for the D.C. property, etc.) are "true and correct". Neither declaration contains a specific and clear statement that Harris or Godwin have no knowledge of, or had nothing to do with, the ballot cast in D.C.

⁵ Counsel, through a letter, claimed that his clients' procedural rights with respect to the prehearing conference had been violated and for that reason Harris would not be made available.

⁶ In an October 13, 2023 letter, then-counsel for Harris and Godwin (they were represented by the same attorney) also argued at length that, given that Harris had moved to Florida prior to the 2020 GE, she should have been removed from the voter roll and never sent a 2020 GE ballot and that the mailing of ballots in 2020 was dysfunctional. Aside from the status of the voter roll and the cause for sending the ballot to Harris being irrelevant (and not well-taken as voters are primarily responsible for their status on any jurisdiction's voter roll and it was Harris who failed to inform the Board that she was no longer a D.C. resident), counsel's concern that Harris remained an active voter on the D.C. voter roll does little to help his client's cause. That is because the National Voter Registration Act and D.C. Code § 1-1001.07(j) impose voter list maintenance requirements that preclude the Board from removing voters from the roll until a series of steps takes place over multiple years. The process begins with an initial mailer to the voter that is sent by each March 31 of odd numbered years followed by further mailers, moving voters who, *inter alia*, do not respond to the notices of inactive status, and allowing their removal from the roll only after "the day after the second subsequent general election for federal office" after the last mailer was sent. 3 DCMR 518. This multi-year process of removing a voter from D.C.'s roll is slowed when mailers are accepted at the voter's address (as opposed to being returned by the U.S. Postal Service). Thus, Harris's continued active status on the Board's rolls suggests that Harris or someone else at or with access to her D.C. address was accepting her mail on her behalf; which, if true, would support an inference that Harris intended to vote in the District. Further, to date, we understand that Harris has still failed to update her D.C. voter registration; a fact that also suggests a continuing intent to vote in the District.

Board with respect to the matter to speak. No one, however, came forward to contest the General Counsel’s case.⁷

Subsequently, the Board recessed and went into executive session to discuss the matter. When the Board reconvened on the record, the members unanimously decided to continue this matter for thirty (30) days to give Godwin a further opportunity to appear. The members indicated that, should Godwin fail to address questions regarding access to the mail at his relevant property during the 2020 GE and the possible identity of the person who voted Harris’s D.C. ballot, the matter would be referred for investigation and prosecution.

As a result of the Board decision to continue the matter for thirty (30) days, the case was set for the Board’s January 10, 2024 meeting and the parties were notified. At that meeting, the General Counsel’s staff who was investigating the case again appeared and updated the Board. She stated that, following the Board’s December 6, 2023 hearing, a notice of a December 28, 2023 prehearing conference was sent to both Godwin and his counsel. Prior to that proceeding, the General Counsel’s staff stated, new counsel for Godwin reached out and requested a continuation of the prehearing conference to the afternoon of January 2, 2024. The General Counsel’s staff rescheduled the prehearing conference as requested, but was then advised by Godwin’s new counsel that Godwin was “declining [OGC’s] offer to participate in a voluntary interview at this time.”

After the presentation of the Office of General Counsel’s update, and given that the continuation had not resulted in any additional evidence, the Board voted unanimously to refer this matter to prosecutorial authorities.

⁷ A representative of counsel for Harris and Godwin was present and identified herself but advised that she was attending only for the purpose of observing.

Discussion

D.C. Official Code § 1–1001.18(a) provides that criminal referrals by the Board be made upon recommendation by the Board’s General Counsel.⁸ Our task is to determine whether the General Counsel has presented sufficient proof of possible criminal activity for us to conclude that referral is supported by reliable, probative, and substantial evidence.

On this record, there is substantial evidence that (1) a D.C. 2020 GE ballot was mailed to “Ashley Godwin Harris” at an address owned, at the time, by Harris’s relative Godwin; (2) the D.C. ballot was voted and the ballot return envelope has a signature reasonably read as “Ashley M Harris” (as opposed to a completely unrelated name that might prove mistake); (3) nothing on the ballot or unsigned ballot return envelope indicated that Harris used the middle initial “M”; and (4) the signature on the D.C. ballot return envelope is dissimilar to other signature samples for Harris. There is no evidence of an innocent explanation for the D.C. 2020 GE ballot being cast in the name of Ashley Harris.

⁸ 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”).

Based on the record before us, it is clear that some likely identifiable person tampered with the D.C. ballot issued to Harris. We therefore find that there is substantial evidence to support the referral of this matter.⁹

Finally, we note that the attorney who initially represented Harris and Godwin in the prehearing conference proceedings submitted a letter in which he made claims of procedural error. The prehearing conference, however, is not an adversarial proceeding to which any procedural rights attach.¹⁰ Therefore, claims of procedural error are without merit.¹¹

⁹ Insofar as the attorney who initially appeared on behalf of both Harris and Godwin argued in a written submission that the evidence was insufficient to support referral, we note that usual evidentiary rules allow the trier of fact to draw an adverse inference from a party's unexplained failure to call a witness if the witness was peculiarly available to that party and could have provided relevant testimony. *McPherson-Corder v. Chinkhota*, 835 A.2d 1081 (D.C. 2003). Here, the parties are peculiarly available to each other, there is no sensible non-inculpatory explanation for either party to fail to call the other as a witness, and neither has asserted a fifth amendment privilege against self-incrimination. Their absence is particularly troubling given that neither Harris nor Godwin has expressly disavowed any knowledge of the casting of the D.C. ballot or professed or otherwise provided sufficient facts to prove their innocence. Notably, there is no statement from Godwin confirming that others occupied the relevant property for the duration of the lease and during the period when the 2020 GE ballot would have been delivered to that address or that the occupants in fact denied him access to the mail. Likewise, Harris has not denied authorizing a third party to vote her ballot. Neither Godwin's or Harris's statement addresses the glaring evidence that whoever signed the D.C. ballot return envelope entered the middle initial "M" when nothing on the face of the ballot return envelope revealed that Harris used that middle initial. Thus, the negative inferences that we may draw from the absence of Harris and Godwin bolsters the record in favor of a referral.

¹⁰ See e.g. *S.E.C. v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742 (1984) (finding no violation of due process where individual was investigated by federal agency without notification: "The Due Process Clause is not implicated under such circumstances because an administrative investigation adjudicates no legal rights"); *Goldstein v. Moatz*, 364 F.3d 205, 223-24 (4th Cir. 2004) (holding that "due process considerations do not attach to [the] investigatory proceedings" of an administrative body (citations omitted)); *United States v. Yusuf*, 199 Fed. Appx. 127, 132 n. 5 (3rd Cir. 2006) (noting: "... a grand jury investigation is non-adversarial in nature and thus does not afford the procedural protections required of due process." (Citation omitted)); *Fullman v. Henderson*, 146 F.Supp.2d 688, 700-01 (E.D.Pa.2001) (agency investigatory proceedings do not implicate due process rights).

¹¹ Indeed, our ultimate decision to refer constitutes a quintessential function of executive discretion that arguably triggers no procedural rights. See *Citizens for Responsibility and Ethics in Washington v. FEC*, 55 F.4th 918 (D.C. Cir. 2022) (*en banc*) (judicial review is not available for Federal Elections Commission decisions regarding criminal referral). Moreover, counsel offered no authority that would give Harris or Godwin standing to claim relief for procedural error where, as here, the referral is of an investigation into the casting of ballots in the name of Ashley Harris (as opposed to a referral *per se* of Harris or Godwin).

Conclusion

Based on the evidence regarding the casting of ballots in the District of Columbia 2020 GE in the name of Ashley Harris and in Florida's 2020 GE in the name of Ashley Harris, we find that referral of this matter to prosecutorial authorities is appropriate. It is therefore hereby:

ORDERED that the recommendation of the General Counsel is **ACCEPTED**. The General Counsel is directed to notify the U.S. Attorney and the Office of Attorney General for the District of Columbia of the referral of this matter for further investigation and possible prosecution.¹²

Date: January 11, 2024



Gary Thompson
Chairman

¹² While we have declined to refer a matter for investigation and prosecution where a D.C. ballot return envelope contained a signature that did not match the signature of the voter, the facts in that other case differed. In the prior matter, the record evidence was that a large number of unidentifiable individuals likely had access to a ballot mailed to a multi-unit apartment complex, making efforts to identify the forger futile. See *In the Matter of Ballots Cast in the Name of David Linfield*, BOE Case No. 23-014 (issued December 15, 2023). Also, in certain other cases, the Board exercised its discretion and imposed only fines for double voting. Unlike the instant case, the voter in those cases cast his/her own ballot and there was no evidence of the more egregious conduct of a potentially identifiable third party forging another voter's name on a ballot.