

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

| | | |
|--------------------------|---|----------------|
| In the Matter of Ballots |) | |
| Cast in the Name of |) | Administrative |
| David Linfield |) | Order #23-014 |
| |) | |

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on December 6, 2023. It concerns the Board’s General Counsel’s recommendation, pursuant to D.C. Code § 1–1001.18(a), that the Board take enforcement action in the above-captioned matter. Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. The Board’s General Counsel, General Counsel and BOE staff, and a third party, John Works, also appeared.

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 David Edward Linfield in the D.C. 2020 General Election (“GE”) and that a ballot was cast in the name of David E. Linfield in the 2020 GE in Florida. This evidence suggested a violation of prohibitions on voting twice. The Board is

authorized, upon recommendation by the General Counsel, to take enforcement action such as referral for prosecution or imposing civil fines for such a violation of the election laws.¹

In response to this information, OGC investigated the casting of 2020 GE ballots in the name of David Linfield. After completing its investigation, the General Counsel notified the Board that this matter should be set for a hearing before the Board.

The hearing was set for December 6, 2023. Mr. Linfield was duly notified of the hearing.

At the December 6, 2023 hearing, the OGC attorney who investigated this matter appeared. That attorney requested admission into the record of voter file materials from D.C. and the Florida Department of State.² The evidence showed that an individual using Linfield's name voted absentee in the Florida 2020 GE and by mail in D.C. on September 30, 2020.³

The investigating attorney advised the Board that Linfield appeared at a prehearing conference and acknowledged that he voted absentee in Florida but denied voting in D.C. He also insisted that he had no access long before, during, and at all times after the 2020 GE to the apartment unit designated in the address on the D.C. 2020 GE ballot return envelope and that he could not have come into possession of that ballot. The investigating attorney stated that Linfield also averred that the signature on the D.C. ballot return envelope was not his signature.

The OGC attorney informed the Board that, after hearing from Linfield, OGC scheduled an additional prehearing conference and provided notice of that proceeding to a third party, John

¹ See D.C. Code §1-1001.18(a)-(b).

² The 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*.

³ To authenticate this evidence, the General Counsel presented an affidavit whereby Mohammed Maeruf, Supervisory Information Technology Specialist, averred that the documentation described above consisted of business records obtained from the Board's voter files and from the Maryland Board of Elections. Mr. Maeruf was available at the hearing to answer any questions by the parties.

Works, who, based on the Board's voter files and D.C. Office of Tax and Revenue property records, evidently resided during the 2020 GE at Linfield's old address. The investigating attorney explained on the record that Works appeared at the second prehearing conference. Works denied receiving the ballot addressed to Linfield, much less voting it. He also denied knowing Linfield. At the second prehearing conference, Works provided insight into the mail area for the apartment building that contained the apartment unit identified on the ballot return envelope.⁴ Based on the disclosures at the second prehearing conference and other evidence, the General Counsel's staff explained to the Board that OGC was able to corroborate Linfield's claims that he would have had no access to mail sent to the D.C. address in the Board's voter files during the 2020 GE. It was OGC's understanding based on its investigation, staff explained, that the D.C. ballot sent to Linfield could have, in the mail area of the building at issue, been accessed by unauthorized persons. Staff pointed out that the signature on the D.C. ballot return envelope did not match examples of Linfield's signature in the voter files.⁵

The OGC attorney further advised the Board at the hearing that, during OGC's investigation, no evidence of impossibility, mistake or other innocent explanation was found that might excuse whoever voted the D.C. ballot sent to Linfield. Based on the facts and evidence, the OGC attorney stated that the General Counsel was recommending that the Board take enforcement action.

John Works, the resident of the address where Linfield's mail-in ballot was sent in 2020, appeared at the Board hearing. Works concurred with the factual representations of the

⁴ Works also offered various documents related to mail ballot issues in the 2020 GE.

⁵ Given that the available evidence indicated that a third party culprit was involved in the casting of the D.C. 2020 GE ballot mailed to Linfield, General Counsel staff informed the Board that OGC had notified Linfield that OGC did not consider him to be a target of the investigation.

investigating attorney. At the request of Works, D.C. voter records containing his signature were entered into the record. Works argued that his writing did not match the signature on Linfield's 2020 ballot.

After hearing the evidence, the Board recessed and went into executive session. When the Board reconvened on the record, the members unanimously voted to decline to take any enforcement action.

Discussion

D.C. Code § 1-1001.18(a) provides that enforcement action by the Board be made upon recommendation by the Board's General Counsel.⁶ Our task is to determine whether there is reliable, probative, and substantial evidence of a violation of the election laws. In that regard, 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.

The evidence shows that a ballot mailed to David E. Linfield by the D.C. Board of Elections in the 2020 GE was voted by someone other than Linfield. The evidence is insufficient to suspect that Works was the person who voted the ballot at issue. Rather, the record shows that some unidentified person voted the ballot in question in 2020.

Since the identity of the culprit has not been determined, the only enforcement action open to the Board would be referral to a prosecutorial authority. In that regard, in response to questioning by the Chair during the Board hearing, Works explained that the cameras in the apartment building for the unit in question covered the entrance but not the mail area. While we believe that there

⁶ 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”).

was fraudulent voting activity at play here, referral for further investigation would be futile as it is not reasonably possible that the culprit could ever be identified.

Conclusion

Based on the evidence regarding the casting of a ballot in the District of Columbia 2020 GE in the name of David Linfield, we decline to take enforcement action in this matter. It is therefore hereby:

ORDERED that this matter be dismissed.

Date: December 15, 2023



Gary Thompson
Chairman
Board of Elections