

**MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING
June 1, 2022**

The District of Columbia Board of Elections (the “Board”) held its Regular Monthly Meeting on Wednesday, June 1, 2022 via Zoom. Board Chairman Gary Thompson, and Board Members Karyn Greenfield and Mike Gill were present. The Board’s Executive Director, Monica Evans, General Counsel, Terri D. Stroud, and the Director of the Office of Campaign Finance (“OCF”), Cecily Collier-Montgomery, were also present.

CALL TO ORDER: (10:32 a.m.)

ASCERTAINMENT OF QUORUM:

- Board Chair Thompson and Board Members Greenfield and Gill constituted a quorum.

ADOPTION OF AGENDA/APPROVAL OF MINUTES

- **BOARD ACTION:** The Board unanimously adopted the agenda and minutes from the last meeting held on May 4.

BOARD MATTERS

- None.

DCBOE EXECUTIVE DIRECTOR’S MAY 2022 REPORT (EXECUTIVE DIRECTOR EVANS)

- **Voter Education and Outreach Division (VEOD)**
 - During the month of May, VEOD conducted 25 outreach events on behalf of the agency. Most events were in-person but two were virtual events. Director Evans attended the ANC7B meeting on May 19 to share the vote plan for the primary election and answer voters’ questions.
- **Voter Services Division (VSD)**
 - VSD registered 3,104 new voters and processed 6,937 registration changes. In total, 10,041 registration cards will be mailed.
 - Because we are within the 90-day window before the June primary, no voters will be moved from ‘active’ status to ‘inactive’ status until after the election.
- **Online Voter Registration**
 - The Board is continuing to register voters using our website portal which provides the same functionality as a mobile app. So far, we have registered over 10,000 voters using the portal.

- **Update on Preparations for the June 21, 2022 Primary Election**
 - The Board will mail a ballot to every registered voter affiliated with the four major parties. K & H Mail House began mailing ballots on May 16. To date, we have mailed 402,108 ballots. 10,235 ballots have been returned.
 - We are continuing to process new voter information and transmit that information to K & H Mail House for additional mailings. The final mailing of ballots will occur on June 10.
 - Anyone who does not receive their ballot by June 16 should plan to vote in person.
- **Vote Centers**
 - Early vote centers and election day vote center locations are listed on our website. Early voting begins June 10 and ends June 19. There is no voting on June 20 in observance of the Juneteenth holiday, but vote centers will re-open on June 21, which is Primary Election Day.
- **Mail-In Drop Boxes**
 - Mail-in ballot drop boxes opened on May 27. We are collecting ballots twice per day. The boxes are open to allow ballots to be deposited, but each box has multiple locks to safeguard votes. Voters can place their ballots into each box without issue, and can do so at any vote center during early voting and on election day. Voters can also mail their ballots to the Board via the U.S. Postal Service.
- **Election Worker Training**
 - The Board met its election worker training goal of training 2,100 election workers for the June primary. We are wrapping up site coordinator training this week. Trained election workers are using the Board’s online training portal to supplement the in-person training they received.
- **Communications**
 - The first two postcard mailers for the “Ready. Set. Vote.” campaign have already gone out. The third and final postcard mailer is scheduled to go out this week. We began mailing the voter guide out the week of May 9, and it is also posted on our website.
 - We are placing yard signs and distributing door hangars and are developing additional content for print, radio, and TV advertising. Advertisements have run in the DCist, East of the River, Hill Rag, El Tiempo and the Informer newspapers. Our vote plan will run in the Washington Post next week. We have conducted radio interviews with WTOP and WPGC. Radio advertisements are also running on Praise,

WHUR, WPGC, and will also run on WTOP. Our TV commercial is airing on the OWN, MSNBC and CNN networks, and will start running on Channel 7 in the near future.

- We mailed ballots to all eligible voters housed in the federal Bureau of Prisons (BOP). The Department of Corrections (DOC) will also be used as a vote center. We are delivering ballots to them today, and will conduct in-person voting there for three days.

DCBOE GENERAL COUNSEL'S MAY 2022 REPORT (GENERAL COUNSEL STROUD)

- **Hearing on the Challenge to Petition Filed in Support of Initiative Measure No. 82, the "District of Columbia Tip Credit Elimination Act of 2022"**

Procedural History: The measure was filed with the Board on June 22, 2021. On August 31, 2021, the measure was deemed a proper subject for an initiative measure. On February 22, a petition was filed in support of the measure. Once a petition is filed, the Board has 30 days to conduct an independent review and determine whether the petition meets both numerical and ward distribution requirements. In this case, two processes took place simultaneously regarding this measure. The Board conducted the 30-day review, as well as a review prompted by the March 7 challenge filed by Valerie Graham.

On March 24, the Board held a meeting to determine the sufficiency of the petition. The Board determined that Wards 1, 2 3 and 4 had a sufficient number of signatures. Wards 5 and 7 were found to have an insufficient number of signatures. No decision was made regarding whether Ward 6 had enough signatures. Based on feedback from the Office of Planning, the Board undertook to evaluate the signatures in all of Ward 6.

On March 28, the Board held a hearing on the matter where the parties agreed to defer consideration of the Ward 2 challenge pending the outcome of the determination with respect to Ward 6. On April 6, the Board held a meeting where it determined that Ward 6 was sufficient in terms of both the numerical and ward distribution requirements. On April 8, the Board issued a written order memorializing the April 6 oral order.

On April 29, the Board's Office of the General Counsel ("OGC") held a pre-hearing conference regarding the challenge. Earlier the same day, the challenger identified 500 signatures she determined should not have been accepted. These signatures were included in the challenge filed on March 7, but the challenger highlighted these and stated that they should not be accepted for various reasons.

On May 9, the OGC issued a pre-hearing conference order outlining the issues that would be before the Board at today's hearing. Neither party objected to the issues as they were outlined in the pre-hearing conference order. Those issues are:

1. Whether the Board should construe the challenges coded in the March 7 challenge to include challenges to actual signatures under the Board's regulations, specifically Title 3 D.C.M.R § 1007.1(i), on the grounds that the signature was not signed by the person who it purports to be. (The original challenge grounds were: that the signer was not registered to vote at the time the petition was signed (designated as "NR" in the challenge); that, according to the Board's records, the signer was not registered to vote at the address listed on the petition at the time the petition was signed ("WA"); that some signatures were duplicates ("DUP"); and that the sole signer was also the circulator on the same petition where the signature appears ("SSC").)
2. Whether the Board, if it does not construe the above challenges to include challenges to actual signatures under 3 D.C.M.R § 1007.1(i), should alternatively grant Ms. Graham leave to amend the challenge to include challenges to each of the 500 signatures pursuant to 3 D.C.M.R § 1007.1(i).
3. Whether the December 30, 2021 monthly report of voter registration statistics was the proper official count to be used for evaluating the validity of the petition.

Assistant Registrar of Voters, Marissa Corrente, read VSD's memorandum detailing its findings regarding the challenge into the record. The VSD found that the number of valid challenges to the 500 Ward 2 signatures was insufficient to render Ward 2 numerically insufficient.

Counsel for the Challenger, Andrew Kline, argued that the central issue before the Board was the third issue listed in the prehearing conference order: which official count should be used to determine the validity of the petition. He repeated his argument that the Board erred in using the December 31, 2021 monthly report as the official count, and insisted that the Board should have instead used the January 31, 2022 report, which included updated redistricting data.

Counsel for the Petitioner, Joe Sandler, argued that the challenge as filed could not reasonably be construed to mean that signatures were being challenged on the basis that voter signatures were forged, and that the challenger should not be granted leave to amend their challenge. He stated that, at any rate, each signature the Board reviewed at the prehearing conference that the challenger identified as being invalid under 3 D.C.M.R § 1007.1(i) matched a signature card on file with the Board. He also argued that the election statute supports the Board's use of the December 31, 2021 monthly report.

At the conclusion of the hearing, the Board unanimously voted to enter into Executive Session to deliberate on the challenge after it had completed all of items on its agenda

and to reconvene to give its oral ruling later in the day. Attorney Kline requested that the Board comply with the District's Sunshine laws and conduct an open session instead. In response, Chair Thompson cited D.C. Official Code § 2-575(b)(13) in support of the Board's authority to enter into Executive Session to deliberate on a decision in an adjudicative action.

○ **Adoption of the Petition to Recall Amber Gove, Advisory Neighborhood Commissioner for Single Member District 6A04**

- Alexandra Kelly filed a Notice of Intent to Recall Commissioner Amber Gove on April 28. Commissioner Gove's response was filed on May 9. The Board prepared an original recall petition form which Ms. Kelly adopted. Ms. Kelly was advised that she had until 5:00 pm on August 1 to circulate and submit her petition to the Board, that all petition pages must be double-sided, and that she could pick the petition sheets up from the Board.
- Assistant Registrar of Voters Marissa Corrente read a memorandum into the record that detailed the next steps regarding the recall process.

○ **Litigation Status**

- Jason Christopher Long v. D.C. Board of Elections
 - This matter was filed in D.C. Superior Court on July 2, 2021, and is a civil complaint seeking \$10,000.00 in damages. Petitioner Jason Christopher Long claims negligence and unjust enrichment stemming from the 2020 election cycle. He alleges that the Board issued him a check without informing him not to deposit it, then had the payment stopped, causing him a returned check fee and a negative balance. The next hearing in this matter is scheduled for June 17.
- Kathy Henderson v. D.C. Board of Elections
 - Kathy Henderson filed a recall petition against Sydelle Moore, Advisory Neighborhood Commissioner for Single-Member District ("SMD") 5D05. The petition was rejected because of an insufficient number of signatures. Ms. Henderson appealed the matter to the D.C. Court of Appeals ("DCCA"). On March 23, the DCCA issued an order requesting that the Board submit a designation of record by May 23, and the Board complied with that request on May 23.
- Public Interest Legal Foundation v. Monica Evans
 - This matter was filed in the United States District Court for the District of Columbia under the National Voter Registration Act ("NVRA"). The suit alleges that the Board is out of compliance

with the NVRA's public records provision. PILF requested records from the Board. The Board denied this request because federal law prohibits public disclosure of the types of records sought. All pleadings have been filed, we are just awaiting next steps.

OCF MAY 2022 REPORT (DIRECTOR COLLIER-MONTGOMERY)¹

- **2022 Election Cycle Debates**
 - The OCF conducted debates in the contested races for the offices of Mayor, Attorney General, and At-Large Member of the Council on May 16, 17, and 19. All candidates who participated in the Fair Elections Program ("FEP") were required to participate in the debates. Debates were held virtually and streamed online. Recordings will remain online through the remainder of the calendar year.
- **FAIR ELECTIONS PROGRAM DIVISION (FEP)**
 - During the 2022 Election Cycle, the total sum of \$10,349,186.80 has been authorized for disbursement in base amount and matching payments to the 33 Candidates certified in the FEP to participate in the June 21 Primary Election, and the two candidates certified in the November 8 General Election.
 - During the month of May, no Candidates were certified in the FEP for the 2022 Election Cycle.
 - OCF authorized the disbursement of 35 matching payments from the Fair Elections Fund to participating candidates, as well as the second half and final base amount payments to 26 previously certified candidates who are running for contested offices and qualified for the ballot.
- **REPORTS ANALYSIS AND AUDIT DIVISION (RAAD)**
 - **Remitted funds**
 - There has been no change in amount of remitted funds from Candidates who participated in the 2020 election cycle, or for those who are participating in the 2022 primary election cycle.
 - **Ongoing Post Election Full Field Audits**
 - Two final audit reports were issued on April 7 for two post-election audits of campaign operations for Candidates who participated in the November 2020 General Election (both were compliance audits):
 - Friends of Allister Chang Principal Campaign Committee

¹ These minutes contain a condensed version of the OCF May 2022 Report. The full version of this report can be found at <https://ocf.dc.gov/release/office-campaign-finance-statistics-may-2022>.

- Committee to Elect Eboni-Rose Thompson for DC State Board of Education (Ward 7) Principal Campaign Committee
- **PUBLIC INFORMATION AND RECORDS MANAGEMENT DIVISION (PIRM)**
 - There were three filing deadlines for Reports of Receipts & Expenditures (“R & E Reports”):
 - Fair Elections Candidate Committees (optional) – due April 30
 - Legal Defense Committees – due May 1
 - Fair Elections Candidate Committees – due May 10
 - New Candidates/Committees
 - One new candidate, Melvin Lawson, registered as a write-in Candidate on May 23 for the Office of Mayor in the June Primary Election.
 - There were no new registrations in the FEP.
 - One new Political Action Committee (“PAC”), the Green New Deal for DC Action, registered on May 23.
 - Fifteen candidates and treasurers complied with the mandatory entrance conference in May.
- **OCF GENERAL COUNSEL REPORT (GENERAL COUNSEL WILLIAM SANFORD)**
 - **Intake/Output Report**
 - 6 referrals received
 - 17 informal hearings completed
 - 19 informal hearing orders issued (17 orders in which a total of \$17,825 in fines were issued, and two orders revoking the certifications of FEP candidates Kenyan McDuffie and Bradley Thomas pursuant to orders issued by the Board and affirmed by the DCCA that denied ballot access to these candidates)
 - One fine of \$50 collected from former candidate Dorothy Douglas
 - No Open Investigations
 - No Show Cause Proceedings
 - No Requests for Interpretive Opinions
 - The General Counsel noted that, pursuant to the US Supreme Court’s decision in *Federal Election Commission v. Ted Cruz for Senate, et al.* (Case No. 21-12), it is

unconstitutional to impose limits and time periods on the amounts that may be recovered from candidates for personal loans they make to their own political campaigns. This ruling, by extension, renders D.C. Official Code § 1-1163.10.10(a) unconstitutional. Accordingly, OCF will no longer enforce that provision.

PUBLIC MATTERS

- **Dorothy Brizill**
 - When the Board posts a meeting's agenda on its website, it should also post detailed information about matters that will be before the Board at such meetings.
 - Board Response: The Board will look into improving how we relay information, especially regarding complex issues, to the public.
- **Nicholas Schiller**
 - The challenger for Initiative 82 argues that the official roll should be published every day. However, all interested parties were informed that December 31 was the data from which the signatures results would be pulled from.

RECESS AT 12:08 TO DELIBERATE RE: HEARING ON THE CHALLENGE TO PETITION FILED IN SUPPORT OF INITIATIVE MEASURE NO. 82, THE "DISTRICT OF COLUMBIA TIP CREDIT ELIMINATION ACT OF 2022" (12:08 pm)

RE-CONVENING OF HEARING ON THE CHALLENGE TO PETITION FILED IN SUPPORT OF INITIATIVE MEASURE NO. 82, THE "DISTRICT OF COLUMBIA TIP CREDIT ELIMINATION ACT OF 2022"

- Upon reconvening the meeting at 12:31 pm, the Board issued an oral ruling rejecting the challenge to Initiative 82. This decision was primarily based on the fact that the Board finds that the December 31, 2021 monthly report was the proper official count to use to evaluate the validity of the petition. The Board also found that the March 7 challenge did not include challenges to actual signatures under 3 D.C.M.R § 1007.1(i), and declined to grant Challenger Graham leave to amend the challenge to include such challenges. The Board indicated that a written order that addressed the challenge would soon issue.

ADJOURNMENT (12:34 pm)