

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In the Matter of Ballots)	
Cast in the Name of)	Administrative
Hannah Brown)	Order #23-015
)	

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 consider 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, Office of General Counsel staff, Hannah Brown, Marc Brown (Hannah Brown’s father), and attorney Adrian Vuckovich were also present.¹

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 Hannah Brown in the D.C. 2020 General Election (“GE”) and that a ballot was cast in the name of Hannah Brown in the 2020 GE in Illinois. This evidence suggested a violation of prohibitions on voting twice.² The Board is authorized, upon the recommendation of the General Counsel, to refer matters to prosecutorial authorities

¹ Board Chair Thompson recognized attorney Vuckovich, who is an Illinois barred attorney, and admitted him pro hac vice for purposes of the proceeding.

² See e.g. D.C. Code §1-1001.09(g)(1) (“No person shall vote more than once in any election[.]”).

and/or impose civil fines of up to \$2,000 for each violation of the elections laws (D.C. Code §1-1001.18(a)-(b)).

In response to the ERIC report, OGC launched an investigation into the 2020 GE ballots cast in the name of Hannah Brown. After completing its investigation, the General Counsel recommended to the Board that this matter should be set for a hearing before the Board.

The hearing was set for December 6, 2023. Ms. Brown, Mr. Brown, and attorney Vuckovich were duly notified of the hearing.

At the December 6, 2023 hearing, the OGC attorney who investigated this matter appeared. That attorney advised that Brown, who was at the time of the 2020 GE a student in the District, did not dispute during OGC's prehearing conference proceedings that she voted in the 2020 GE in Illinois and in D.C. Brown, OGC staff stated, had explained that she had mailed her Illinois ballot well before the election and that she then made repeated attempts to confirm with the Lake County Clerk's Office (the appropriate Illinois elections administration authority) that her ballot had been received. No one with the Illinois authority could provide such confirmation. Brown averred during the prehearing conference that she again called the Lake County Clerk's Office on November 3, 2020 (*i.e.*, election day), and spent a fair amount of time on the telephone while a woman at that office tried to ascertain the status of her ballot. The woman informed Brown that her ballot could not be located. Brown stated that at that point she asked the woman what she should do and that the woman advised Brown to go to a polling site in the District and vote in person. During the prehearing conference, Brown stated that she followed this Illinois election official's advice and that she had no intention of voting twice but only wanted to make sure her right to vote was not forfeited because Illinois could not locate her ballot.

OGC's attorney advised that Brown's family attorney, Mr. Vuckovich, appeared in an unofficial capacity at the prehearing conference and attested to knowing Brown her entire life and to her honest character and her civic mindedness and that, in his opinion, she would never intentionally vote twice. Brown's father also appeared and echoed these sentiments. Both witnesses commented on the Lake County Clerk's Office being overwhelmed during the 2020 GE with mailed ballots.

The OGC investigating attorney informed the Board that, after the prehearing conference, she followed-up with Illinois to verify the extent to which voters could track the status of their mailed ballots and for any information that might shed light on Brown's claims. The investigating attorney stated at the Board hearing that, as a result of those inquiries, OGC obtained from Illinois email communications between Brown and the Clerk's Office regarding Brown's efforts to receive her mail ballot. The communications showed that, on October 13, 2020, Brown expressed concern because the "Voter Power website" showed that a ballot was mailed to her on September 24, 2020 but she had not received it. The responding Clerk Office's staff emailed that he would have a ballot reissued to her. This evidence, General Counsel's staff noted, tended to corroborate Brown's claim as to her effort to verify the status of her ballot in Illinois.

In addition, the investigating attorney provided to the Board an email from the Lake County Clerk that responded to OGC's inquiries. In that email, the Clerk stated:

This issue took place under the prior administration before our office instituted more thorough policies to account for Vote by Mail ballots, but what Ms. Brown is claiming sounds entirely feasible. I can include an audit log for the Vote by Mail ballot with the other documentation, which shows that Ms. Brown's ballot did not have a return status of "Good" until November 12th, but I do not believe that there is any other process that would have indicated that Ms. Brown's ballot had been received on November 3rd back in 2020.

The Clerk's statement, the OGC attorney pointed out, is consistent with Brown's claims that the Clerk's Office could not, on election day, confirm the status of her Illinois mail-in ballot.³ She also advised that, just prior to the Board hearing, Ms. Brown submitted a letter from an acquaintance that stated that that person had accompanied Ms. Brown to the D.C. polls on election day and as to that person's understanding that Ms. Brown was voting in D.C. because she believed Illinois had lost her ballot.

Based on the foregoing facts regarding this matter, the OGC attorney deferred to the Board as to whether any enforcement action should be taken in this matter.

After hearing the evidence, the Board recessed to executive session to discuss its action. When the Board reconvened on the record, the members unanimously voted in favor of finding that the record did not support taking any enforcement action or making a referral.

Discussion

D.C. Code § 1-1001.18(a) provides that Board's General Counsel may recommend to the Board enforcement action for violations of the elections laws.⁴ 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).

³ Given that the records and email communications from the Illinois elections officials were obtained by the same OGC staff member who appeared at the hearing and that that person is an attorney and officer of the court, we consider the evidence to be sufficiently authenticated. Moreover, the evidence was not contested.

⁴ 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").

It is undisputed that Brown voted twice in the 2020 GE. 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, Brown’s voting in Illinois and in D.C. constituted voting twice for purposes of, at least, the prohibition at D.C. Code §1-1001.09(g)(1).

Brown’s defense is that she lacked the intent to vote twice. We do not doubt that Brown’s intention was to vote only once and that her voting in the District was motivated by her desire to make sure her right to one vote was not forfeited. Clearly, such intent is insufficient to satisfy the elements of the criminal laws against voting twice.⁵ While D.C. Code §1-1001.09(g)(1) (which further prohibits voting twice in “any election”) may be enforced via a civil penalty, we decline to find that a voter can be strictly liable for a violation of that provision. Accordingly, the record is insufficient in this matter to support an enforcement action.

Conclusion

Based on the undisputed evidence that Hannah Brown did not intend to vote twice in the 2020 General Election, it is hereby:

ORDERED that no enforcement action will be taken and no referral will be made in this matter.

Date: December 15, 2023



Gary Thompson
Chairman
Board of Elections

⁵ For example, while 52 U.S. Code § 10307 also prohibits voting more than once for, in relevant part, President, the Sixth Circuit has indicated that a violation of that provision is contingent upon proof that the accused person voted knowingly, willfully and expressly for the purpose of having his/her vote count more than once. *U.S. v. Salisbury*, 983 F.2d 1369 (6th Cir. 1993). Reading such intent into the law is appropriate where, as in the case of section 10307, a violation constitutes a felony.