

**BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS
1015 HALF STREET, S.E., SUITE 775
WASHINGTON, D.C. 20003
(202) 671-0550**

IN THE MATTER OF:)
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)
Advisory Neighborhood Commissioners)
Daniel Warwick (SMD2B02); Aaron Landry)
(SMD2B04); Randy Downs (SMD 2B05);)
Mathew Sampson (SMD 2B01);)
Mike Silverstein (SMD 2B06); and)
Kari Cunningham (SMD 2B07))
Respondents)
)

Docket No.: OCF 2019-001

ORDER

I. Introduction

This matter came before the Office of Campaign Finance (hereinafter OCF) Office of the General Counsel pursuant to a complaint filed by Advisory Neighborhood Commissioner Edward Hanlon on September 5, 2019. Mr. Hanlon alleged that Commissioners Daniel Warwick (SMD2B02); Aaron Landry (SMD2B04); Randy Downs (SMD 2B05) Mathew Sampson (SMD 2B01); Mike Silverstein (SMD 2B06); and Kari Cunningham (SMD 2B07) (hereinafter the named commissioners) of Advisory Neighborhood Commission (ANC) 2B illegally used the government owned Twitter account to promote the campaign of Patrick Kennedy for Councilmember from Ward 2.

Commissioner Hanlon specifically alleged that the named commissioners of ANC 2B allowed a photo of Mr. Kennedy to be posted and a link to his campaign's Twitter page to be embedded in ANC 2B's official Twitter page.

Commissioner Hanlon additionally alleged that he sent a copy of the complaint to all eight other ANC Commissioners on September 4, 2019. He also stated that during an ANC 2B meeting, at least one resident complained and requested that the items regarding Mr. Kennedy's campaign be removed but the ANC 2B Secretary, Aaron Landry told Ms. Bedard and the others present at the meeting that he did not think the law was being violated. Commissioner Hanlon also attached a screenshot of the ANC 2B Twitter page which he indicated has 1542 followers.

On September 6, 2019, the Office of Campaign Finance (OCF) acknowledged Commissioner Hanlon's complaint and notified the named commissioners that the complaint against them had been filed by Commissioner Hanlon. OCF also advised the named commissioners of their right to respond to the allegations and further advised the commissioners that if they had used any government resources to promote or support a candidate, a campaign committee or for any campaign purposes, to immediately cease and desist from such activity.

On October 5, 2019, Commissioner Hanlon submitted a supplement to the original complaint in which he alleged that despite OCF instructions to cease and desist from the use of government resources for campaign activity, the posting continued to remain on the ANC 2B official Twitter page, nearly 4 weeks after OCF's instructions. Commissioner Hanlon also included a screenshot of the Commission's Twitter page which included an apparent posting from Commissioner Aaron Landry stating "I love the 17th Street Festival" which was displayed on the ANC 2B Twitter page. The caption beneath the posting stated "Dupont Circle ANC 2B, Dupont Circle Main Streets and Patrick Kennedy". A split screen image above the caption included a photograph of attendees at the Festival on the left and an insert of a photograph of Patrick

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Kennedy on the right with the words Patrick Kennedy @PLKDC, Running for Ward 2 D.C. Council in 2020 beneath Mr. Kennedy's photograph. On September 17, 2019, Commissioner Hanlon provided an additional supplement to the complaint that included a screenshot from ANC 2B's Twitter page which indicated that the link to the Kennedy campaign remained on the Commission's Twitter page.

II. Findings of Fact

On September 11, 2019, Advisory Neighborhood Commission 2B Chairperson Daniel Warwick filed a response to the allegations. He stated that ANC 2B's use of Twitter conforms with Advisory Opinion 1559-001 which was published by the Board of Ethics and Government Accountability (BEGA) in 2017. He additionally stated that the ANC 2B Twitter account "retweets (or shares content) from commissioners and community stakeholders" as part of their role "to support the neighborhood and drive community engagement." He further stated that the ANC 2B retweeted a tweet from a commissioner in his individual capacity stating "I love the 17th Street Festival, " with the sole intent of sharing the same sentiment and it is not uncommon on the World Wide Web to have third party content that might link to another third party's content. Thus, he stated that no endorsement of any kind was intended. He additionally stated that Commissioners in their individual capacity on their personal accounts are allowed to tweet and retweet about numerous subjects but their individual tweets do not imply an endorsement by ANC 2B. Chairperson Warwick also stated that he spoke with Sonya King at the Board of Ethics and Government Accountability (BEGA) on September 6, 2019, and forwarded her a copy of the initial complaint and on September 9, 2019; Ms. King advised him that BEGA would take no

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action regarding the matter. Chairperson Warwick further stated that Commissioner Hanlon's characterization of the exchange between Secretary Landry, Ms. Bedard and others during the September 4, 2019 meeting is inaccurate because, it is likely that at the time of the exchange, some commissioners were generally unaware of the specific allegations in the complaint because it had been filed only two days prior to the meeting.

On October 3, 2019, Commissioner Hanlon advised OCF via email that despite the cease and desist instructions the agency issued on September 6, 2019, the posting on ANC 2B's official government Twitter page with the embedded link that takes the reader to Patrick Kennedy's campaign Twitter page had not been removed.

On October 4, 2019, ANC 2B Secretary Aaron Landry submitted a written statement as a supplement to Chairperson Warwick's submission. He stated that the posting in question was completely about the 17th Street Festival and was not intended to support or oppose any candidate for elected office. He further stated that the intent of the posting was to express his love for the 17th Street Festival and does not represent any endorsement of any candidate or misuse of the government resource. He additionally stated that the postings cited in the complaint were about the 17th Street festival and it would require a series of manual actions to access campaign content which is completely unrelated and not directly connected to a government resource. Commissioner Landry concluded that the other commissioners named in the complaint have granted him permission to summarize their position regarding the complaint.

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On November 21, 2019, Secretary Aaron Landry appeared pro se at OCF pursuant to Notice of Hearing, Statement of Violations. After being duly sworn, Commissioner Landry stated that he routinely shares personal tweets with ANC 2B and his primary intent in the instant case was to share photographs of the 17th Street Festival. He stated that he is familiar with the complaint and has had an opportunity to review the allegations. He further stated that he tweeted "I love the 17th Street Festival" with a photograph which included several individuals and Patrick Kennedy was one of the individuals in the photograph. He additionally stated that Patrick Kennedy is an Advisory Neighborhood Commissioner in ANC 2A, who is aware of the complaint but Mr. Kennedy has not indicated that he wants the link removed. Secretary Landry also stated that the posting was not removed because the commissioners know they have done nothing wrong and believe it would be unprincipled to remove the tweet. He further stated that after the named commissioners received the complaint they contacted BEGA for advice even though the matter is within the jurisdiction of OCF. Secretary Landry stated that although the 17th Street Festival occurred on August 24, 2019, to date, ANC 2B has not removed the posting. Secretary Landry did concede that he and the other named commissioners in the complaint have all endorsed Patrick Kennedy for councilmember from Ward 2 in the 2020 election as alleged by Commissioner Hanlon but denied that the posting was intended to support the Kennedy campaign.

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III. Conclusions of Law

Accordingly, it is alleged that the named members of Advisory Neighborhood Commission 2B violated the following provisions of the D.C. campaign finance statute and implementing regulations:

(1) D.C. Official Code §1-1163.36 (a) which provides in pertinent part that “No resources of the District of Columbia government, including the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, and telephones and other utilities, shall be used to support or oppose any candidate for elected office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum conducted in accordance with §1-203.03.”

(2) (b)(1) This section shall not prohibit the Chairman and members of the Council, The Mayor, the Attorney General, or the President and members of the State Board of Education from expressing their views on a District of Columbia election as part of their official duties.”

It is also alleged that the named members of ANC 2B violated Title 3 of the District of Columbia Municipal Regulations (3DCMR) §3301 which provides in pertinent part that:

3301.1 No District of Columbia government resources shall be used to support or oppose any of the following:

(a) A candidate for elected office, whether partisan or nonpartisan; or

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(b) An initiative, referendum, or recall measure, or a charter amendment referendum.

3301.2 Resources of the District of Columbia government shall include, but not be limited to, the following:

- (a) The personal services of employees during their hours of work; and
- (b) Nonpersonal services.

3301.3 Nonpersonal services shall include, but not be limited to, the following:

- (a) Supplies;
- (b) Materials;
- (c) Equipment;
- (d) Office space;
- (e) Facilities; and
- (f) Utilities, for example, telephone, gas, and electric services.

3301.4 Notwithstanding the prohibition set forth in § 3301.3, the following public officials may, as part of their official duties, express their views on a District of Columbia election:

- (a) The Mayor;
- (b) The Chairman of the Council;
- (c) Each Member of the Council;
- (d) The President of the State Board of Education; and
- (e) Each Member of the State Board of Education.

Both Chairman, Daniel Warwick and Secretary, Aaron Landry on behalf of themselves and the other named commissioners in the complaint filed by Commissioner Hanlon have categorically denied that the Twitter page provided by the District of Columbia government was used to

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support or oppose the political campaign of any candidate. Thus, they contend that no government resources were used for political purposes as alleged in the complaint.

A review of the information provided as attachments to the complaint indicates that while the Secretary Landry's posting does include his quote "I love the 17th Street Festival" it also includes a caption that states "Dupont Circle ANC 2B Dupont Circle Main Street and Patrick Kennedy". When a reader clicks on the Patrick Kennedy portion of the caption, a photograph of Mr. Kennedy appears with the following information: "Patrick Kennedy @.PLKDC Running for Ward 2 D.C. Council in 2020". This information is clearly campaign related and should not be connected to the ANC 2B Twitter page in any regard. Because the posting provided by Secretary Landry includes the link to Mr. Kennedy's political aspirations, the information should not have been posted initially or at a minimum should have been removed following OCF's instructions to cease and desist. Therefore it is puzzling why the Commission would continue to display a posting from August 24, 2019, that includes information that can easily be interpreted as campaign related.

Despite the fact that the named commissioners in the complaint sought advice from BEGA, it is surprising that after Chairperson Warwick reviewed BEGA Advisory Opinion-1559-001 the commissioners continued to display the posting. BEGA Advisory Opinion- 1559-001 states in pertinent part "**...For instance, linking to a partisan political group's social media account in a post is political activity because it demonstrates support for the group as does posting the**

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picture of a partisan political candidate or a political cartoon. And the same is true for linking to or sharing a link to a partisan political group's website or an article advocating for or against a partisan political candidate."

While the ANC 2B Commissioners did not directly link the Commission's Twitter page to Mr. Kennedy's social media account, Secretary Landry's posting included a link to Mr. Kennedy's photograph and his political activity. This clearly can be construed as using a government resource to support a political campaign. Moreover, the fact that merely clicking on Kennedy's name immediately produces his photograph and information regarding his candidacy for Ward 2 Councilmember creates the appearance of an impropriety. Therefore, it can only be concluded that irrespective of how slight the impact might have been, a government resource was used in a manner that could be beneficial to a candidate for political office in the District of Columbia.

However, even though there was no evidence presented that indicated that the posting on the ANC 2B Twitter Page was done with the intent to promote Mr. Kennedy's political campaign, the prohibition on the use of government resources for political purposes does not require the intent to violate that provision of the statute.

Therefore, the allegation that the named members of ANC 2B allowed the District Government Twitter page to be used for campaign related activity has been sustained.

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The penalty established by 3DCMR §3711.2 (w) for violating D.C. Official Code §1-1163.36 (a) Using District of Columbia government resources for campaign-related activities: is a fine of four thousand dollars (\$4,000).

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Pursuant to 3 DCMR §3711.6, the Director of the Office of Campaign Finance (Director) may modify, rescind, dismiss or suspend any fine.

IV. Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director order ANC 2B to remove Secretary Landry's posting that can be linked to the Patrick Kennedy campaign from the Commission's Twitter page. I also recommend that the Director impose a fine of four thousand dollars (\$4,000.00) collectively or (\$666.67) each, against the named commissioners. I further recommend that the Director suspend three thousand dollars (\$3,000.00) of the fine resulting in a fine of one thousand dollars (\$1,000.00) collectively against the named commissioners or one hundred sixty six dollars and sixty seven cents (\$166.67) each on the condition that the named ANC 2B commissioners attend Ethics Training at the Board of

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Ethics and Government Accountability (BEGA) within Sixty (60) days of the date of this order which BEGA has agreed to provide. However, the failure of any commissioner to attend Ethics Training at BEGA within the prescribed time period or within a timetable otherwise scheduled by BEGA will result in the imposition of the full fine of four thousand dollars (\$4,000).

December 17, 2019
Date

William O. Sanford
William O. Sanford
Hearing Officer

V. Order .

Based upon the foregoing findings of fact and conclusions of law, it is this 17th day of December, 2019:

ORDERED, that the ANC 2B Commission shall immediately remove Secretary Landry's posting that can be linked to the Patrick Kennedy campaign from the Commission's Twitter page.

IT IS FURTHER ORDERED, that the named ANC 2B commissioners in the complaint are hereby fined four thousand dollars (\$4,000) collectively or six hundred sixty six dollars and sixty seven cents (\$666.67) each, for violations of D.C. Official Code §1-1163.36(a) and 3 DCMR §3301.

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IT IS FURTHER ORDERED, that three thousand dollars (\$3,000) of the fine will be suspended resulting in a fine of one thousand dollars (\$1,000) collectively or one hundred sixty six dollars and sixty seven cents (\$166.67) each, on the condition that the named ANC 2B commissioners in the complaint attend Ethics Training at the Board of Ethics and Government Accountability within Sixty (60) days of the date of this order or within a timetable otherwise scheduled by BEGA. The failure of any commissioner to attend Ethics Training at BEGA will result in the imposition of the full fine of four thousand dollars (\$4,000).

December 17, 2019
Date

Cecily Collier-Montgomery
Cecily Collier-Montgomery
Director

This Order may be appealed to the Board of Elections within 15 days from the date of issuance.

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order on the Honorable Daniel Warwick (SMD2B02); Aaron Landry (SMD2B04); Randy Downs (SMD 2B05); Mathew Sampson (SMD 2B01); Mike Silverstein (SMD 2B06); and Kari Cunningham (SMD 2B07) by regular mail at #9 Dupont Circle, NW Washington, DC 20036 and by email at 2B01@anc.dc.gov, 2B02@anc.dc.gov, 2B04@anc.dc.gov, 2b05@anc.dc.gov, 2B06@anc.dc.gov and 2B07@anc.dc.gov. ,

December 17th 2019
Date

Laura McAlister

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NOTICE

Any party adversely affected by any Order of the Director may: (1) file a Motion for Reconsideration (Motion) with OCF within five (5) days after receipt of an Order, provided that, relevant evidence was omitted from consideration at hearing (3DCMR §3709.13) (May 2015); or obtain review of the Order by filing a request for a **hearing de novo** with the Board of Elections within fifteen (15) days from the date of issuance of an Order. Any fine imposed by the Director, pursuant to 3DCMR §3711.2, shall become effective on the 16th day following the issuance of a decision and order (3DCMR§3711.6); provided that, the Respondent does not request a **hearing de novo**, pursuant to 3DCMR §3709.11. Fines imposed shall be paid within ten (10) days of the effective date of the issued Order of the Director. Make a payment by check or money order payable to the District of Columbia Treasurer. Send payment to the:

Office of Campaign Finance
1015 Half Street, SE, Suite 775,
Washington, D.C. 20003