

**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:

Councilmember Brandon Todd
Respondent

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Docket No.: OCF 2018-002

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 Emily Naden on December 4, 2018. Ms. Naden alleged that on November 30, 2018, she received an email promoting the campaign of and soliciting donations for Ward 4 State Board of Education candidate Rhonda Henderson in the December 4, 2018 Special Election. She further alleged that she clicked on a link which indicated that she received the email because she had contacted Ward 4 Councilmember Brandon Todd (hereinafter Councilmember Todd) in the past. While Ms. Naden concedes that she has contacted Councilmember Todd in the past, she contends that her contacts were limited to the Councilmember's Constituent Services Program. Based on her contention that she only contacted Councilmember Todd in his official capacity, Ms. Naden has alleged that Councilmember Todd used government resources to support a political campaign in violation of the Campaign Finance Act. As evidence of the violation, Ms. Naden attached copies of the following documents which she stated were included in the solicitation.

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- (1) A page with a heading bearing the name Brandon Todd and the email address of brandon.todd.2017@gmail.com.
- (2) The document also includes the following information "You are receiving this email because you contacted Councilmember Todd in the past."
- (3) Rhonda Henderson for Ward 4 State Board of Education. 207 Sheridan St. NW, Washington, DC 20011" (Attachment A);
- (4) A copy of a document with the same heading and email address dated December 19, 2018 which includes an image of Councilmember Todd and is entitled Councilmember Brandon Todd Ward 4 Weekly, (Attachment B); and
- (5) A copy of a document with the same heading and email address dated November 9, 2018 which includes an image of Councilmember Todd and candidate Rhonda Henderson holding a sign displaying the words "Elect Rhonda Henderson Ward 4 State Board of Education December 4, 2018." (Attachment C).

On December 5, 2018, the Office of Campaign Finance acknowledged Ms. Naden's complaint and transmitted copies of the complaint and acknowledgement to Councilmember Todd.

II. Findings of Fact

On December 11, 2018, Councilmember Todd filed a response in which he stated that he utilized his personal email distribution list to assist Ms. Henderson's campaign. He additionally stated that his personal email distribution list is maintained in a personal account which is not connected to the District government. He further stated that the emails in his personal account were accumulated over the last 10 years from a variety of sources that were exclusive of the District government. In conclusion, Councilmember Todd denied that he gave the Henderson campaign direct or indirect access to anyone's email and asserted that none of the email messaging was done in his DC government office on government time by any government employee, or using any government resources.

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On December 12, 2018, OCF received a letter submitted by Advisory Neighborhood Commission (ANC) 4C and signed by Chairperson, Bennett Hilley which alleged that Councilmember Todd's office repeatedly used public resources to promote the candidacy of Ms. Henderson. He urged OCF to investigate whether any violations of the Campaign Finance Act had occurred. The letter also stated that residents had entrusted Councilmember Todd's Council office with personal information for public, non-political purposes and stressed that the information given to Councilmember Todd to execute his government responsibilities was improperly used for the purpose of advancing a political campaign. In addition, the letter stated that the list used by Ms. Henderson to contact many Ward 4 residents was developed by Councilmember Todd's office which collected constituents' personal information when residents corresponded with the office. Those correspondences were typically related to matters of public concern such as pending legislation and sometimes matters relating to constituent services. Chairperson Hilley indicated that the letter was approved for distribution by a vote of 7-1-1, which constituted a quorum, at a properly noticed meeting of the ANC on December 12, 2018. The letter additionally stated that Zachary Teutsch had been authorized to represent ANC 4 in the matter by a 9-0-0 vote. On December 13, 2018, Mr. Teutsch submitted a formal request via email for OCF to commence an investigation into Councilmember Todd's "potentially illegal activities," which he identified as the following:

1. Using government resources to promote Ms. Henderson's campaign
2. Possible in-kind donations by the Councilmember's staff that exceeded the contribution limit of \$25.00 for contributors to ANC campaigns.

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OCF acknowledged the complaint from ANC 4C and Mr. Teutsch and advised that an investigation was already in progress pursuant to a complaint that was received previously. OCF additionally forwarded a copy of the ANC 4C complaint to Councilmember Todd.

On December 26, 2019, Councilmember Todd submitted a written response to the complaint filed by ANC 4C. He denied that the email list he used in support of Ms. Henderson's campaign was developed by his Council office. He additionally stated that the emails were sent using his personal email list which he has developed over more than a decade from various sources which included: his campaigns, requests from friends, contacts, residents requesting updates and information, in-person interactions and individuals who have contacted him through his website. In addressing why the link from the emails in question states "you are receiving this email because you contacted Councilmember Todd in the past" he contended that the statement does not mean the list was "developed by his Council office, it is simply a function of the service he uses to manage and contact his personal email list and it unfortunately misstates the purpose and origin of the email." He additionally argued that as a Councilmember he is permitted to express his views on a District of Columbia election as part of his official duties. In conclusion he stated that he is unaware of any provision which would designate email addresses which originated from direct constituent contact with his Council office as government resources.

On March 1, 2019, Councilmember Todd submitted an additional response through Counsel, Thorn Pozen, Esq. in which he stated that he collected email addresses in his personal capacity which he used to support the 2018 candidacy of Rhonda Henderson for the Ward 4 seat on the

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State Board of Education. He repeated his denial of the use of government resources and his contention that the link attributing the receipt of the email to prior contacts with the Councilmember was in error. He attached a copy of a Mailchimp Receipt Billing Statements for his personal account issued to Brandon Todd, Brandon T. Todd, bradontodd@gmail.com which was paid on November 8, 2018. He also attached a copy of a Mailchimp Receipt Billing statement for presumably his Council email account, issued to Dawn Cromer, Council of the District of Columbia dcromer@dccouncil.us which was paid on February 25, 2019.

The personal account and the Council account reflected separate account numbers but provided no details regarding the management, the use of the accounts, or the sources of the email addresses listed on the accounts. However, many of the same email addresses appeared on both accounts.

III. Conclusions of Law

Accordingly, it is alleged that the Councilmember Todd 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.”

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(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 Councilmember Todd 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
 - (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:

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- (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.

While Councilmember Todd has emphatically denied using District of Columbia government resources for political purposes, the information provided in the complaints indicates that it is unlikely that the recipients of the campaign literature promoting the campaign of Ms. Henderson would have received the emails from the Councilmember if he had not gained access to their email through either his Council office or Constituent Service office. Even though there may not be evidence of a flagrant disregard for the prohibitions on the use of District of Columbia government resources enumerated in D.C. Official Code §1-1163.36 (a) and 3DCMR §3301 there is sufficient confirmation of the fact that the transmission of emails from the Councilmember to support the candidacy of Ms. Henderson at a minimum created an appearance of an impropriety. Moreover, it is somewhat contradictory to suggest as the Councilmember has that his use of emails received through his Council office which clearly is a government resource to support the political campaign of Ms. Henderson did not entail the use of government resources. Despite the fact that the Councilmember has emphasized his conscientious efforts to segregate his Council email account and his personal email account, the email promoting Ms. Henderson's candidacy for Ward 4 member of the State Board of Education drew no such distinction. In fact, the link in the email noted the connection between the Councilmember and the recipients who in the case of Ms. Naden and ANC 4C rejected any connection to Ms. Henderson. Thus, the appearance of an impropriety that was created by the transmission of email

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from Councilmember Todd soliciting not only support for Ms. Henderson's campaign but donations as well significantly undermined the public trust in government as highlighted in the letter from ANC 4C.

Pursuant to D.C. Official Code §1-1163.36 (b)(1) and 3DCMR §3301.4 Councilmember Todd as part of his official duties may express his views on a District of Columbia election but the activity cited in the complaints clearly exceeds the expression of views. However, based upon the negative responses to the emails promoting the candidacy of Ms. Henderson, it is apparent that the initial complainant Ms. Naden and the members of ANC 4C did not view the Councilmember's activity as merely an expression of his views. The fact that several ANC 4C members received the emails and were disturbed because they did not expect to receive campaign literature promoting Ms. Henderson's campaign from a source they believed would restrict its correspondence to matters of public concern, pending legislation or constituent services clearly demonstrates the inappropriateness of the activity. Therefore, it is not surprising that the complainants view the Councilmember's behavior as a breach of the public trust.

In view of the fact that the link in the emails connects the campaign literature supporting Ms. Henderson's campaign to Councilmember Todd, it can only be concluded that government resources were used to compile the list of individuals who received the email. The Councilmember's argument that his personal email was used to promote the campaign of Ms. Henderson is not a plausible explanation in view of the fact that Ms. Naden and several members of ANC 4C have all indicated that their email contact with the Councilmember was

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either through his Council office or Constituent Service office. Therefore, the allegation that Councilmember Todd used District of Columbia government resources for campaign related activity has been sustained.

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).

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 imposed a fine of \$4,000.00. I further recommend that the Director suspend \$2,000.00 of the fine on the condition that Councilmember Todd attends Ethics Training at the Board of Ethics and Government Accountability (BEGA) within Sixty (60) days of the date of this order which BEGA has agreed to provide. However, Councilmember Todd's failure 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).

March 18th, 2019
Date

William O. Sanford
William O. SanFord
Hearing Officer

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V. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 18th day of March, 2019:

ORDERED, that Councilmember Brandon Todd is hereby fined four thousand dollars (\$4,000) for violations of D.C. Official Code §1-1163.36(a) and 3 DCMR §3301.

IT IS FURTHER ORDERED, that two thousand dollars (\$2,000) of the fine will be suspended on the condition that Councilmember Todd attends 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. Councilmember Todd's failure to attend Ethics Training at BEGA will result in the imposition of the full fine of four thousand dollars (\$4,000).

March 18, 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.

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SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order on the Honorable Brandon Todd by regular mail at 423 Buchanan Street, NW Washington, DC 20011 and by email at brandontodd@gmail.com; Thorn Pozen, Esq., by regular mail at 1625 K Street NW, Suite 700, Washington, DC 20006 and by email at tpozen@gmpllp.com March 18th, 2019.

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