

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

IN THE MATTER OF:

Brooke Pinto and
The Re-Elect Brooke Pinto 2024 Committee
Respondents

Docket No.: OCF 2023-002

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 Edward Hanlon on October 23, 2023. Mr. Hanlon alleged that Councilmember Brooke Pinto and the Re-Elect Brooke Pinto 2024 Principal Campaign Committee are illegally using both the Councilmember’s official Government-owned Twitter and Government-owned Council Domain Name to Promote her Re-Election.

The OCF served both Councilmember Pinto and the Re-Elect Brooke Pinto 2024 Principal Campaign Committee with copies of the Complaint on October 23, 2023 and requested that they provide responses to the Complaint on or before November 3, 2023.

More specifically, Mr. Hanlon alleged that because Councilmember Brooke Pinto’s Twitter account is an official government owned communications account, Councilmember Pinto’s Tweets on this account are government records and therefore government property regardless of physical form or characteristics; and that Councilmember Pinto has illegally retweeted posts she created on her government-owned

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Twitter account to her Election Campaign Twitter account in violation of D.C. Official Code § 1-1163.36(a) and 3DCMR § 3301.1.

Mr. Hanlon further asserts that Councilmember Pinto's misuse of the government-owned Hyperlinks is affecting search engine results like those of Google which when activated pulls up a partisan political cite when a search is launched under the Councilmember's official government-owned account of "@CMBrookePinto"; and that Councilmember Pinto's Retweets from her government-owned Twitter Page to her Campaign Twitter Page confers an obvious political advantage by creating search engine snippets that increase the "Click-Through-Rate" to her Political Advertising. He additionally contends that Councilmember Pinto is illegally using her government-owned Domain name brookepinto.com to engage in partisan election campaigning because brookepintodc.com is owned by the District of Columbia (DC) Government and DC taxpayers, is Government property, was developed at government expense and has been maintained at Government expense over the last three years.

As evidence of the violation, Mr. Hanlon provided copies of the following screenshots of documents which he stated were secured during Google searches:

- (1) A copy of the Home page of @ CMBrookePinto, stating that it is the "Official Twitter account of Brooke Pinto";
- (2) Examples of alleged reposting of posts by Councilmember Pinto from her official government Account directly to the Councilmembers' election campaign Twitter account ;
- (3) A copy of an official August 10, 2023, post by the Councilmember regarding "public safety in Chinatown" that was allegedly Retweeted to the Councilmember's Re-Election campaign Twitter page the same day;
- (4) Copies of Google indexes of Councilmember Pinto's election campaign page which allegedly generated 17 references to the Councilmember's official account @CMBrookePinto;

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- (5) Search results Councilmember Pinto's official government-owned social media accounts that allegedly displayed the Councilmember's election campaign Twitter page;
- (6) A copy of Councilmember Pinto's Election Campaign Twitter page on October 13, 2023, which allegedly included postings from her government owned Twitter account from October 9 through October 12, 2023.

II. Findings of Fact

On November 3, 2023, the OCF sent a second Notice of the Complaint and Request for an Investigation to Councilmember Pinto and Gretchen Wharton, Treasurer of the Re-Elect Brooke Pinto 2024 Principal Campaign Committee because neither had acknowledged receipt of the complaint.

On November 9, 2023, Anthony Field, campaign manager for the Re-Elect Brooke Pinto 2024 Principal Campaign Committee, submitted responses to the complaint on behalf of Councilmember Pinto and the Re-Elect Brooke Pinto 2024, Principal Campaign Committee, which generally denied that any violations of the Campaign Finance Act had been committed by the Committee or Councilmember Pinto. However, OCF advised Councilmember Pinto and Mr. Field that the responses submitted did not specifically address the allegations cited in the complaint. On November 13, 2023, Mr. Field submitted a second response on behalf of Councilmember Pinto and the Re-Elect Brooke Pinto 2024, Principal Campaign Committee to the allegations but OCF again advised that the second response was also deficient because it remained unresponsive to the specific allegations in the complaint.

On December 16, 2023, Councilmember Pinto submitted a detailed response to the allegations in which she denied the allegations. The Councilmember reiterated that as

stated in her previous response, she is aware of the prohibition on the uses of official mail by Elected Officials which include the following:

(e) PROHIBITED USES OF OFFICIAL MAIL BY ELECTED OFFICIALS.

- (1) A Councilmember may not mail, as official mail, a mass mailing within the 90-day period that immediately precedes a primary, special, or general election in which the Councilmember is a candidate for office.
- (2) A Councilmember may mail, as official mail, news releases or newsletters; provided, that these materials do not contain any of the following: (A) Autobiographical articles; (B) Political cartoons; (C) Reference to past or future campaigns; (D) Announcements of filings for reelection; (E) Announcements of campaign schedules; (F) Announcements of political or partisan meetings; (G) Reports on family life; (H) Personal references that are included for publicity, advertising, or political purposes; (I) Pictures of the official members with any partisan label such as "Democrat," "Republican," "Statehood Party," or any other label that purports to advertise the member rather than to illustrate the accompanying text; (J) Articles about community events that are unrelated to official government business; and (K) Reports on non-official activities of the Councilmember that have the effect of lending the franking privilege to others, no matter how worthwhile or charitable the endeavors of those to whom the franking privilege would be loaned.
- (3) A Councilmember may not use official mail to solicit directly or indirectly funds for any purpose.
- (4) A Councilmember may not use official mail for transmission of matter that is purely personal to the sender and is unrelated to the official duties, activities, and business of the member.
- (5) A Councilmember may not mail, as official mail, cards or other materials that express holiday greetings from the Councilmember or the Councilmember's family; (f) **AUTHORIZED USES OF OFFICIAL MAIL.** The provisions of subsection (e) of this Rule do not prohibit a Councilmember or the Councilmember's staff from mailing, as official mail, any of the following: (1) The whole or part of a record, speech, debate, or report of the Council or a committee of the Council; (2) The tabulation of a Councilmember's vote or explanation of the vote.

In addition, Councilmember Pinto stated that she denies the violations because “Tweets posted from a campaign account cannot be reposted from a government account but the same is not true for posts made from a government account that are retweeted from a personal or campaign account.” The Councilmember further contends that while Title 3 of the District of Columbia Municipal Regulations §§3301.1 and 3304.1 cite the prohibitions on government officials using their government accounts to promote a candidate or political activity, “it does not say anything about prohibitions of personal accounts promoting a government account.”

III. Conclusions of Law

Accordingly, it is alleged that the Councilmember Brooke Pinto and the Re-Elect Brooke Pinto 2024 Principal Campaign Committee violated the following provisions of the D.C. campaign finance statute and implementing regulations: (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.”

“(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.”

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It is also alleged that Councilmember Brooke Pinto and the Re-Elect Brooke Pinto 2024 Principal Campaign Committee violated Title 3 of the District of Columbia Municipal Regulations:

(3DCMR) §3301 which provides in pertinent 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;
 - (f) Utilities, for example, telephone, gas, and electric services; and

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- (g) District government accounts, including, but not limited to the following:
 - (1) Email accounts;
 - (2) Social media accounts;
 - (3) Webpages; and
 - (4) Internet domains.

3301.4 Prohibited use, whether intended or unintended, of District government accounts, prescribed under § 3301.3(g), shall include, but not be limited to, the following:

- (a) Linking to or sharing a link to an elected candidate's or political group's website, whether partisan or nonpartisan, advocating in support or opposition of the candidate elected for office or political group; or
- (b) Tweeting or retweeting a link to an article of a candidate elected for office or political group, whether partisan or nonpartisan, in support or opposition to the candidate elected for office or political group, or
- (c) Linking to or sharing a link to a post in a social media account of a candidate elected for office or a political group; and
- (d) Posting a picture, photograph, or cartoon to a District government account of a candidate elected for office or political group, in support or opposition of the candidate or political group.

3301.5 With exception to the members of the ANC Commission, prohibition set forth in § 3301.3, shall not apply to the following public officials who 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 Attorney General;
- (e) The President of the State Board of Education; and
- (f) Each Member of the State Board of Education

While Councilmember Pinto has denied using District of Columbia government resources for political purposes, the information provided in the complaints indicates that it is unlikely that the Tweeting and Re-Tweeting of the same or similar information between the Councilmembers' official government account, her personal account and the Re Election Principal Campaign account is easily distinguishable. Assuming that the Councilmember is correct in stating that although Tweets posted from a campaign account cannot be reposted from a government account, the same is not true for posts made from a government account that are Re-tweeted from a personal or campaign account.

Even though the statutory and regulatory provisions may be silent regarding the scenario the Councilmember described the fact that the information may have originated from the Councilmember's personal account but was posted on her official government account either prior to or subsequent to the Re-Tweeting does not effectively refute the fact that the origin of the information became unclear. Therefore, an observer who finds the information on both the official government owned Twitter account and the Re-Election campaign account will have difficulty determining whether the required segregation of the accounts has been observed.

Regarding the issue raised by the Complainant that a Google search of the Councilmember's official website yielded references to her Re-Election campaign website, even the casual user of the Google search engine would not be surprised to discover that Google often provides additional website information regarding the subject of the search. Nonetheless, despite the fact that there is no evidence that the cross pollination between the Councilmember's official government owned accounts and her Re-Election campaign account was due to an intentional act by the Councilmember or her staff, the government owned Twitter account that the Councilmember is accorded access to as an Elected Official in the District of Columbia cannot serve as a relay station for information from the Councilmember's official, personal and Re-Election accounts either intentionally or unintentionally. Therefore, it is apparent that the confusion arising from the activity should be curtailed in a manner which will best serve the voters of the District of Columbia.

IV. Recommendation:

In view of the foregoing, while the facts in this matter suggest that a violation of the prohibition on the use of government resources for campaign purposes may have occurred it is not clear that the violation was knowingly and willfully committed. Nor is it clear that the prohibitions anticipated the possibility of the current scenario arising. However, it has been clearly established that the activity in question has created the appearance of an impropriety which warrants remedial action.

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Therefore, I hereby recommend that the Director order Councilmember Brooke Pinto and the Re-Elect Brooke Pinto Principal Campaign Committee to Cease and Desist from the practice of Tweeting and Re-Tweeting between her official government-owned account, personal account, and her Re-Elect Brooke Pinto Principal Campaign account.

I further recommend that the Director order Councilmember Brooke Pinto to remove any and all information from her official website that refers to her Re-Election campaign and vice versa.

January 17, 2024
Date

William O. SanFord /s/
William O. SanFord
Hearing Officer

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IT IS HEREBY ORDERED, that Councilmember Brooke Pinto and the Re-Elect Brooke Pinto Principal Campaign Committee Cease and Desist from the practice of Tweeting and Re-Tweeting between her official government-owned account, personal account, and her Re-Elect Brooke Pinto Principal Campaign account.

FURTHER ORDERED, that Councilmember Brooke Pinto remove any and all information from her official website that refers to her campaign and vice versa.

January 17, 2024
Date

Cecily E. Montgomery
Cecily E. 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 Brooke Pinto by email at brookepinto@gmail.com and Anthony Field by email at brookepinto2024@gmail.com on January 17, 2024.

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) (November 22, 2019); 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**. Mail payment to the: Office of Campaign Finance, 1015 Half Street, SE, Suite 775, Washington, D.C. 20003.