

**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
Brooke Pinto forward 2 Principal Campaign
Committee 2020
Respondents

Docket No.: OCF FI 2023-003

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 November 13, 2023. Mr. Hanlon alleged that, Ward 2 Council Member Brooke Pinto and the Brooke Pinto Principal Campaign Committee 2020, used government resources and government property to support her 2020 General Election political campaign in violation of the D.C. Official Code § 1-1163.36 (a) and 3 DCMR § 3301.1(a) et.seq., to send out unsolicited electronic newsletters within 90 days of an election, which email also contained a “Meet Brooke” hyperlink, with personal information about the CM; used a registration form for Town Hall Meetings with a photo of the CM next to campaign literature; and used the Government owned email list for the Candidate’s campaign Town Hall.

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As evidence of the violation, Mr. Hanlon stated that pursuant to the Freedom of Information Act, he had secured information that in late August of 2020, less than 75 days before the November 3, 2020, General Election, “at government expense, Council Member Brooke Pinto ordered from iConstituent, LLC”:

1. 42,252 “Constituent Profiles” for Ward 2 voters called the “Full Voter File Acquisition”,
2. 13,000 email addresses of Ward 2 voters “matched to voter file records” and
3. 20,000 Robo calls inviting Ward 2 voters to a Telephone Town Hall on September 15, 2020, 48 days before the General Election

On November 13, 2023, the Office of Campaign Finance acknowledged Mr. Hanlon’s complaint and transmitted copies of the complaint and acknowledgement to Councilmember Pinto.

II. Findings of Fact

3 DCMR §3704 provides that:

- 3704.1 A full investigation regarding any alleged violation of the Act or Chapters 30-42 of this title shall commence upon a finding of reasonable cause by the Director and notice to the respondent that a full investigation has commenced.
- 3704.2 The full investigation shall be conducted by evidence gathered and explored by the following:
- (a) Subpoena;
 - (b) Depositions;
 - (c) Interrogatories;
 - (d) Interviews;

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- (e) Audits;
- (f) Affidavits;
- (g) Documents; and
- (h) Other means deemed appropriate.

3704.3 The Director may require any person to submit in writing certain reports and answers to questions, as prescribed by the Director, relating to the administration and enforcement of the Act, and Chapters 30-42 of this title.

3704.4 Any person required by the Director to submit in writing certain reports or to answer questions under oath shall submit such reports and/or answers within seven (7) calendar days after receipt of the request.

3704.5 If any person required by the Director to submit in writing certain reports or to answer questions fails to submit such reports or answers within seven (7) calendar days after receipt of the request, the Director shall issue a subpoena in accordance with § 3707.

3704.6 All submissions of reports or answers shall be made under oath; provided, that the person is not represented by counsel.

3704.7 Within ninety (90) days of receipt of any complaint, the Director shall:

- (a) Cause evidence to be presented to the Board, if sufficient evidence exists constituting an apparent violation, pursuant to § 3706;
- (b) Dismiss the complaint, if insufficient evidence exists to present the matter, pursuant to § 3705; or
- (c) Impose civil penalties, pursuant to § 3711, upon a determination that a violation of the reporting and disclosure requirements prescribed by the Act and/or Chapters 30-42 of this title has occurred.

3704.8 The Director may seek, upon a showing of good cause, an extension of time as reasonably necessary to complete an investigation.

As of February 5, 2024, the respondents had not submitted a response to the allegations in the complaint. Therefore, in accordance with 3704.8 the Office of Campaign filed a request for an extension of time to complete the investigation with the Board of Elections (Board)

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on February 6, 2024. On February 13, 2024, the Board granted the OCF an extension until March 3, 2024. Following the Board's approval of the request for an Extension, the OCF informed the Respondents that Wednesday February 21, 2024, was designated as the final date for the Respondents to submit a response to the allegations in the Complaint.

On February 21, 2024, Councilmember Pinto filed a response in which she stated the following: "Mailers are not permitted to be sent out from government offices within 90 days of a campaign; the same prohibition is not true of a telephone townhall. The complaint alleges that hosting a telephone town hall is a campaign violation; the complainant is inaccurate. The DC Council Code of Ethics: PR25-0001b X(d)(1) provides the prohibition on sending out an official mailer from a government office 90 days before any election. See link to code here: [PR25-0001b.pdf \(dccouncil.gov\)](#) X. OFFICIAL MAIL RULES (d) 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, 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,"

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"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; or (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 matters 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 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 retweeted from a personal or campaign account. The complaint alleges it is a campaign violation to retweet items from a government account to a personal account; the complainant is inaccurate. DC Municipal Regulations 3301.1 and 3301.4 lay out the prohibition's government officials have on using their government accounts to promote a candidate or political activity. It does not say anything about prohibitions of a personal account promoting a government account. In fact, that would be antithetical to running for office. See link to DCMR here: <https://dcregs.dc.gov/Common/DCMR/Rule List .asp? Chapter Num=3-33>

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VI. USE OF GOVERNMENT RESOURCES (a) GENERALLY. Employees shall not: (1) Use Council time or government resources for purposes other than official business or other government-approved or government-sponsored activities, with the exception of de minimis use that does not interfere with an employee's official duties and responsibilities, including the incidental use of Council time or resources for purposes of scheduling; (2) Order, direct, or request an employee to perform, during regular working hours, any personal services not related to official Council functions and activities, with the exception of incidental use of Council time or resources for purposes of scheduling; or (3) Use or permit the use of government resources to support or oppose any candidate for elected office, to promote a political committee, or to support or oppose any initiative, referendum, or recall measure — (d) DEFINITIONS. For the purposes of this Rule, the term: (1) "Government Resources" means any property, equipment, or material of any kind, including that acquired through lease, and the personal services of an employee during his or her hours of work. (2) "Usual and customary constituent services" includes an employee's representational activities, such as advocacy, communications, inquiry, oversight, and other actions, made on another person's behalf; provided, that the employee does not, directly or indirectly: (A) Threaten reprisal or promise favoritism for the performance or nonperformance of another person's duties."

It is alleged that the Councilmember Brooke Pinto violated the following provisions of the D.C. Campaign Finance statute and its implementing regulations: D.C. Official Code §1-1163.36 (a) which provides in pertinent part that: "No resources of the District of Columbia

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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.”

It is also alleged that Councilmember Pinto 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, 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.

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- 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
 - (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

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- (d) Posting a picture, photograph, or cartoon to a District government account of a candidate elected for office or political group, in support of 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.

Following an extensive review of this matter, the Office of Campaign Finance has determined that the majority of the allegations in question, with the exception of those issues discussed hereinafter, primarily involve alleged violations of the DC Council's Code of Conduct and possibly the Board of Ethics and Government Accountability's Code of Ethics, which are not enforceable by the Office of Campaign Finance. Based upon this determination, the OCF deems the referral of this complaint to the General Counsel for the District of Columbia Council and to the Board of Ethics and Government Accountability the appropriate course of action. Moreover, it is apparent that allegations of activity which may be inconsistent with the DC Council's Code of Conduct, or the Board of Ethics and Government Accountability's Code of Ethics do not automatically in and of themselves rise to the level of violations of the Campaign Finance Act in the absence of evidence that government resources were clearly used for campaign related purposes, including to support or oppose a candidate for public office.

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Notwithstanding, the allegation that Council Member Pinto used the same photograph which appeared on her campaign literature on the Registration Form for the three Telephone Town Hall Events to discuss matters of concern with her constituents, namely, the 7th Street, N.W. Car Free Lane Project, the Ward 2 COVID-19 Recovery & Legislative Agenda, and the Conversation on Homelessness Solutions, required further review to determine whether a violation of D.C. Official Code, Section 1-1163.36 (a) had in fact occurred. The photograph used on the Registration Form submitted by the Complainant clearly depicts the CM standing beside campaign literature, which reads “Vote Democratic Re-Elect Councilmember Brooke Pinto”. In examining the Official Website of the DC Council, www.dccouncil.us, and linking to the Homepage of the CM, the OCF used the address <http://www.brookepintodc.council>, to research the posted Newsletters of the CM and found the September 2, 2020, Newsletter, titled “September Outreach Schedule, Back to School, and the General Election”. The Newsletter addresses the CM’s September 2020 Outreach Schedule and offers an invitation to register for the Telephone Town Hall Events. The Registration Form at the registration site, tinyurl.com/PintoSeptember2020, did not include the purported photograph of the CM standing next to the campaign literature. Therefore, the OCF could not find a violation of D.C. Official Code Section 1-1163.36 (a).

Last, the Complainant alleged without supporting documentation that the Respondents more than likely used the voter list purchased for the Town Hall Meetings to send campaign related emails to the voters of Ward 2. The review of the Reports of Receipts and Expenditures filed with the Office of Campaign Finance by the Principal Campaign

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Committee Brooke Pinto for Ward 2 Special Election established by the CM as a Candidate in the 2020 Special Election for Member of the Council from Ward 2 reports an expenditure on May 22, 2020 for a Polling/Mailing List. The OCF finds that it is also plausible that the Candidate may have used the voter list purchased during the CM's Special Election campaign for Office in the 2020 General Election campaign operation to email Ward 2 voters.

The Office of Campaign Finance notes for the record that the Agency conducted a Full Field Audit of the campaign operations of the Brooke Pinto for Ward 2 Principal Campaign Committee following the certification of the CM by the Board of Elections as the Winner of the General Election held on November 3, 2020 for the Office of Member of the Council from Ward 2. The OCF released a Compliance Audit for the Committee on January 5, 2022.

IV. Recommendation

In view of the foregoing and the information included in the record, I hereby recommend that the Director refer the complaint in question to the General Counsel for the District of Columbia Council and to the Board of Ethics and Government Accountability.

03/01/2024
Date

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

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V. Order

Based upon the foregoing findings of fact, it is this 29th day of February 2024: **ORDERED** that the Complaint in OCF FI 2023-003 be referred to the General Counsel for the Council of the District of Columbia and to the Board of Ethics and Government Accountability.

03/01/2024
Date

Cecily Collier-Montgomery
**Cecily Collier-Montgomery
Director**

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 brookecpinto@gmail.com; and Anthony Fields by email at anthony@brookepinto2024 on March 1, 2024.

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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.