

BOARD OF ETHICS PUBLIC HEARING
REGULATION 8 (POLITICAL ACTIVITY)

TRANSCRIPT OF HEARING,
taken by and before CAROL NEALIS,
Professional Reporter and Notary Public, via
ZOOM, Haddonfield, New Jersey, on Wednesday,
July 15, 2020, commencing at 1:00 p.m.

ERSA COURT REPORTERS
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United Plaza - Suite 1520
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HEARING

1 A P P E A R A N C E S :

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 B O A R D M E M B E R S

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 Michael Reed - Chair

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 Phyllis Beck

 Brian McCormick

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 Joanne Epps

 Sanjuanita Gonzalez

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9 A L S O P R E S E N T :

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 Bryan McHale

 Thomas Klemm

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 Jordana Greenwald

 Shane Creamer

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 Michael Cooke

 Krystle Baker

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 Dani Gardner Wright

 Jeff Zeman

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 Frank Iannuzzi

 Robert Keiffer

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 Pat Christmas

 Patty Gillett

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TESTIMONY

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COUNCILMAN DEREK GREEN

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SARAH STEVENSON

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MARY MCDANIEL

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ADAM BONIN

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DESCRIPTION

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Exhibit-1

Documents

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Exhibit-2

Sarah Stevenson

N/A

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Exhibit-3

Adam Bonin

N/A

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HEARING TESTIMONY

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MR. REED: Good afternoon,

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everyone. So our first item of business is

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the public hearing for our amended

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regulation 8.

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My name a Mike Reed. I'm the

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chair of the Board of Ethics. Our first

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activity today is the public hearing on

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proposed amendments to board regulation 8

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on political activity.

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I note for the record that I am

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joined by Vice-Chair Judge Beck, and board

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members, Sanjuanita Gonzalez, Brian

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McCormick and Joanne Epps.

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I further note for the record

19

that Robert Keiffer from the law department

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is present or he will be present soon.

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MR. KEIFFER: Good morning or

22

afternoon, I am here.

23

MR. REED: Welcome. Finally, I

24

note for the record that this meeting is

1 conducted via Zoom and is being recorded.

2 Today's hearing is an opportunity
3 for members of the public and interested
4 parties to provide comments and
5 recommendations for modifications to
6 proposed amendments Board Regulation 8 on
7 political activity.

8 The proposed amendments have been
9 made available electronically through the
10 Board's website.

11 The Board is following the
12 process required by a Philadelphia Home
13 Rule Charter Section 8-407 for these
14 proposed amendments.

15 The Board approved these proposed
16 amendments for public posting at the
17 Records Department during it's June 24,
18 2020 public meeting.

19 The law department reviewed the
20 proposed amendments and found the proposed
21 amendments to Board Regulation 8 to be
22 legal, within the Board's authority and in
23 proper form.

24 The Department of Records

1 advertised and gave public notice of the
2 proposed amendments. The Board also took
3 action by notifying members of the relevant
4 email distribution list and by giving
5 notice of the proposed amendments on its
6 website.

7 The Board proactively scheduled
8 this hearing on the proposed amendments and
9 provided notice of this hearing by
10 newspaper and on the Board's website.

11 The Board will not take any
12 action on the proposed amendments at this
13 hearing. Rather, this hearing is an
14 opportunity for the public to make comments
15 on the proposed amendments or
16 recommendations for modifications to the
17 proposed amendments to Board Regulation 8.

18 Board members may ask questions
19 of the witnesses if they wish. A hearing
20 report will be considered and approved by
21 the Board at a future Board meeting.

22 The hearing report will respond
23 to testimony and is the mechanism by which
24 the Board may modify the proposed

1 amendments to the regulation that are
2 pending.

3 A court reporter is present to
4 transcribe this hearing. At this time the
5 documents that the Board filed with the
6 Department of Records, including the
7 proposed amendments to Board Regulation 8,
8 should be entered on the record of this
9 hearing and marked as Exhibit-1.

10 (At this time, a document was
11 marked for identification as Exhibit No. 1

12 MR. REED: And has that been
13 done?

14 MS. Gonzalez: Does that require
15 any action from us?

16 MR. REED: No. It requires
17 action from the court reporter.

18 COURT REPORTER: Yes. It's
19 marked.

20 MR. REED: Thank you.

21 COURT REPORTER: You're welcome.

22 MR. REED: We now -- we will now
23 take testimony. As our Zoom host, Board
24 staff member -- by the way, Zoom host is --

1 I don't know whether it's in Websters yet,
2 but it's a very exalted status now,
3 somewhere along, you know, in the pantheon
4 with chancellor.

5 So the Zoom host of this meeting
6 is Bryan McHale. He will give an
7 explanation of the mechanics of how the
8 rest of the hearing will proceed.

9 Mr. McHale, you're on.

10 MR. MCHALE: Thank you, Chair
11 Reed. Good afternoon, in order to keep
12 this process as simple as possible, I'm
13 going to call on every participate that I
14 see to testify.

15 If you do not have testimony when
16 called, please say that you have no
17 testimony and I will move on to the next
18 participate.

19 If you do have testimony when
20 you're called, the floor will be yours.
21 Please begin by introducing yourself for
22 the record.

23 If you have a document you wish
24 to submit for the record and have not

1 already emailed it to staff, please
2 indicate that you have an exhibit and email
3 the document as a PDF to --
4 GCstaff@phila.gov.

5 MR. REED: Bryan, you are fading
6 in and out for some reason. So would you
7 please repeat the last thing you said?

8 MR. MCHALE: Certainly, for those
9 who have an exhibit that they would like to
10 attach to the record and you have not
11 already sent it to GCstaff, can you please
12 send it to the email BOEGCstaff@phila.gov.
13 And it will then be amended to the record.
14 With that, first up --

15 MR. REED: Bryan, I'm going to
16 let you take control and introduce our
17 witnesses.

18 The one thing I'm wondering,
19 would it be wise for everyone to be on mute
20 unless and until they need to speak?

21 MR. MCHALE: I believe that that
22 would be good practice, yes.

23 MR. REED: Okay.

24 MR. MCHALE: You know, I would

1 say that for purposes of the Board, if you
2 are going to weigh in with questions, you
3 should unmute yourself as you need to and
4 jump in.

5 MR. REED: Yeah. I would request
6 that all Board members, all staff and all
7 guests put themselves on mute, and I am
8 about to do that, while Bryan and our
9 witnesses are speaking simply as a matter
10 of enhancing the -- our ability to hear
11 each other.

12 MS. Gonzalez: Mr. Chairman,
13 before we proceed, I have a question. Is
14 this meeting being recorded right now?

15 MR. MCHALE: It is.

16 MR. REED: Yes.

17 MS. GONZALEZ: Okay. I just
18 wanted to make sure. Thank you.

19 MR. REED: Yep.

20 MR. MCHALE: So with perfect
21 timing, Councilman Green, if you would like
22 to testify first, if you could unmute
23 yourself and introduce yourself to the Zoom
24 meeting and then proceed with testimony.

1 COUNCILMAN GREEN: Thank you,
2 Bryan. Can you hear me?

3 MR. MCHALE: We can.

4 COUNCILMAN GREEN: Yes. Thank
5 you for this opportunity to offer a few
6 words regarding today's agenda item in
7 reference to this regulation of political
8 activity.

9 For many of the people on this
10 call and for those of you who may not be as
11 aware, I've been very engaged in the work
12 of the Board of Ethics for a number of
13 years.

14 In fact, prior to you all coming
15 into your current positions, I along with
16 Julie Chapman then working with then
17 Council Member Michael Nutter, helped to
18 draft the legislation which I think has put
19 us as a city in a much better place
20 regarding ethics and political activity.

21 And I've had a chance to work
22 with the Ethics Board staff in some detail
23 over the past number of years going from my
24 position as a staffer to being a member of

1 City Council at Large capacity.

2 So it's been a true pleasure to
3 work with the Ethics Board over these years
4 in helping to continue the work that we
5 both mutually agree upon that needs to be
6 done in our city to improve ethics and how
7 we function both as elected officials, City
8 employees and the public at large.

9 As you all know, I was a draft of
10 legislation that was recently passed and
11 then voted by the voters in the City of
12 Philadelphia regarding political activity.

13 This was something that came to
14 me based on commentary with various City
15 employees regarding their concern regarding
16 the tension between first amendment
17 activities and their status as a City
18 employee.

19 So we tried to strike a balance
20 between the two which led us to legislation
21 that was introduced and approved by voters
22 of this city.

23 For today's testimony, my main
24 point is regarding 8.5(d) in reference to

1 posting social media. We are living in a
2 very unusual time.

3 We're in fact having this hearing
4 in a platform, which is Zoom, that if you
5 would have asked people back in January
6 what is Zoom, some of you would have said
7 that's a song by the Commodores. We got a
8 little levity on the morning.

9 But Zoom and Skype and Webex, all
10 these different platforms that we're
11 currently engaging with as a way to
12 communicate during this Covid-19 pandemic.

13 And so from my perspective, doing
14 some type of post as a City employee to
15 their social media when they are doing this
16 in their volunteer time, using their own
17 personal computer or laptop or iPhone or
18 android and they're not divulging or
19 including information in their post
20 identifying themselves as a City employee
21 and allowing them to post information in
22 reference to their first amendment rights,
23 I think are the real crux and the context
24 of the legislation that was passed in the

1 City Council and approved by the voters.

2 However, the perspective of
3 requiring City employees to change their
4 profile status I think is a step beyond the
5 intent of the legislation, especially in
6 this time period of Covid-19 when we can't
7 engage like we normally would in better
8 settings.

9 And so my perspective, my hope,
10 is that the Ethics Board will reflect the
11 times, the context of the legislation and
12 the spirit of the legislative intent when
13 the legislation was passed in City Council
14 as well as the spirit and the perspective
15 of the voters of the City of Philadelphia
16 that they should be able to, as a City
17 employee, be able to engage in this type of
18 activity as long as they are not presenting
19 or providing information in their post
20 itself that they are a City employee.

21 And I think that's the balance
22 that we had tried to strike between first
23 amendment rights and someone's activity as
24 a City employee, keeping those separate.

1 And I think they should be able
2 to make those posts in their own volunteer
3 time, on their own personal devices in a
4 capacity as an individual, not informing
5 anyone that they are a City employee. But
6 that's a separate perspective than having
7 to change their profile in their social
8 media accounts.

9 So that's my purpose of coming in
10 for today's hearing, to offer those
11 comments and my perspectives. I thank the
12 Ethics Board for the opportunity to present
13 this information and my perspective as the
14 scrutiny of this legislation.

15 And I think this helps to provide
16 some perspective on what I believe is the
17 spirit and the perspective of the voters in
18 the City of Philadelphia so thank you.

19 MR. REED: Thank you. This is
20 Chair Reed. I want to thank my friend,
21 fellow fraternity brother, Councilman Green
22 for the reform that he authored and the
23 support that he's given to the Board and to
24 ethics enforcement in the City during his

1 various service in both as a council person
2 and before.

3 And we appreciate this testimony
4 and will give it, you know, very, very
5 serious consideration.

6 MR. MCHALE: Thank you, Chair
7 Reed. Thank you, Councilman. Sarah
8 Stevenson.

9 MS. STEVENSON: Hello, everyone,
10 can you hear me? Thank you.

11 Okay. So I have some testimony
12 that I will be transmitting to the Board
13 PDF shortly just after I deliver it here.
14 It's on my screen, so I'm going to read it.

15 On behalf of the Kenney
16 administration, I want to thank you for the
17 opportunity to provide comment on the
18 proposed revisions to Reg 8. I am Sarah
19 Stevenson, Chief Integrity Officer for the
20 City of Philadelphia. Joining me today is
21 Krystle Baker, Deputy Chief Integrity
22 Officer.

23 First, I'd like to thank the
24 Board and staff for the tremendous work

1 completed so far so quickly on this
2 project, particularly, under the current
3 work conditions.

4 In general, the proposed
5 revisions to Reg 8 align with the Charter
6 amendment approved by Philadelphia voters
7 on June 2, 2020 and we generally support
8 the proposed regulation.

9 However, I'd like to offer
10 comment on the following four sections:
11 First, 8.5(d), the use of an employee's
12 title on social media profile; 8.8,
13 clarifying temporary assignment to a
14 restricted agency; 8.7(b), prohibiting
15 substantial input into strategy; and
16 8.12(c), the gift/compensation provision.

17 First, I want to echo Councilman
18 Green's sentiments that we believe that the
19 administration suggests amending proposed
20 section 8.5(d) to eliminate the blanket
21 restriction on an employee's title and
22 social media profile and returning to the
23 Board's existing narrower interpretation.
24 This would still align with the plain

1 language of the recently adopted Charter
2 section 10-107(4)(c).

3 I'm embarrassed that I had to do
4 this, but I did get into this dictionary
5 use of the term use and you can see it in
6 the written comments.

7 But, you know, the term use is
8 really about active engagement, active
9 employment of a title, so -- which the
10 Charter section -- so I'll read the Charter
11 section.

12 No appointed officer or employee
13 of the City shall use a City title when
14 engaged in political activity.

15 So I think that the passive
16 existence of a title on a static profile
17 page would be okay as long as that profile
18 does not carry through into the post.

19 In other words, we'd like see the
20 current rule stand where the employee
21 cannot post using the title or if, as in
22 the current example with the LinkedIn
23 profile, it's a profile entitled carry into
24 the post, then that would also be

1 restricted.

2 Social media profiles do not
3 uniformly appear immediately next to posts.
4 In the case where it does not, unless the
5 reader took the extra step of viewing the
6 profile, the reader would be unaware of the
7 City title. Just as a reader could take
8 any extra step to research the author of
9 any post, so too must the reader take an
10 additional step to find the City employee's
11 title on a profile.

12 Therefore, we feel this blanket
13 restriction falls outside the plain meaning
14 of the Charter and employees could
15 inadvertently get caught in this
16 restriction.

17 We would like to suggest that, as
18 I mentioned, leaving the existing rule and
19 returning to the issue, the Board and staff
20 returning to the issue in the future, if
21 you do see a need to impose a broader
22 restriction because of abuses of this --
23 keeping the current role in place.

24 Second, with respect to temporary

1 assignment, the administration suggests
2 that "the duration of assignment" be the
3 calendar day in which the employee actually
4 works in the restricted agency.

5 And by restricted agency, I mean
6 those five or six agencies that are outside
7 of the broadened political activity rules,
8 police, Commissioner's Office, so on and so
9 forth.

10 This clear demarcation allows
11 departments to plan ahead without burdening
12 the rights of those employees otherwise
13 permitted to engage in political activity.

14 For example, this is just a for
15 instance, on October 1st, at the request of
16 the City Commissioners, the administration
17 makes the call for volunteer assignment to
18 the Commissioners for Election Day on
19 November 3rd. A volunteer employee signs
20 up on November 2nd. What I'm suggesting is
21 that the volunteer employee may engage in
22 otherwise permissible political activity
23 except from midnight to 11:59 p.m. on
24 November 3rd, Election Day.

1 If the assignment period extends
2 too far beyond the time parameter, employee
3 willingness to volunteer might diminish or
4 result in last-minute volunteering - both
5 are problematic for administering the
6 election in this example. Additionally,
7 the calendar day rule allows for some
8 cooling period around actual hours worked.

9 I know that was part of the
10 discussion the last voting Board meeting.

11 Third, we also recommend that the
12 Board review references to the development
13 of strategy. For example, 8.7(b) prohibits
14 responsibility for or substantial input
15 into strategy. This rule makes it sound
16 like some participation is permissible, but
17 the accompanying example does not allow for
18 any flexibility. The example states that
19 an employee may not participate in the
20 development or directing of campaign
21 strategies such as public relations and
22 data analytics. This conflict continues in
23 8.12(b) that prohibits a non-local campaign
24 task that involves strategy.

1 To remedy any confusion, we
2 recommend revising the example along the
3 lines of an employee may participate in
4 conversations to develop campaign policy
5 positions but may not direct campaign
6 strategies. Alternatively, the Board could
7 strike the word substantial from 8.7(b).

8 Finally, we recommend including
9 an example that correlates -- corresponds
10 with 8.12(c)(ii) that does not permit an
11 employee to seek or accept any compensation
12 for his or her participation beyond what
13 would reasonably be provided to volunteers
14 by a campaign in the ordinary course of its
15 activities.

16 Again, I will be providing this
17 in writing, so you can read it.

18 It would be helpful to understand
19 what the Board deems is reasonable under
20 the context of this rule. For example, if
21 a campaign provides pizza to a group of
22 volunteers for their work, may the City
23 employee enjoy a slice of pizza without
24 running afoul of this provision?

1 This concludes our prepared
2 remarks. And I want to thank you again for
3 the opportunity to testify. And again,
4 kudos to the Board and staff on this
5 really, really important work and having
6 done so in these current work conditions.
7 Thank you.

8 MR. REED: Thank you, Ms.
9 Stevenson. Krystle, are you going to
10 testify?

11 MS. BAKER: No. No. Sarah is
12 just testifying.

13 MR. REED: I'd like to thank
14 Ms. Stevenson and Ms. Baker for their
15 appearance and providing their input and we
16 will certainly give it very, very serious
17 consideration.

18 MS. STEVENSON: Thank you.

19 MR. REED: And by the way, any
20 other Board members is free to chime in,
21 just remember to unmute if you desire to do
22 so.

23 MR. MCHALE: Thank you, Chair
24 Reed. Thank you, Sarah and Krystle.

1 Mary McDaniel, do you have any
2 testimony?

3 MS. MCDANIEL: I do have some
4 testimony. Thank you.

5 I'm Mary McDaniel. I am the
6 chief ethics officer for City Council. And
7 I too appreciate your quick turnaround and
8 your guidance on this recently passed law
9 which Councilman Green championed and was
10 passed by the voters.

11 I just have a couple quick
12 questions that have come to me from our
13 employees. We're in kind of a unique
14 position. Because prior to this law, the
15 Council employees were permitted to do this
16 activity on 8.5(d), use of the title. And
17 that's the biggest change for Council
18 employees.

19 And just some things that have
20 come up, since they were allowed to do it,
21 the question about old postings has come
22 up. If you continue to use your title but
23 stop doing any political posting, does that
24 now create the impression that the old

1 postings are not legal, not permissible?

2 I would argue that the timeline
3 should be from when the law passed and
4 anything you did in the past is okay.
5 Because otherwise, we're going to have to
6 go through all their old postings, try and
7 clean them.

8 I don't even know if that's
9 possible. I'm not a social media person.
10 Again, I've talked to the people who are
11 social media, and that would be Lauren
12 Parrish.

13 I agree with Councilman Green and
14 the Kenney administration that the use
15 should be active use. That question has
16 also been raised by some of our people.

17 Some of the issues they've raised
18 are a lot of them are known to the media.
19 And if they have a post where they don't
20 identify themselves as a City employee but
21 everyone knows they're a City employee, are
22 they still in violation of the rule. I
23 would argue that they are not, but that I
24 believe needs to be clarified.

1 And the third issue is since our
2 employees did not have to follow this in
3 the past, they're not really clear what
4 they're allowed to do, what they're not
5 allowed to do. Their jobs are to promote
6 their bosses who are politicians every four
7 years, most of them, if they seek
8 reelection.

9 So the question is where's the
10 line. I'd like to see some examples on
11 that. Maybe we can discuss that further.
12 But they are --

13 And I have contacted your office
14 and you've been very helpful in scheduling
15 training and advice. But I think they're
16 looking for a little more guidance on what
17 exactly they're allowed to do and what
18 they're not allowed to do.

19 And those are my comments.
20 Again, I thank you. This has been tough on
21 all of us. You guys have done a great job
22 and I appreciate all your help. And
23 hopefully, we can work together to get
24 these things straightened out. That's all

1 I have.

2 MR. REED: Mary, thank you for
3 your testimony and we will certainly give
4 serious consideration to your suggestions.

5 The floor is open to -- I want to
6 confirm that Mary's grandchild is still
7 doing very well and then I will open up the
8 floor to the rest of the Board if they have
9 any comments for Mary.

10 MS. MCDANIELS: My grandchild is
11 doing great. In fact, she is a little girl
12 but she's off the charts tall. Her -- my
13 son-in-law is 6'5" and my daughter is
14 normal size, 5'5".

15 But the baby is like in the 90th
16 percentile already. She's in 6-month
17 clothes being a 3-month old, so she's doing
18 very well. Thank you.

19 MR. REED: Future basketball.

20 MR. MCHALE: Thank you, Chair
21 Reed. Thank you, Mary.

22 Adam Bonin is next. Do you have
23 any testimony today?

24 MR. BONIN: Thank you, Bryan. I

1 submitted my testimony in writing in
2 advance of the hearing. I really don't
3 have much to say.

4 I share in the suggestions of
5 Council Member Green and others with
6 regards to the profile. I generally think
7 the Board did a great job.

8 The only two points which I
9 raised in my written testimony, and I'm
10 happy to just rely upon that because it was
11 brief anyway, is the more examples the
12 better, and in particular, examples
13 pertaining to the presidential campaign,
14 because that is what most Council -- most
15 City employees are going to care about this
16 year, would be welcome.

17 And as before, you know, whether
18 those examples live in, you know, the
19 regulations or in a constantly changing
20 appendix, just the more information, the
21 more examples, the better.

22 The only change that I had
23 suggested was to one of the examples
24 provided with regards to the definitions of

1 what it counts to be in a managerial role
2 for a campaign. Data analytics was
3 suggested as one of those things which
4 brings one into the managerial role.

5 And just based on my experience,
6 it is not necessarily the case that an
7 outside, you know, volunteer who, you know,
8 is good with Excel, you know, and provided
9 data to the campaign that that by itself
10 puts that person into a managerial role.
11 It could just as easily just be an outside
12 role whereas the actual managers decide
13 what to do with that data.

14 That's all I have and I
15 appreciate the opportunity to testify.

16 MR. REED: As usual, we thank
17 Bryan -- I'm sorry, Adam for his appearance
18 and his testimony.

19 We will certainly give due
20 consideration to his recommendations. The
21 floor is open to the rest of the Board for
22 any questions or comments for Mr. Bonin.

23 Hearing none, I'm turning it back
24 over to the chancellor, the host --

1 MR. MCHALE: Thank you, Chair
2 Reed.

3 MR. REED: -- unless he tells me
4 to do otherwise.

5 MR. MCHALE: Thank you, Adam.
6 Pat Christmas, you are up next. Do you
7 have any testimony to offer today?

8 MR. CHRISTMAS: No. No. Not
9 this afternoon, thank you, Bryan.

10 MR. MCHALE: Thank you. In that
11 case, next would be Jeff Zeman. Do you
12 have any testimony to offer today?

13 MR. ZEMAN: I do not, thank you.
14 I'm just here to observe.

15 MR. MCHALE: Thank you. And then
16 next up would be Patty Gillett, do you have
17 any testimony to offer today?

18 MS. GILLETT: No, I do not.
19 Thank you.

20 MR. MCHALE: In that case, Chair
21 Reed, there are no other participants I
22 believe to offer testimony.

23 MR. REED: Thank you. I would
24 now ask whether there are any Board members

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who have any final comments or questions.

And hearing none, I would declare
the public hearing on Board Regulation 8
closed and thank everyone for attending.

(Hearing concluded at 1:28 p.m.)

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C E R T I F I C A T E

I, CAROL NEALIS, Court Reporter, certify that the foregoing is a true and accurate transcript of the foregoing deposition, that the witness was first sworn by me at the time, place and on the date herein before set forth.

I further certify that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Carol Nealis
Notary Public # 1261298
County of Philadelphia
My commission expires
3/22/2023

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EXHIBIT-1

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EXHIBIT-2

EXHIBIT-3

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