

Report on public hearing held July 15, 2020 by the Philadelphia Board of Ethics  
Regarding a proposed amendment to Regulation No. 8 “Political Activity”

Dated: 8/20/2020

/s/ J. Shane Creamer, Jr., Esq.

Board of Ethics  
J. Shane Creamer, Jr., Esq.  
Executive Director

Dated: 8/25/2020

Approved: /s/ Robert Kieffer

Law Department  
Robert Kieffer  
Assistant City Solicitor  
Legislative & Legal Counsel Unit

**A. Legal Authority**

The Board of Ethics was created by an amendment to the Philadelphia Home Rule Charter that voters approved via a ballot question at the May 2006 primary election. *See* Philadelphia Home Rule Charter §§ 3-806 and 4-1100. The Board is charged with administering and enforcing all provisions of the Charter and City Code that pertain to ethical matters, such as conflicts of interest, financial disclosure, standards of governmental conduct, campaign finance, prohibited political activities, and such additional duties as City Council may assign. The Board has the power to promulgate regulations as necessary to implement and interpret the laws over which it has jurisdiction, including the Charter’s political activity restrictions. *See* Code §§ 20-606(1)(a), 20-1008.

**B. Procedural Summary**

The Board followed the procedures set forth in Home Rule Charter Section 8-407 when promulgating this amendment to Board Regulation No. 8 (Political Activity). On June 24, 2020, the Board voted to approve the posting of a proposed amendment to Regulation No. 8 at the Department of Records. The Law Department approved the proposed amendment of Regulation No. 8 for public comment posting and, on June 29, 2020, the Board filed the proposed amendment with the Records Department. The Board scheduled a hearing on the proposed amendment for July 15, 2020, notice of which was advertised in local newspapers and posted prominently on the Board’s website and Twitter account.

Through this report on the July 15, 2020 hearing, the Board modifies the amendment and adopts the amendment as modified. A clean copy of the Regulation as amended is attached as Exhibit A and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made to the Regulation by the regulatory process initiated on June 24, 2020, and being approved by the Board through this Report, is attached as Exhibit B. A markup showing changes made to the proposed amendment as posted for public comment at the Records Department is attached as Exhibit C.

**C. The July 15, 2020 Hearing**

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice-Chair Phyllis Beck and Board members Sanjuanita González, Brian McCormick, and JoAnne Epps. Robert Kieffer, Assistant City Solicitor, attended on behalf of the Law Department. The hearing transcript is attached as Exhibit D. The proposed amendment as posted for public comment at the Records Department is included in Exhibit D as an attachment to the hearing transcript. The following witnesses provided testimony: Councilmember Derek Green; Sarah Stevenson, the City’s Chief Integrity Officer; Mary McDaniel, City Council’s Chief Ethics Officer; and Adam Bonin, an attorney in private practice. Ms. Stevenson and Mr. Bonin also provided written testimony that was attached to the hearing transcript as Exhibit 3.

**D. Summary of Hearing Testimony and Board Responses Thereto**

**1. Testimony of Councilmember Derek Green**

Councilmember Green expressed concern that proposed amended Paragraph 8.5(d) was too restrictive and suggested that the existing rule in Regulation No. 8 regarding the use of City title or position in conjunction with political activity on social media should remain.

**Board Response**

The Board agrees that the general rule regarding the use of title on social media set forth in the 2019 version of Regulation 8 should be retained. The Board finds, however, that additional clarification of this rule is appropriate.

Expanded permissible political activity under the Charter increases the opportunity for City officers and employees, whether intentionally or inadvertently, to engage in political activity on social media in a manner that the public could reasonably perceive as carrying the weight of an official's City position. In an effort to clarify the guidelines for political activity on social media and prevent the use of City title or position in a manner that undermines the public trust in the impartial operation of City government, the Board revises Paragraphs 8.4, 8.5, and 8.13 to read as follows:

➤ **8.4 No political activity using City resources.**

An appointed officer or employee shall not engage in political activity:

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b. Via a City-owned or City-operated social media account or a social media account that presents itself as being for official City business. An account presents itself as being for official City business if it contains little to no personal content and primarily shares or promotes material related to official City activities.

➤ **8.5 No political activity using City title or position.**

An appointed officer or employee shall not use their authority, influence, title, or status as a City officer or employee while engaging in political activity, such as:

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(d) Using their City title or status as a City officer or employee while participating in political activity on social media. Specifically, an officer or employee using a social media account for political activity cannot use text or images that identify, reference, or depict their City title or status as a City officer or employee:

- i. in a post or other content that contains political activity;
- ii. in an account profile on any social media platform that references, reproduces, or depicts that information alongside posts or other user-created content; or
- iii. in a profile picture, handle, username, or other account identifier.

Paragraph 8.5(d) does not require an appointed officer or employee to remove social media content (1) created by someone else or (2) that they created before becoming a City officer or employee.

➤ **8.13 Permissible activity involving social media.**

So long as they are using a personal social media account on their own time and using their own resources as further described in Subpart B, appointed officers and employees may:

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As described in Paragraph 8.5, City officers and employees must ensure that their City title or status is not referenced, reproduced, or depicted in or with any social media content they create that expresses support for or opposition to a candidate, political campaign, political party, or partisan political group.

**2. Testimony of Sarah Stevenson**

**a.** Ms. Stevenson expressed concerns about the restriction on use of City title or status in social media profiles as proposed in amended Paragraph 8.5(d) and requested that the existing rule from the 2019 amendments to Regulation No. 8 be retained.

**Board Response**

The Board acknowledges these concerns and addresses them as set forth in its response to Item 1 above.

**b.** Ms. Stevenson requested clarification of the phrase “for the duration of that assignment” as used in proposed amended Paragraph 8.8, which applies to temporary assignments to more-restricted City offices. Ms. Stevenson noted that additional clarity is particularly critical for the purposes of planning for and implementing the temporary assignment of Executive and Administrative Branch personnel to the City Commissioners for short-term election support activities. Ms. Stevenson proposed that the more-restrictive rules would apply to an officer or employee on temporary assignment for the entirety of any a calendar day (from 12:00 A.M. to 11:59 P.M.) on which the employee actually performed work for the more-restricted office.

**Board Response**

The Board acknowledges the importance of a clearly defined timeframe for the application of Paragraph 8.8 to temporary assignments and agrees that further clarification is warranted. The Board further agrees that a calendar day rule would be appropriate for temporary assignments to most of the more-restricted offices. The Board recognizes, however, the risk that newly permissible political activity could take place in such close temporal proximity to temporary election-related work that it would reasonably undermine the public’s trust in the fair and impartial conduct of elections. Balancing these two concerns, the Board concludes that a slightly longer period of restriction is appropriate for temporary assignments related to the administration of elections, and revises the proposed rule to read as follows:

For any officer or employee temporarily assigned to one of the listed offices, this Paragraph shall apply for the entirety of each calendar day on which any such temporarily assigned duties are performed.

If, however, the officer or employee is temporarily assigned to perform duties relating to the administration of an election, this Paragraph shall also apply for the entirety of the day of the election and each of the ten (10) calendar days preceding that day through the end of the last calendar day on which all such temporarily assigned duties are completed with regard to that election.

c. Ms. Stevenson expressed concern about the use of the term “substantial” in amended Paragraph 8.7(b) to qualify the extent of input into strategy, communications, compliance, or finances that would reach the level of managerial activity. In particular, Ms. Stevenson commented that Paragraph 8.7(b), Example 4 to Paragraph 8.7, and amended Paragraph 8.12(b) were not fully consistent with respect to what level of input or participation would be considered managerial activity. Ms. Stevenson suggested that this concern could be resolved by either removing the word “substantial” from Paragraph 8.7(b) or revising Example 4 to distinguish between participation in conversations about strategy and the direction of strategy.

#### **Board Response**

The Board agrees that the term “substantial” should be replaced to emphasize that most input into the strategy, communications, compliance, or finances of a political party, political campaign, or partisan political group would be considered political management. The term “substantial” was intended to exclude inadvertent or purely incidental input. The Board revises the proposed rule to read as follows:

Having responsibility for or more than minimal input into the strategy, communications, compliance, or finances of a political party, political campaign, or partisan political group.

d. Ms. Stevenson requested that the Board include an example that illustrates the application of Paragraph 8.12(c)(ii), which provides an exception to the general prohibition on receiving compensation or benefit from a campaign in excess of “what would reasonably be provided to volunteers by a campaign in the ordinary course of its activities.”

#### **Board Response**

The Board agrees that an example illustrating the application of amended Paragraph 8.12(c)(ii) would be helpful, and adds the following example to Paragraph 8.12:

An employee of the Mayor’s Office volunteers to staff a rally in support of a Presidential candidate. If the campaign offers cheesesteaks to all volunteers staffing the rally, the employee may accept the cheesesteak.

### **3. Testimony of Mary McDaniel**

**a.** Ms. McDaniel noted that several Council staffers had concerns regarding the prohibition on the use of City titles in social media profiles. She requested that the existing rule in Regulation No. 8 regarding the use of City title or position in conjunction with political activity on social media be retained.

#### **Board Response**

The Board acknowledges these concerns and addresses them as set forth in its response to Item 1 above.

**b.** Ms. McDaniel expressed concern that Council staffers would be required to remove past social media activity to comply with amended Paragraph 8.5.

#### **Board Response**

The Board acknowledges this concern and addresses it as part of the revisions to Paragraphs 8.5(d) and 8.13 set forth in response to Item 1 above.

### **4. Testimony of Adam Bonin**

**a.** Mr. Bonin expressed concern that Example 4 for Paragraph 8.7 identified data analysis as an activity that constituted political management. Mr. Bonin testified that data analysis may encompass a variety of tasks, many of which would not by themselves involve developing or directing campaign strategies.

#### **Board Response**

The Board acknowledges Mr. Bonin's concern and revises Example 4 Paragraph 8.7 to read as follows:

An employee may not develop or direct public relations strategies for a political campaign.

**b.** Mr. Bonin expressed his agreement with the concerns raised in earlier testimony about the proposed amendments relating to the use of title in social media.

#### **Board Response**

The Board acknowledges these concerns and addresses them as set forth in its response to Item 1 above.

**c.** Mr. Bonin suggested that additional examples would be helpful.

#### **Board Response**

The Board agrees and notes that the final version of the Regulation as amended (attached hereto as Exhibit A) includes additional examples.

**F. Approval**

At a public meeting on August 19, 2020, the Board voted 3-0 to approve the proposed amendment to Regulation No. 8 as modified and to approve this Hearing Report. (Board Members Brian McCormick and Sanjuanita Gonzalez were not in attendance.) The Regulation as amended is attached as Exhibit A.

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The Board of Ethics appreciates the input of the Law Department and the participation of those who provided testimony and those who simply attended the hearing on this Regulation.