

Albany
Atlanta
Brussels
Denver
Los Angeles

**McKenna Long
& Aldridge**^{LLP}
Attorneys at Law

1900 K Street, NW • Washington, DC 20006-1108
Tel: 202.496.7500 • Fax: 202.496.7756
www.mckennalong.com

New York
Philadelphia
Sacramento
San Diego
San Francisco
Washington, D.C.

CHARLES R. SPIES
(202) 496-7878

EMAIL ADDRESS
cspies@mckennalong.com

November 20, 2008

VIA HAND DELIVERY

DC Board of Elections and Ethics
441 4th Street, NW, Suite 250 North
Washington, DC 20001

Attn: General Counsel - TIME SENSITIVE

**Re: Challenge To DC Board of Elections and Ethics Certification Of At Large
City Council Election Results**

Dear Sir/Madam:

We represent the District of Columbia Republican Committee (“DCRC”), located at 1275 K Street, NW Suite 102, Washington, DC 20005 and DCRC Chairman Robert Kabel. The DCRC hereby respectfully requests that the DC Board of Elections and Ethics (“Board”) decline to certify the Nov. 4, 2008 election of Michael A. Brown, of 2612 Northampton St. NW, Washington, DC 20015, on the grounds that he does not meet the statutory requirements necessary to serve in the office that he ran for, and therefore is ineligible for certification.

Mr. Brown received the majority of votes for a non-Democratic Party affiliated At-Large position on the District of Columbia City Council on November 4, 2008. The position to which Mr. Brown was elected is reserved for a member of a minority party in the District. Notwithstanding Mr. Brown changing his party registration on May 20, 2008 from Democratic to “No Party,” he is an active Democrat and indisputably “affiliated” with the Democratic party. Consequently, certification of Mr. Brown’s election would violate District of Columbia Self-Government and Governmental Reorganization Act, Pub.L. 93-198, 87 Stat. 774 (Dec. 24, 1973) (the “Home Rule Act” or “D.C. Charter”).

I. Facts

Michael Brown is a prominent life-long Democrat who, as a registered Democrat, voted in the 2008 Democratic Presidential Preference primary on February 12, 2008. On May 20, 2008 Mr. Brown switched his party registration from Democratic to No Party, but then continued his strong Democratic affiliation, even to the extent of his campaign brochures describing him as a

November 20, 2008

Page 2

“Democrat” *See* Attachment. On Mr. Brown’s campaign website it notes that he “is a surrogate speaker for the Obama/Biden Presidential Campaign” and his website also notes that he has “been recognized as a national political figure, regularly appearing as a Democratic strategist on national news programs and serving as a surrogate speaker for national political campaigns such as the Obama/Biden, Kerry/Edwards and Gore/Lieberman Presidential campaigns.” *See* www.michaelbrownatlarge.com. In fact, Mr. Brown attended the Democratic National Convention in Denver and continued to appear on talk-shows as a “Democratic Strategist.” *See* <http://gretawire.foxnews.com/2008/08/26/do-you-want-to-be-on-tv/> (Aug. 26, 2008). Mr. Brown’s professional biography on his firm website also notes that “He now serves as a surrogate speaker for the Obama & Biden campaign.” <http://www.eapdlaw.com/professionals/detail.aspx?attorney=856>.

With all of his Democratic party affiliated activity during the campaign, it is easy to see why *The Washington Post* described Mr. Brown as a “faux independent.” *Bucking a Tide in DC*, Wash. Post, Oct. 31, 2008, at A18. The problem for Mr. Brown, however, is that the DC Home Rule Act is written to promote real minority party representation, not sham self-proclaimed “independent” Democrats who nonetheless attend the Democratic convention, call themselves a Democrat on TV, and brag of their Democratic affiliation in their biographies.

II. Jurisdiction

The DC Board of Elections and Ethics is charged with the certification of election results, D.C. Code § 1-1001.15(11), and is authorized to issue implementing regulations. D.C. Code § 1-1001.15(14). For a candidate to be “eligible,” he or she must meet “or [be] capable of meeting those statutory requirements necessary to serve in a particular office by the date of the election in which he or she seeks the office.” 3 DCMR 600.2(d). In addition, the Regulations clarify that:

The preliminary determination of eligibility shall in no way be deemed to preclude further inquiry into or challenge to the eligibility of an individual for candidacy or office made prior to the certification of election results by the Board and based upon evidence which was not known to the Board at the time of the preliminary determination or upon evidence of changed circumstances.

3 DCMR 602.7 In addition, the DC Code explains the remedy available to the Board:

If after the date of an election and prior to the certification of the election results, the qualified candidate who has received the highest number of votes dies, withdraws, or *is found to be ineligible to hold the office...* the Board shall declare no winner, and the office shall become vacant as of the date of the beginning of the term of office for which the election was held.

D.C. Code § 1-1001.10(b)(1)(emphasis added).

November 20, 2008

Page 3

III. Law

The DC Home Rule Act provides, “Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party.” D.C. Code § 1-204.01(d)(3). With the election and certification of Democratic Party candidate Kwame R. Brown to an At-Large position on the City Council, there will be three members serving at large on the Council who are affiliated with the Democratic party. Mr. (Michael) Brown is also affiliated with the Democratic party and, therefore, may not be added to the Council.

The purpose of the Home Rule Act is to ensure that members of minority parties in the District have some representation on the D.C. Council due to the overwhelming Democratic majority in the city (seventy-six percent at the time of the Home Rule Act’s passing). *See Hechinger v. Martin*, 411 F.Supp. 650, 651-52 (D.D.C. 1976) (“purpose of the limitations contained in the sections at issue is to ensure minority representation on the Council”). Consequently, the Act uses the broad term “affiliated.” In common usage, “affiliated” means “closely associated with.” *See Merriam-Webster Dictionary*, <http://www.merriamwebster.com/dictionary/affiliated> (Nov. 19, 2008) (“affiliated: closely associated with another typically in a dependent or subordinate position.”). In addition, *Blacks Law Dictionary* defines “Affiliation” as:

Act or condition of being affiliated, allied, or associated with another person, body, or organization. Imports less than membership in an organization, but more than sympathy, and a working alliance to bring to fruition the proscribed program of a proscribed organization, as distinguished from mere co-operation with a proscribed organization in lawful activities, is essential.

Black’s Law Dictionary 58 (6th ed. 1990). Again, this “affiliation” definition is much broader and more inclusive than simply party registration at the time of the election in question.

It is worth noting that in other sections of the Home Rule Act that address partisanship as a factor in eligibility to hold office, there is a narrower (more exclusive) standard. For example, when describing the requirements for Board of Elections members, the Act states the Board shall be “...composed of three members, no more than two of whom shall be of the same political party...” D.C. Code § 1-1001.03(a). In the case of service on the City Council, however, there is a broader standard designed to include not just people registered with a political party (as with the Board of Elections standard) but all of those who are merely affiliated with a political party. There is no doubt that Mr. Brown meets this standard by being “closely associated” or “affiliated” with the Democratic party, and consequently is ineligible to serve.

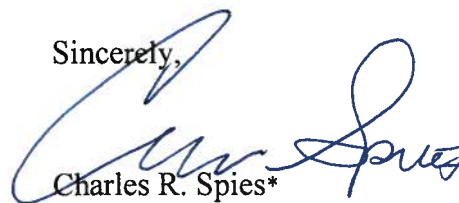
November 20, 2008

Page 4

IV. Conclusion

Thank you for your prompt consideration of this matter. We request that the Board immediately hold a hearing to consider the certification of Michael Brown, allow DCRC Counsel the opportunity to present evidence at said hearing, and ultimately uphold the letter and intent of the Home Rule Act by declining to certify the election results for Mr. Brown on the grounds that he does not meet the statutory requirements to serve in office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles R. Spies". The signature is fluid and cursive, with a large initial "C" and "S".

Charles R. Spies*

*Admitted only in Virginia
Supervision by Stefan Passantino,
a member of the DC Bar.



MICHAEL A. BROWN

VOTE FOR 2 AT-LARGE CANDIDATES

VOTE

**MICHAEL A.
BROWN ★ ★ ★**

**FOR DC COUNCIL AT-LARGE
INDEPENDENT* DEMOCRAT**