

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

JAMES E. MARINO,

COMPLAINT NO. VCRB 2022-04

**Mayor, City of Clarksburg,
Respondent.**

PROBABLE CAUSE ORDER

The Probable Cause Review Board, having investigated and considered the allegations set forth in VCRB 2022-04, unanimously finds that there is probable cause to believe that Respondent James E. Marino (“Marino” or “Respondent”) violated the provisions of the West Virginia Governmental Ethics Act, in his public position as Mayor for the City of Clarksburg, as follows:

Background

The City of Clarksburg is governed by seven City Council members serving four-year staggered terms. The Mayor and Vice Mayor are elected by the City Council from their own members to serve a two-year term. On June 4, 2019, there was a Clarksburg City election, and three of the seven Council seats were on the ballot. Marino was one of the three new Council members elected for a four-year term, commencing on July 1, 2019, and ending on June 30, 2023. As a Council member, Marino receives compensation and benefits from the City.

Historically, City elections were held every two years on the first Tuesday in June in odd-numbered years. The City of Clarksburg decided, in order to increase voter turnout, to amend its City Charter to hold its elections on the same day and year as

West Virginia's primary election day, which is the second Tuesday in May in even-numbered years. The City Charter amendment required the City Council members to pass an ordinance ("New Election Date Ordinance") proposing the Charter amendment and then place the New Election Date Ordinance on the next municipal election ballot for approval by the voters in the June 2021 City election.

The change to a new election date required the City to reconcile the Council members' terms of office with the change from odd to even year elections so that there would not be vacancies on City Council. The proposed ordinance ("Direct Election of Mayor and Extension of Terms Ordinance") created two sets of five-year terms of office for City Council members. Importantly, the Direct Election of Mayor and Extension of Terms Ordinance stated that the three Council members who were first elected in June 2019, including the Respondent, would have their terms extended by one year, ending on June 30, 2024, instead of June 30, 2023. The City Council voted on the Direct Election of Mayor and Extension of Terms Ordinance three times in 2021 for the following purposes: a vote on first reading, a vote on second and final reading, and a vote to place the Ordinance on the next general election ballot. Marino participated in the votes for both the first reading and to place the Ordinance on the general election ballot, but was absent from the meeting at which the vote on the Ordinance's second and final reading took place.

The Direct Election of Mayor and Extension of Terms Ordinance was placed on the June 1, 2021, General Election ballot and was passed by the voters; hence, the terms of office of Marino and two other Council Members were extended by one year, until June 30, 2024, under the terms of the newly passed Ordinance.

Thereafter, the City Council determined that there were defects in the Charter Amendments passed during the 2021 election. In 2023, to fix the defects in the Charter Amendments, the City Council proposed two additional ordinances: Charter Amendment No. 23-4 “An Ordinance of the City of Clarksburg Amending Sections 5, 25, and 38 of the City Charter” (hereinafter “Charter Amendment 23-4”) and Ordinance No. 23-5 “An Ordinance Regarding Charter Amendments and Elections” (hereinafter “Ordinance Placing Three Council Seats on Upcoming Ballot”) (collectively “New Ordinances”). Notably, Charter Amendment 23-4 contained a provision ending the terms of office for the three seats elected in June 2019, on their original expiration date of June 30, 2023, and placing those three seats on the June 6, 2023, election ballot for the voters to elect three council members to serve a one-year term. The Ordinance Placing Three Council Seats on Upcoming Ballot resulted in Marino’s seat and the two other seats being on the June 6, 2023, municipal election ballot.

There was a first reading and second and final reading for both New Ordinances; hence, the City Council voted on the New Ordinances on four occasions. The Respondent participated in all votes and voted in opposition to having his Council Seat on the 2023 ballot. Hence, Marino’s vote constituted a vote in favor of maintaining his extended term of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing him to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023.

Count One: On **January 21, 2021**, Marino violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Direct Election of Mayor and Extension of Terms Ordinance’s first

reading to extend his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.

Count Two: On **April 1, 2021**, Marino violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote to put the Direct Election of Mayor and Extension of Terms Ordinance, which would extend his term of office, on the June 1, 2021, General Election ballot. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself.

Count Three: On **February 2, 2023**, Marino violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on Charter Amendment No. 23-4's first reading which affected the length of his term of office. Marino's vote constituted a vote in favor of maintaining his extended term of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing him to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself.

Count Four: On **February 16, 2023**, Marino violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on Charter Amendment No. 23-4 second and final reading which affected the

length of his term of office. Marino's vote constituted a vote in favor of maintaining his extended term of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing him to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself.

Count Five: On **February 2, 2023**, Marino violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Ordinance Placing Three Council Seats on Upcoming Ballot's first reading which affected the length of his term of office. Marino's vote constituted a vote in favor of maintaining his extended term of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing him to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself.

Count Six: On **February 16, 2023**, Marino violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Ordinance Placing Three Council Seats on Upcoming Ballot's second and final reading which affected the length of his term of office. Marino's vote constituted a vote in favor of maintaining his extended term of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing him to serve an additional year beyond the original four-year term that

otherwise would have expired on June 30, 2023. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself.

Count Seven: Marino used his office for private gain in violation of the Ethics Act, at W. Va. Code § 6B-2-5(b)(1) by knowingly and intentionally participating in votes in which he had a financial interest.

ENTERED: June 21, 2023



Michael A. Kawash, Chairperson
Probable Cause Review Board



Daniel J. Guida, Member
Probable Cause Review Board