

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: DON TRACY) OEIG Case #18-01946

OEIG FINAL REPORT

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and to Don Tracy at his last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

I. ALLEGATIONS

On September 17, 2018, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) received a complaint alleging that Don Tracy, Chairman of the Illinois Gaming Board (Gaming Board), made an illegal campaign contribution of \$1,000 to Friends of Seth McMillan. The complaint alleged that the campaign contribution amounted to political activity, in which Mr. Tracy is prohibited by law from engaging as a member of the Gaming Board.

II. BACKGROUND

A. Illinois Gaming Board

The Riverboat Gambling Act (the Act) established the Illinois Gaming Board, and gives it the power and duties to administer, regulate, and enforce the system of riverboat gambling in the

State.¹ The Gaming Board consists of five members, appointed by the Governor and confirmed by the Senate, to serve three-year terms.² The Governor designates the Chairman.³ Members of the Gaming Board are prohibited from engaging in any political activity, which the Act defines as any activity in support of or in connection with any campaign for elective office or any political organization.⁴ The Governor may remove any member of the Board for engaging in any political activity.⁵

B. Don Tracy and Wanda Tracy

Secretary of State records show that the Governor appointed Don Tracy as member and Chair of the Gaming Board effective February 2, 2015. The records show that Don Tracy's signed Oath of Office was filed with the Secretary of State on January 30, 2015.⁶ He currently holds that position. He has been a partner with Brown, Hay & Stephens LLP, a law firm in Springfield, since 1995. Wanda Tracy is his wife.⁷

III. INVESTIGATION

The State's Election Code requires every political committee to file quarterly reports of contributions with the Board of Elections. For contributions in excess of \$150, the committee must disclose the contributor's name, address, date, and amount of the contribution and, if the contributor gave more than \$500, the contributor's occupation and employer.⁸ For a contribution of \$1,000 or more, the committee must file a special stand-alone report, known as an A-1 report.⁹ Every disclosure report must be verified as true and correct either by the committee's treasurer or by the candidate herself or himself.¹⁰

A. Political Contributions Made by Don Tracy Before Becoming Chairman of the Gaming Board

¹ 230 ILCS 10/5(a)(1). The Gaming Board's jurisdiction now also includes oversight of video gaming operations in Illinois. 230 ILCS 40/78.

² 230 ILCS 10/5(a)(2) & (3).

³ 230 ILCS 10/5(a)(2).

⁴ 230 ILCS 10/5(a)(5.5). Specifically excluded from this prohibition are (i) activities relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act); (ii) activities relating to collective bargaining; and (iii) activities that are otherwise in furtherance of the person's official State duties or governmental and public service functions. *Id.*

⁵ 230 ILCS 10/5(a)(6).

⁶ The records also show that the Governor withdrew this appointment on January 25, 2016, at 4:29 p.m., and at 4:30 p.m. appointed him to the position through July 1, 2016. On July 15, 2016, the Office of the Governor filed another appointment and signed Oath of Office, reappointing Don Tracy as member and Chair of the Gaming Board until July 1, 2019. The Senate confirmed the appointment on June 21, 2017.

⁷ To avoid confusion, this report will refer to Mr. and Mrs. Tracy by their full names.

⁸ 10 ILCS 5/9-10(b), 5/9-11(a)(4); 26 Ill. Admin. Code § 100.70.

⁹ 10 ILCS 5/9-10(c); 26 Ill. Admin. Code § 100.70.

¹⁰ 10 ILCS 5/9-11(e).

Investigators reviewed Board of Elections disclosure records for contributions made by Don or Wanda Tracy prior to Don Tracy becoming Chairman of the Gaming Board in February 2015.¹¹ Those records showed that from 1998 until February 2, 2015:

- Don Tracy made 210 contributions to approximately 67 different political committees; and
- Wanda Tracy made only one contribution, on September 30, 2013, in the amount of \$5,300 to “Tracy for Lieutenant Governor 2014.”¹²

On the same day as Wanda Tracy’s single contribution, Don Tracy also made a contribution of \$5,300 to “Tracy for Lieutenant Governor 2014.” At the time, \$5,300 was the maximum contribution an individual could make to a candidate political committee.¹³

Investigators requested that Don Tracy produce copies of 26 checks corresponding to political contributions identified in the Board of Elections records as made in 2014 in order to determine their origin. Don Tracy declined to provide the checks, stating through his attorney that he would not produce the checks because the contributions predated his service as a State employee.

B. Contributions Made After Don Tracy Became Chairman of the Gaming Board

According to Board of Elections records, Don and/or Wanda Tracy made 30 contributions to various political committees after Don Tracy became Chairman of the Gaming Board on February 2, 2015. The Board of Elections records showed that from February 2, 2015 until October 29, 2018:

- Don Tracy made 6 contributions to 5 political committees; and
- Wanda Tracy made 24 contributions.¹⁴

Investigators also subpoenaed bank account records for Don and Wanda Tracy to verify the origin of their political contributions. The bank provided records of eight deposit accounts Don Tracy owned or had signatory authority over. The records showed that Don and Wanda Tracy held one of the deposit accounts jointly (the “joint account”). Investigators identified checks written from the joint account that corresponded to 22 of the 30 contributions listed in the Board of Election records. The remaining eight contributions listed by the Board of Elections could not be located in the Tracys’ bank records. Prior to and during his OEIG interview, investigators asked

¹¹ In his interview, Don Tracy was shown a summary spreadsheet of these records. He said that the spreadsheet appeared to show contributions that he made prior to his tenure on the Gaming Board.

¹² According to the Board of Elections records, the purpose of this candidate committee was to support the candidacy of Jil Tracy for Lieutenant Governor in 2014.

¹³ State Board of Elections, Contribution Limits Per Election Cycle (Effective 1/1/13).

¹⁴ Board of Elections records reflect that on September 15, 2018, the Friends for Seth McMillan campaign committee filed a report disclosing that Don and Wanda Tracy contributed \$1,000 to the campaign on September 13, 2018. Board of Elections records further show that on September 17, 2018, Becky Edwards of the McMillan campaign emailed the Board of Elections, stating: “I have just been notified by Seth McMillan that the A-1 [report] that I filed on 9/15/18 should not have referenced Don Tracy *only* Wanda Tracy. I was unaware of this when I filed the A-1 since both names appeared on the check and I was not told to remove Mr. Tracy from the donation.” Board of Elections records currently reflect that Wanda Tracy alone contributed \$1,000 to Friends for Seth McMillan on September 13, 2018.

Don Tracy to provide payment records of those eight contributions. Prior to his OEIG interview, Don Tracy produced one record of an online contribution and one additional check.¹⁵ After his interview, Don Tracy confirmed, through his attorney, that he did not have any other records that the OEIG requested.

All 30 of the contributions listed below were made to a political committee that was either a candidate committee, a political party committee, a political action committee, or an independent expenditure committee. Furthermore, the supporting bank records and records provided by Don Tracy show the following:

- 23 contributions were made from the joint account.
- Nine checks written from the joint account had the preprinted name, “Don Tracy, Attorney at Law” and 13 checks written from the joint account had the preprinted names of “Don Tracy” and “Wanda Tracy.”
- Nine checks written from the joint account had the preprinted name “Don Tracy” or “Don Tracy, Attorney at Law” crossed out.
- One of the checks written from the joint account had no preprinted name, and “Wanda Tracy” was written in.
- All of the checks written from the joint account that were signed had signatures in the name of “Wanda Tracy.”
- The payment source for six contributions could not be located but the Board of Elections lists three of these contributions as being from Don Tracy and three as being from Wanda Tracy.

This information is further detailed in the chart below.

¹⁵Don Tracy provided a receipt for an October 24, 2018 online contribution to Rauner for Governor and a check dated October 13, 2017 payable to Friends for Steve McClure. He also provided a check dated May 11, 2017 payable to Citizens for Rauner, which investigators already had in their possession.

Contributions Made After February 2, 2015

Date	Amt.	Contribution Recipient	Payment Source According to Financial Records	Payment Source Shown by Board of Elections
3/20/15	\$200	Friends for Senor	not located	Don Tracy
5/27/15	200	Central Illinois for Responsible Government, NFP	not located	Don Tracy
8/25/15	1,000	Sangamon County Republican Foundation	Joint account check unsigned (preprinted name "Don Tracy, Attorney at Law")	Don Tracy
10/13/15	2,400	Jil Tracy for State Senate	Joint account check signed "Wanda Tracy" (no preprinted name)	Wanda Tracy
5/2/16	210.10	Central Illinois for Responsible Government, NFP	not located	Don Tracy
8/24/16	1,000	Sangamon County Republican Foundation	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law")	Wanda Tracy
10/12/16	250	Citizens to Elect Judge April Troemper	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law")	Wanda Tracy
11/6/16	500	Friends of Sara Wojcicki Jimenez	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law")	Wanda Tracy
2/6/17	250	Sangamon County Republican Central Comm	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law")	Don Tracy ¹⁶
5/24/17	1,000	Citizens for Rauner, Inc	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law")	Wanda Tracy
5/30/17	100	Citizens for Rauner, Inc	not located	Wanda Tracy
8/7/17	1,000	Sangamon County Republican Foundation	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law")	Wanda Tracy
8/14/17	1,000	Citizens for Rauner, Inc	not located	Wanda Tracy
11/29/17	500	Friends of Mike Murphy	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law" crossed out and Wanda Tracy written in)	Wanda Tracy

¹⁶ The name is shown in Board of Elections records as "D.R. Tracy" with an address matching Don Tracy's home address.

Date	Amt.	Contribution Recipient	Payment Source According to Financial Records	Payment Source Shown by Board of Elections
12/1/17	200	Friends of Steve McClure	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy, Attorney at Law" crossed out and Wanda Tracy written in) ¹⁷	Wanda Tracy
1/11/18	1,000	Citizens for Rauner, Inc	Joint account check signed "Wanda Tracy"	Wanda Tracy
3/6/18	1,000	Citizens for Rauner, Inc	Joint account check signed "Wanda Tracy"	Wanda Tracy
4/23/18	500	Citizens for Rauner, Inc	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
5/15/18	500	Friends of Steve McClure	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
6/6/18	300	Sangamon County Republican Central Comm	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
6/11/18	1,000	Sangamon County Republican Foundation	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
6/12/18	250	Brady for Senate Inc	Joint account check signed "Wanda Tracy"	Wanda Tracy
6/26/18	1,000	Citizens for Erika Harold	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
7/9/18	250	House Republican Organization	Joint account check signed "Wanda Tracy"	Don Tracy
8/3/18	250	Citizens for Senor for State Rep	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
8/23/18	1,000	Senger for Comptroller	not located	Wanda Tracy
9/13/18	1,000	Friends for Seth McMillan	Joint account check signed "Wanda Tracy"	Wanda Tracy
9/14/18	2,000	Citizens for Rauner, Inc	Joint account check signed "Wanda Tracy"	Wanda Tracy
9/29/18	250	Friends of Tim Butler	Joint account check signed "Wanda Tracy" (preprinted name "Don Tracy" crossed out)	Wanda Tracy
10/29/18	1,000	Citizens for Rauner, Inc.	Online donation receipt in the name of "Wanda Tracy" ¹⁸	Wanda Tracy

¹⁷ Don Tracy provided the copy of this check pursuant to the OEIG's request.

¹⁸ Don Tracy provided the copy of this receipt pursuant to the OEIG's request.

C. Don Tracy's Chairmanship of Central Illinois for Responsible Government While He Was Gaming Board Chairman

In addition to identifying political contributions made by Don Tracy, or from the joint account, following Don Tracy's appointment as Gaming Board Chairman, investigators discovered that according to the Board of Elections records, Don Tracy continued to serve on two political committees after he became Gaming Board Chairman.

Board of Elections records show that on February 25, 2014, an independent expenditure political committee named "Illinoisans for Jil Tracy" was created with Don Tracy as its chairman. The committee name later changed to "Don Tracy Illinois Committee" on March 3, 2014, and finally changed to "Central Illinois for Responsible Government, NFP" on July 15, 2014. Board of Elections records reflect that the committee filed the required quarterly reports for each quarter, 2014 through 2017, and were electronically signed by the committee treasurer. The Board of Election records also indicate that Don Tracy made two contributions to Central Illinois for Responsible Government: a \$200 loan on May 27, 2015; and a contribution in the amount of \$210.10 on May 2, 2016.¹⁹ On January 3, 2018, the committee filed a Final Report with the Board of Elections, thereby closing the committee. According to the Board of Elections records, Don Tracy was the chairman of the committee during the entirety of its existence.²⁰

D. Interview of Don Tracy

On April 17, 2019, investigators interviewed Don Tracy, who said that he was appointed to be Gaming Board Chairman on January 31 or February 1, 2015, and that his primary duty is to chair the meetings of the Gaming Board. He also said that he has been a partner with the law firm of Brown, Hay & Stephens since 1995.

Don Tracy acknowledged that as a member of the Gaming Board, he is not allowed to engage in political activity. He said that when he was first appointed to the Board, he was told that he could not engage in political activity, but was not told what "political activity" meant. He said that at the time he became Chairman, he believed that political activity meant no solicitation, campaigning, or promoting candidates. Later, he said, he learned that political activity may include making political contributions but could not recall exactly how or when he learned this.

Don Tracy said that after he became Gaming Board Chairman, he told his wife, Wanda Tracy, he could not make contributions to political committees any longer. He said that he could not tell her to make political contributions, and that any contributions she made had to be of her own volition and her own decision. He said that he told his wife to cross his name off any checks that she wrote, because he could not make political contributions. He confirmed that he and his wife hold a joint bank account together; he also acknowledged that joint owners of an account each owns the account.

¹⁹ A loan constitutes a contribution under the Election Code. 10 ILCS 5/9-1.4(A)(1). Investigators were unable to find bank records for either of these contributions.

²⁰ Following Don Tracy's OEIG interview, investigators discovered Board of Elections records indicating that a Don Tracy, with a home address matching Don Tracy's home address, also was the chairman of the candidate political committee "Friends of Frank Edwards," from June 28, 2012 until the committee closed on April 18, 2017.

Investigators asked Don Tracy about each of the contribution checks listed in the “Contributions Made After February 2, 2015” table set out above (the “contribution checks”). He said that his wife, not he, made all of the contributions represented by the checks, other than the March 20, 2015 contribution. When asked whose decision it was to make a certain contribution, each time he said it was his wife’s decision. He said that he did not recall discussing the contributions with her at or before the time they were made, except for two contributions that he said he may have discussed with her, including the contribution of \$250 to the Sangamon County Republican Central Committee on February 6, 2017, and the contribution of \$1,000 to Friends for Seth McMillan on September 13, 2018. He said that he did not recall whether he was aware of any of the contributions at the time they were made, except for the February 6, 2017 contribution, which he said he may have been aware of, and the September 13, 2018 contribution, which he said he generally knew about but did not know any details. According to Don Tracy, he did not direct his wife or tell her to make any of the contributions.

Don Tracy identified his wife’s signature on each of the contribution checks on which a signature appears, and also identified her handwriting as appearing on all of the signed contribution checks. As for the unsigned contribution check (the August 25, 2015 contribution of \$1,000 to the Sangamon County Republican Foundation), Don Tracy said that the handwriting on the check appeared to be his wife’s, but he was not sure. He said it was definitely not his handwriting.

Investigators asked Don Tracy about the preprinted name or names on each of the contribution checks. He said that at one time, the account checks displayed only his name because an attorney’s checks were more readily accepted for payments to the Clerk of Court.²¹ For each of the contribution checks on which both names appear and his is crossed off, Don Tracy said that his wife crossed it off, as they had discussed. According to Don Tracy, he did not make any contributions after he became Chairman; all were made by Wanda Tracy.

Investigators also showed Don Tracy records of the Board of Elections that showed that he made a contribution of \$200 to the candidate political committee Friends for Senor on March 20, 2015. He said that he may have made the contribution, but without seeing the check he could not be sure.²² According to Don Tracy, the contribution was made prior to his first day serving on the Gaming Board; he said that his first day of work on the Board was March 25 or March 26, 2015, the date of the Board’s first meeting following his appointment. Following his interview, investigators asked Don Tracy to produce the check constituting the contribution. Through his attorney, Don Tracy responded that he did not have a copy of the check, but believes he made the contribution because it was prior to his first day on the job as Chairman of the Gaming Board, and was before he learned or was told that political activity included making political contributions.

Investigators asked Don Tracy about the political committee Central Illinois for Responsible Government NFP (CIRG). He said that he became chairman of CIRG when the committee was created in early 2014 and remained its chairman until the committee closed. He said that he could not recall when the committee closed, but that it was later than 2016. He said

²¹ Regardless whether Wanda Tracy’s name appeared on the checks, he said, the account has always been a joint account.

²² Investigators were unable to identify this contribution in the Tracys’ bank records obtained.

he never resigned as CIRG's chairman. According to Don Tracy, CIRG ran ads during the governor's race in 2014, but it had no political activity after 2014. After 2014, he said, there was nothing for the committee to do except file "maintenance reports," which the committee treasurer did. He stated that after 2014, the committee was inactive and engaged in zero political activity. It only kept its bank account open, paid fines, and closed down. Aside from his chairmanship of CIRG, when asked if he had held an office in a political committee during his tenure on the Gaming Board, Don Tracy said he had not.²³

Investigators asked Don Tracy about Board of Elections records which indicate that he made a \$200 loan to CIRG on or about May 27, 2015. He said that he did in fact make the loan to CIRG so that the committee could pay a fine, due to filing a report late, to the Board of Elections. He said that he made the loan via an online transaction from the joint bank account. Investigators showed him a Board of Elections record showing that he made a second contribution to CIRG on May 2, 2016 in the amount of \$210.10. He said that he did not recall making the second contribution, that he did not know if he made that contribution, but that he had no reason to believe that the Board of Elections record was wrong. Investigators asked Don Tracy to produce the checks constituting the two contributions to CIRG. Through his attorney, he responded that he believed the 2015 loan and the 2016 payment/contribution were made via an online transfer from one bank account to another, and is not certain but assumes that they were made to cover bank service charges and other corporate/committee maintenance expenses.

IV. ANALYSIS

The Riverboat Gambling Act prohibits Don Tracy, as a member of the Gaming Board, from engaging in any political activity.²⁴ "Political" activity under the Act is defined as "any activity in support of or in connection with any campaign for federal, State, or local elective office or any political organization," with exceptions not relevant to this case.²⁵ The Act does not define "political organization," but the State Officials and Employees Ethics Act defines the same term as a party, committee, or other organization that is required to file a statement of organization with the State Board of Elections under the Election Code.²⁶ Organizations required to file include candidate committees, political party committees, political action committees, and independent expenditure committees.²⁷

The OEIG's investigation revealed that Don Tracy engaged in political activity during his tenure as Gaming Board Chair. Don Tracy served as chairman of the political committee CIRG for nearly two years after he became Gaming Board Chair, until the committee was closed on

²³ Following his OEIG interview, investigators discovered Board of Elections records indicating that a Don Tracy, with a home address matching Don Tracy's home address, also was the chairman of the candidate political committee "Friends of Frank Edwards," from June 28, 2012 until the committee closed on April 18, 2017. However, the OEIG did not identify any contributions from Don Tracy to that committee or any other activity by Don Tracy relating to it during his tenure with the Gaming Board, and accordingly elected not to attempt to re-interview him regarding this.

²⁴ 230 ILCS 10/5(a)(5.5).

²⁵ 230 ILCS 10/5(a)(5.5).

²⁶ *State Officials and Employees Ethics Act*, 5 ILCS 430/1-5. The Ethics Act prohibits all State employees from performing political activity during any compensated time or utilizing State resources. 5 ILCS 430 5/15. The OEIG found no evidence that Don Tracy engaged in any political activity while he was on State time or with State resources.

²⁷ *Election Code*, 10 ILCS 5/9-1.8, 5/9-3(a).

January 3, 2018. Although he attempted to justify his continued role with CIRG on the basis that he claimed the committee was inactive while he was Gaming Board Chair, this was clearly not the case. Don Tracy admitted that he made a loan to CIRG on May 27, 2015, after becoming Gaming Board Chair, in order to pay off fines incurred by the committee, and he did not dispute making a second contribution to the committee in 2016.

In addition to his financial support of CIRG and continued service as its chairman during his tenure as Gaming Board Chair, Don Tracy admitted to contributing to the candidate political committee Friends for Senor on March 20, 2015. He attempted to excuse this conduct by saying, first, that he made the contribution before he attended his first Gaming Board meeting in late March 2015. However, Don Tracy became a member of the Gaming Board when his appointment became effective on February 2, 2015, more than a month before he made his contribution to Friends of Senor. His second excuse was that at the time he made the contribution, he did not understand that “political activity” encompassed making campaign contributions. The statute establishing the Gaming Board and this prohibition of engaging in “political activity” defines “political” broadly, as *any* activity in support of or in connection with any campaign for elective office or a political organization. This language clearly encompasses making a financial contribution as an activity in support of a political organization.

The evidence obtained in the investigation further shows that Don Tracy made a contribution to another political committee, the Sangamon County Republican Foundation, on August 25, 2015, over six months after he became Gaming Board Chair. Although the check for the contribution was unsigned and Don Tracy contended in his interview that it was not in his handwriting, Board of Elections records attribute the contribution to him. That attribution is consistent with the fact that the check for the contribution was written from his joint bank account, and bore the preprinted name of “Don Tracy, Attorney at Law.” It is also consistent with Don Tracy’s prior political activity; he had previously made four contributions to the Sangamon County Republican Foundation in the same amount as the August 25, 2015 contribution, before his appointment as Gaming Board Chair.

Indeed, Don Tracy had a long history of making hundreds of contributions to many political committees, dating back decades. In the 17 years prior to his appointment to the Gaming Board in February 2015, Don Tracy made 210 contributions to approximately 67 different political committees. By contrast, during the same period, Wanda Tracy made exactly *one* contribution to a political committee, a contribution to her sister-in-law’s campaign. It exactly matched Don Tracy’s contribution on the same day, in the same amount, and appears to have been made to maximize the amount that could be contributed.

After he became Chairman of the Gaming Board in February 2015, and was prohibited from continuing his political activity, Don Tracy appears to have made his political contributions through his wife. Beginning in 2015, his wife’s name began to appear on the checks written from the joint account for contributions to the same political committees, picking up where Don Tracy left off:

- Before Don Tracy became Chairman of the Gaming Board, he made four contributions of \$1,000 each to the Sangamon County Republican Foundation.

Wanda Tracy made none. Subsequently, Wanda Tracy's name appeared on checks written from the joint account for three \$1,000 contributions to that committee.

- Before Don Tracy became Chairman of the Gaming Board, he made twelve contributions to Brady for Senate, Inc. Wanda Tracy made none. After Don Tracy became Chairman, his wife's name appeared on a check written from the joint account for a contribution to the committee.
- Before Don Tracy became Chairman of the Gaming Board, he made nine contributions to the Sangamon County Republican Central Committee. Wanda Tracy made none. After becoming Chairman, his wife's name appeared on checks written from the joint account for two contributions to that committee.

Don Tracy maintained in his OEIG interview that his wife made all of the political contributions following his appointment as Gaming Board Chair herself, and he did not give her any direction to do so. While he did not recall discussing most of the contributions with his wife, he said that he may have discussed with her the contribution of \$250 to the Sangamon County Republican Central Committee on February 6, 2017, and the contribution of \$1,000 to Friends for Seth McMillan on September 13, 2018. Although the Riverboat Gambling Act does not prohibit spouses of Gaming Board members from engaging in political activity, given that Wanda Tracy made virtually no political contributions prior to her husband's appointment as Gaming Board Chair, it is not credible that she suddenly decided to make 26 political contributions, including 6 to the same committees Don Tracy previously supported, without any direction from her husband, or even discussion with him about it. To the contrary, the evidence supports a conclusion that Don Tracy at least discussed the contributions with his wife, and such collaboration shows that the decisions to make the contributions were, at minimum, joint decisions between the Tracys.

After Don Tracy became Gaming Board Chair on February 2, 2015, he engaged in political activity by making loans and contributions either directly, or through his wife, to political committees. In addition to providing financial support to the political committee CIRG, Don Tracy continued to serve as chairman of that committee. The allegation that Gaming Board Chairman Don Tracy engaged in political activity in violation of the Riverboat Gambling Act is **FOUNDED**.²⁸

V. FINDING AND RECOMMENDATIONS

As a result of its investigation, the OEIG finds that **THERE IS REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDING:**

- **FOUNDED** – Don Tracy engaged in political activity while a member of the Illinois Gaming Board, in violation of the Riverboat Gambling Act, 230 ILCS 10/5(a)(5.5).

²⁸ The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

Based on this finding, the OEIG recommends that the Governor take whatever action he deems appropriate with regard to Don Tracy. The OEIG further recommends that the Governor's Office take steps to ensure that any future appointees to the Gaming Board are trained on their obligations as board members, including the restrictions of the Riverboat Gambling Act relating to political activity, prior to their tenure on the Board.

No further investigative action is needed and this case is considered closed.

Date: May 31, 2019

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By: **M. Katherine Fischer**
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Reginald Spears #124
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Don Tracy
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August 30, 2019

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Re: Don Tracy's Response to OEIG Report, No. 18-01946

Dear Commissioners and Executive Director Fornoff:

For reasons unknown to me, the OEIG escalated what should have been a routine short investigation into an inflammatory political report based primarily on speculation and unsubstantiated conspiracy theory, which insults both me and my wife, Wanda Tracy, and attacks my character and long established reputation for honesty and ethical behavior. The fact that the OEIG wrote its Report to be as self-serving as possible is clear from page one.

Here, the OEIG asserts that the complaint that triggered this investigation was that I purportedly made a \$1,000 political contribution last fall while on the Illinois Gaming Board ("IGB"). Not until footnote 14 on page three, does the OEIG's Report admit that the "Board of Elections records currently reflect that Wanda Tracy alone contributed [this] \$1,000."

The OEIG continuously ignored the fact that Board of Elections' records had inaccurately attributed a donation from Wanda to me, and then relied on similarly mistaken Board of Elections' records to reach its conclusions against me. The OEIG buried this exculpatory evidence in a footnote, while going into great detail about innocuous conduct—**such as all of my political contributions since 1998 and before going on the IGB.** The only explanation is that the OEIG wanted to cast my constitutionally protected political speech in a negative context.

There are several key mistakes in the OEIG's Report: (1) the OEIG, without cause or evidence, insulted Wanda by attributing her political speech to me; (2) the OEIG's interpretation of prohibited political activity under the Illinois Riverboat Gambling Act ("RGA") is overbroad, unconstitutional, and unprecedented; (3) the OEIG attributed campaign contributions to me without evidence; and (4) the OEIG unnecessarily detailed 17 years of my constitutionally protected political speech **in a desperate attempt to justify this gross waste of scarce State government resources.**

Don Tracy
Springfield, Illinois 62701

August 30, 2019

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To be clear, I admitted to making a political contribution on March 20, 2015, over 4 and ½ years ago, after I was sworn in on the IGB. This was before my first IGB meeting,¹ before I set foot in an IGB office, before my first paid day of service, and before I learned that the OEIG had informally interpreted the RGA ban on “political activity” as applying not just to political campaigning, electioneering, and soliciting political contributions, but also to merely making political contributions to federal, state or local candidates for political office, without (a) a formal rule to this effect, (b) publishing this interpretation, or (c) asking the Office of the Illinois Attorney General for a formal opinion.

1. The OEIG, Without Cause or Evidence, Insulted Wanda by Attributing Her Political Speech to Me – (This Section Includes a Statement from Wanda Tracy)

The OEIG—without evidence—attacked my integrity and my spouse Wanda’s character. The OEIG’s Report claims that I violated the RGA’s ban on “political activity” by making political contributions *through my wife*, Wanda Tracy. The OEIG admits that “All of the checks written from the joint account that were signed had signatures in the name of ‘Wanda Tracy.’” (Report at 4.) The OEIG also admits that the Board of Elections wrongfully attributed some of these donations to me. (Report at 5, 6.) To reach its conclusion, the OEIG had to ignore the facts and call me a liar. Yet, the OEIG did not make any finding that I lied to them—perhaps because they know that they could not. To reach this conclusion, *without interviewing Wanda*, the OEIG also characterized Wanda as someone who does not think or act by herself, and speculatively concluded that Wanda’s political activity must have been at my direction. This speculative accusation was unprofessional, unnecessary, unsubstantiated, baseless, and insulting.

First, the OEIG claims that Wanda could not have engaged in political activity *all by herself* because she wasn’t very politically active before I joined the IGB. As shown by Wanda’s below letter, this is beyond false. The OEIG points to the fact that I made more political contributions before joining the IGB than she did. But this does not support their conclusion any more than a myriad of other possibilities: How does the OEIG know that Wanda didn’t participate in my political contributions before I joined the IGB? How does the OEIG know that Wanda doesn’t believe in those political causes and organizations as much or more than I do? How does the OEIG know that Wanda did not want to give those political contributions more after I was no longer permitted to do so? Wanda was willing to interview with the OEIG, and during my interview, I suggested that the OEIG reach out to her. They did not.

¹ As I explain further below, it is important to note that the OEIG did not prove that I made this claim: I admitted it.

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Furthermore, the OEIG chose to count contributions rather than dollars contributed. (Report at 10– 1.) If the OEIG would have looked at the amounts contributed, they would have seen that I contributed way more money before I joined the IGB than Wanda contributed while I was on the IGB. In 2014, for example, according to public records easily accessible to the OEIG, I contributed over \$100,000 to political committees. In 2015, Wanda donated less than \$11,000 and in 2016, less than \$9,000. Since then, Wanda's annual contributions have not come close to my 2014 contributions (which was not my highest year). Did the OEIG consider why total political contributions would drop so dramatically if Wanda was merely acting as my puppet like they assert? If they did not, given their far afield search of decades of my pre-IGB contributions in order to allege a questionable ethics violation by a part-time public servant, they should have. If they did consider that, they should have included and addressed these public facts which severely undercut the Report's gross speculation and inflammatory accusations.

The OEIG Report concludes that Wanda did not engage in political activity before I joined the IGB solely because the Illinois Board of Elections attributes most of the pre-IGB contributions to me. The OEIG assumes that Wanda had no say or participation in any of those contributions and that all of those contributions were correctly reported—despite the fact that OEIG's own Report recognizes instances when the Illinois Board of Elections erroneously attributes checks **signed by Wanda** to me. The OEIG's own Report even acknowledges that the Board of Elections has modified their records **for this reason**. The OEIG ignores or discounts this critical fact because it does not fit their theory.

The OEIG goes further and undermines Wanda's motivations for engaging in political activity before I joined the IGB. The OEIG asserts—without evidence—that Wanda's contribution was “made to maximize the amount that could be contributed.” Since they passed on interviewing Wanda, it is beyond inappropriate for the OEIG to speculate about the motivation behind Wanda's political activities.

Second, although admitting that the RGA **does not prohibit** political contributions by spouses of IGB members (Report at 11), the OEIG repeats that Wanda made political contributions from our “joint account,” as if there were something wrong with this. The OEIG also repeatedly points out that the checks for this account had my name pre-printed on them—as if that was meaningful. If the Illinois legislature or the Governor wanted to prohibit spouses from exercising their First Amendment Rights from a joint account, they should say so. As it is, they do not. The OEIG does not have the authority to make, create, or change statutory law, especially for laws that the OEIG does not administer, such as the RGA.

Third, the OEIG also acknowledges that they could not locate the source of some of the political contributions in any of my bank accounts. Nonetheless, they still conclude—

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despite the organization's established inaccuracies and Wanda's signature on the checks—that these contributions were mine. This conclusion beggars belief.

Fourth, on page 11, the OEIG provides the following indefensible description of Wanda as a political actor:

Although the Riverboat Gambling Act does not prohibit spouses of Gaming Board members from engaging in political activity, given that Wanda Tracy made virtually no political contributions prior to her husband's appointment as Gaming Board Chair, it is not credible that she suddenly decided to make 26 political contributions, including 6 to the same committees Don Tracy previously supported, without any direction from her husband, or even discussion with him about it. To the contrary, the evidence supports a conclusion that Don Tracy at least discussed the contributions with his wife, and such collaboration shows that the decision to make the contributions were, at minimum, joint decisions between the Tracys.

Because the OEIG did not give Wanda the opportunity, I believe it is necessary to allow her to address this point herself:

Dear Executive Ethics Commission,

My name is Wanda Tracy. I am a 62 year old woman with my own political rights and autonomy. I signed the political contribution checks referenced in the OEIG's Report of my own free will.

Unlike my husband, I have not run for political office. However, I have circulated nominating petitions for several different political candidates, solicited political contributions for several candidates, organized political parade walkers, attended lots of political fundraisers, campaigned with my husband in two political races, one statewide, attended political conventions (including the 2012 Republican National convention in Tampa, Florida), and made lots of political contributions, with and without my husband, to friends, family and political acquaintances.

In addition, I have held numerous political fundraisers at my home including, among several others, a 2000 fundraiser for my friend Ann Robert when she ran for Judge, a 2010 fundraiser for my sister-in-law Jil Tracy when she ran for State representative, and a 2014 fundraiser for the Illinois Republican Party.

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Over the years, and especially since 2009 when I spent a lot of time on the statewide campaign trail with my husband, many people, including my friend Rose Long the long time Chair of the Sangamon county Republican Party, have suggested that I would be an excellent Republican candidate for public office.

Without saying so directly, based on its conspiracy theory, the OEIG *characterized me as a political puppet for my husband without even meeting or speaking to me*. The idea that I could not engage in political speech without my husband directing me to make political contributions, in this day and age, is both insulting and demeaning not just to me but to all women, and should give the OEIG and the Executive Ethics Commission serious pause.

Frankly, the OEIG owes me an apology.

Sincerely,

Wanda Tracy

"After he became Chairman of the Gaming Board in February 2015, and was prohibited from continuing his political activity, Don Tracy appears to have made his political contributions through his wife." (Report at 10.) The only way that this *appears* to be the case is if the OEIG assumes that Wanda is not her own person with her own political views.

Finally, the OEIG brings up *potential* discussions between Wanda and me regarding political speech. To be blunt, it is not the OEIG's business regarding discussions between Wanda and me in the privacy of our own home. But, the OEIG is in an untenable position: The OEIG incorrectly assumes that the RGA's ban on political activity is so broad that it *encompasses political speech between spouses*. One can practically guarantee that this overreach *will not* be included in the Governor's new training to the IGB.

Wanda thinks for herself and exercises her political speech rights as she sees fit. Had the OEIG interviewed Wanda they would have quickly learned that she thinks and acts for herself. Concluding without evidence that a wife is a puppet to her husband when it comes to making political contributions from a joint account is based on some archaic and unenlightened view of marriage and women and has no place in a professional State investigative report by an otherwise professional state agency.

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2. The OEIG's Interpretation of Prohibited "Political Activity" under the Illinois Riverboat Gambling Act Is Overbroad and Unconstitutional

Under the overly broad definition of prohibited political activity that the OEIG asserts, it could have also made findings against me for voting in primaries and general elections while a member of the IGB. It is not clear how the OEIG reached its conclusions that the RGA prohibits political speech in the form of campaign contributions but does not prohibit voting.

Clearly, the Illinois legislature could not have constitutionally intended to stop IGB members from voting. So how can they prohibit IGB members from engaging in all political speech on their personal time, including federally protected political speech?

The only attempt the OEIG makes to justify its unconstitutional informal interpretation of the RGA is an incomprehensible reference to the Illinois State Officials and Employees Ethics Act. Here, the OEIG wants to have their statutory interpretation both ways by asserting that the definition of political activity under the RGA is **not clarified** by "political activity" under the Ethics Act, but the definition of prohibited "political organization" is **clarified** by the Ethics Act. (Report at 9, n.26.) If the OEIG used the Ethics Act as reference fairly, they would have acknowledged that the Ethics Act—like comparable federal laws—considers political contributions a form of prohibited "political activity" only if it is made **on state time**. The OEIG admits that it "found no evidence that Don Tracy engaged in any political activity while he was on State time or with State resources" or, as I would add, on state property. (Although, a reader would have to dig to footnote 26 on page nine to find that conclusion.) In other words, as admitted by the OEIG Report at footnote 26, I did not even arguably violate the prohibition on political activity under the Ethics Act.

A blanket prohibition on political speech is unconstitutional. Even the most restricted federal employees under similar federal laws are "largely limited to exercising the **most basic rights of civic participation, such as voting, making political contributions, and expressing individual opinions.**"²

In its Report, the OEIG failed to acknowledge political speech rights at all. Instead of trying to codify its informal interpretation by seeking formal rule-making, asking the Office of the Illinois Attorney General for a formal opinion, or even publishing its own interpretation of the RGA, the OEIG appears to want to use me as a test case to retroactively apply their informal unconstitutional reading of the RGA.

² U.S. Food & Drug Administration, *The Hatch Act: Political Activity and the Federal Employee* (May 22, 2019) (emphasis added), available at <https://www.fda.gov/about-fda/ethics/hatch-act-political-activity-and-federal-employee>.

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To distract readers from this truth, the OEIG—with no real evidence—has attacked my character and attempted to destroy my sterling reputation for honesty, integrity, and ethical behavior. I have built this reputation as an attorney of 43 years, licensed in three states (Illinois, Missouri, and Tennessee). I have never before been disciplined or sanctioned by any state or court or other jurisdiction, notwithstanding that I have tried jury cases in Arkansas, California, Illinois, Maryland, and Tennessee and argued appeals in Illinois, Louisiana, Missouri, and Tennessee. I have also been an honest public servant, who has served the public, not himself or special interests, in more than one capacity. I have spent a lifetime building the reputation the OEIG needlessly attacked. The fact that the OEIG went even further and accused my wife of 37 years of being a subservient political puppet is especially inappropriate.

3. My Clearly Protected Political Contributions before Joining the Illinois Gaming Board

The OEIG's report should have been simple: Over 4 ½ years ago, based on an OEIG informal, overly broad and unconstitutional interpretation of vague statutory language, I made a political contribution that I shouldn't have made. Instead, the OEIG took great lengths to detail over **17 years of my political contributions** for no good reason. This obscured the issue of this case and wrongfully made legal and innocuous conduct look like a violation: "Indeed, Don Tracy had a long history of making hundreds of contributions to many political committees, dating back decades." (Report at 10.) Constitutionally protected political activity is not a violation; it is a right. Any political activity I engaged in before joining the IGB is irrelevant.

If the OEIG wanted to insist that my pre-IGB position speech was relevant, then they should not have presented such a biased characterization of the facts. The OEIG claims that my legal contributions were high and Wanda's were low. As above, the OEIG acknowledged that the Illinois Gaming mistakenly attributed political contributions to me that were actually signed checks from Wanda. The OEIG made no indication that they went back through the 17 years of contributions and determined whether any of the checks came from Wanda. Doing so would have risked undermining their foregone conclusion. State taxpayers—Wanda and myself included—demand better from a purportedly independent and fair watchdog agency than being biased toward its own tunnel vision.

4. Alleged Political Contributions while I Was on the Illinois Gaming Board

I made a \$200 political contribution on March 20, 2015, after I was sworn in as Chair to the IGB, but before my first IGB meeting. To be clear, the OEIG did not prove that I made this contribution; I admitted it.

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In comparison, the OEIG asserted that I made this donation because the Board of Elections' records said that I did. As demonstrated in the OEIG's Report, the Board of Elections records are not always accurate and have mistakenly attributed some of Wanda's donations to me. The Board of Elections has made several corrections on this point. The OEIG does not have record of a check, a signature, *or even a bank account* for this contribution. In my interview, I told the truth: I did not recall whether I made a \$200 contribution *over four years earlier*. After the interview, I reflected on the issue, and I admitted that I believed I made the contribution.

This was before my first action on the IGB and before I received any guidance that the RGA may be interpreted to prohibit IGB members from engaging in political speech. This is not an excuse as the OEIG Report projects on me. Assuming that the RGA in fact does prohibit political contributions and is constitutional—which are big assumptions—this is an explanation for an innocent mistake. The OEIG makes this point when they ask the Office of the Governor to institute training for IGB members on the restrictions of political activity “**prior to their tenure on the Board.**” (Report at 12 (emphasis added)).

The OEIG also claims that I made a \$1,000 donation to the Sangamon County Republican Foundation on August 25, 2015, because (1) the unsigned check had my name printed on it, (2) I had previously donated to the Sangamon County Republican Foundation, and (3) the Board of Elections attributed the contribution to me.

Each of these points is belied by the facts of the OEIG's own report:

- (1) The unsigned check was from my joint account with Wanda—so yes, it had my name preprinted on it—but this particular check **had Wanda's handwriting on it;**
- (2) While I donated to the Sangamon County Republican Foundation before joining the IGB, Wanda donated to the Sangamon County Republican Foundation on other occasions while I was on the IGB—**which is the only relevant period.**
- (3) The OEIG admits that **the Board of Elections inadvertently attributed some of the contributions by Wanda to me.** The actual allegation against me, for example, was a check from Wanda, which the Board of Elections originally attributed to me and later corrected. *See* Report at 3 n.14). The OEIG's Report also reflects several other instances when they admit Wanda signed the check and, yet, the Board of Elections erroneously attributes the contribution to me. (*See* Report 5–6 (contributions on February 6, 2017, and July 9, 2018)).

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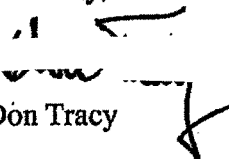
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5. Alleged Political Activities while I Was on the Illinois Gaming Board

The OEIG also asserts that I engaged in political activity by being the chair of the Central Illinois for Responsible Government, which was inactive while I was on the IGB. OEIG asserts that "this was clearly not the case" and that the Central Illinois for Responsible Government was active because it incurred maintenance fees, which I covered. The Central Illinois for Responsible Government incurred fees, however, by merely existing—not by engaging in political activity. As above, if the definition of "political activity" includes being the Chair of an inactive committee, a publicly disclosed fact, that should have been made clear to me before or at any point during my tenure on the IGB. It was not.

In sum, the OEIG wanted to reach an inflammatory conclusion. So it did. To the extent the OEIG did not have evidence, they claimed that the lack of evidence supported their conclusion. To the extent the OEIG had contradictory evidence, they ignored it.

Sincerely,


Don Tracy



Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY
RESPONSE FORM

Case Number: 18-01946

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

☒ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

See attached

☐ We will implement some or all of the OEIG recommendations but will require additional time to do so.

We will report to OEIG within _____ days from the original return date.

Supplemental training to occur

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

Signature

Deputy General Counsel / Ethics Officer

Print Agency and Job Title

Whitney Rosen

Print Name

Date

June 20, 2019



OFFICE OF THE GOVERNOR

207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

JB PRITZKER
GOVERNOR

June 20, 2019

Via e-mail to Fallon Opperman on behalf of:

Susan M. Haling
Executive Inspector General
Office of Executive Inspector General
69 West Washington, Suite 3400
Chicago, Illinois 60602

Re: OEIG Complaint Number # 18-01946 Response to Final Report

Dear Executive Inspector General Haling:

This letter is in response to the Final Summary Report ("Final Report") issued to the Governor's Office by the Office of Executive Inspector General ("OEIG") in the above-captioned matter. The OEIG determined there was reasonable cause to find that Chairman Don Tracy engaged in political activity while a member of the Gaming Board, in violation of the Riverboat Gambling Act, 230 ILCS 10/5(a)(5.5).

Based on this finding, the OEIG made the following recommendations: (1) the Governor should take whatever action he deems appropriate with regard to Don Tracy; and (2) the Governor's Office should take steps to ensure that any future appointees to the Gaming Board are trained on their obligations as board members, including the restrictions of the Riverboat Gaming Act relating to political activity, prior to their tenure on the Board.

The Governor's Office has reviewed the Final Report and accepts and agrees with the OEIG's recommendations. To implement the recommendations, the Governor's Office will ensure that the following takes place:

- Don Tracy will no longer serve on the Gaming Board. The Governor's Office accepted his letter of resignation, which he submitted earlier this year.
- The Gaming Board will address the Riverboat Gaming Act's restrictions on political activity as a supplement to annual ethics training. Current Board appointees will receive the supplemental ethics training by August 30, 2019.

- The Gaming Board will develop onboarding training for new appointees regarding their obligations as board members, including the restrictions of the Riverboat Gaming Act relating to political activity. Future appointees will complete this training prior to serving on the Board.

If you have any questions or require any further information with respect to this response, please contact gov.compliance@illinois.gov.

Sincerely,



Whitney Rosen
Deputy General Counsel & Ethics Officer
Office of Governor JB Pritzker