

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 18-0001

IN THE MATTER

OF

HAROLD MACGILVRAY

**ORDER TO SHOW CAUSE**

1. The State Ethics Commission (“Commission”) is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.
2. On September 21, 2017, the Commission found reasonable cause to believe that Harold MacGilvray violated G.L. c. 268A, § 23(b)(2)(ii), and authorized adjudicatory proceedings.

**FACTS**

3. MacGilvray is a paid appointed Patrol Officer for the City of Medford Police Department (“MPD”) and has served in this position for twenty years.
4. MacGilvray is also president of the Medford Police Patrolmen’s Association (“MPPA”) and has served in this position since around 2004.
5. On or about Saturday, October 29, 2016, MacGilvray was on paid duty as a MPD Patrol Officer at a community event in Medford.
6. While on duty at the community event and in his MPD uniform, MacGilvray posed for a photograph with an individual costumed as presidential candidate Hillary Clinton and another Medford Police officer, also in uniform. The costumed individual wore a Hillary

Clinton mask and a prison-style orange jumpsuit marked 'INMATE,' and wrist shackles. MacGilvray and the other police officer posed with the costumed individual as if they were restraining a prisoner.

7. While still on duty, MacGilvray posted the photograph to the MPPA Facebook page, with the caption: "Look who MPD grabbed at the Fall Festival in Haines Square Today . . . ."
8. Later the same day, MacGilvray was on paid duty as a MPD Patrol Officer at another community event.
9. At the second event, MacGilvray posed for a photograph with an individual costumed as presidential candidate Donald Trump and two other Medford police officers. The costumed individual wore a Donald Trump mask and a business suit. MacGilvray and the other two officers were in Medford police uniforms and posed with their arms around or embracing the costumed individual.
10. The photograph was emailed to one of the officers who posed in the photograph.
11. While on duty as a MPD Patrol Officer, MacGilvray, as president of the MPPA, asked the officer to post the photograph to the MPPA Facebook page.
12. While on duty as a MPD Patrol Officer, MacGilvray authored the resulting post's caption: "Making America GREAT again in West Medford Square!!"
13. The two Facebook posts gained significant media attention and the photographs were disseminated on social media.

#### LAW

14. MacGilvray, as a Medford Patrol Officer, is a "municipal employee" as that term is defined in G.L. c. 268A, § 1(g).

15. Section 23(b)(2)(ii) prohibits a public employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
16. MacGilvray used his official position when he used public resources, including his and others' police uniforms and the work time for which he is paid as a patrol officer, to post photographs and captions on a private Facebook page that demonstrated support for one presidential candidate over another by uniformed MPD police officers.
17. MacGilvray's actions secured for a presidential candidate the privilege of the publicly demonstrated support of uniformed MPD police officers, and the implied support of the MPD itself.
18. This privilege was unwarranted because public resources may only be used to further the public interest and may not be used for private or political causes, and because MacGilvray's actions were in violation of the MPD's Rules and Regulations.
19. This privilege was of substantial value as the support of uniformed police officers for a political candidate can carry significant weight with voters, and can possibly intimidate supporters of an opposing candidate, especially when coupled with disapproval of the other candidate. The use of the photographs on social media also provided valuable political advertising.
20. This privilege was not properly available to other candidates for elected office, as appointed public employees may not use their work time or other public resources to engage in partisan political activity on behalf of or in support of any candidate for elected office.

21. Therefore, by engaging in the above-described partisan political activity while on duty and in uniform as a Medford Patrol Officer, MacGilvray violated § 23(b)(2)(ii).

WHEREFORE, Petitioner asks that the Commission:

1. Find that MacGilvray violated G.L. c. 268A, § 23(b)(2)(ii); and
2. Levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully Submitted,

Petitioner State Ethics Commission  
By its attorney,

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