

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Elissa Silverman *et al.*,)
Challenger)
)
)
v.)
)
)
S. Kathryn Allen)

Candidate.)

Administrative
Order #18-033

Re: Nominating Petition
Challenge for the Office
At-Large Ward Member
of the Council

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter initially came before the District of Columbia Board of Elections (“the Board”) on September 5, 2018, and was continued on September 7, 2018. It is a challenge to the nominating petition of S. Kathryn Allen (“Ms. Allen”) for the office of At-Large Member of the Council filed by Elissa Silverman (“Ms. Silverman”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). Ms. Silverman was represented by Mr. Joseph Gonzalez, Esq., of Schertler & Onorato, LLP, and Ms. Allen was represented by Ms. Dara Lindenbaum of Sandler Reiff Lamb Rosenstein & Birkenstock P.C. Chairman D. Michael Bennett and Board members Dionna Lewis and Michael Gill presided over the hearing on September 5, 2018, and Chairman D. Michael Bennett and Board member Dionna Lewis presided over the continued hearing on September 7, 2018. Witnesses on September 7, 2018 included Mr. Leonard Howard, Jr., Mr. Rasheed Mathus, and Ms. Mary C. Lord.

BACKGROUND

On August 8, 2018, S. Kathryn Allen submitted a nominating petition to appear on the ballot as an Independent candidate in the November 6, 2018 General Election contest for the At-

Large Member of the Council. That petition was posted for public inspection for 10 days, as required by law, and challenged on August 20, 2018 by Elissa Silverman, a registered voter in the District of Columbia. Ms. Allen submitted a petition with six thousand and sixty-eight (6,068) signatures in support of her candidacy and for ballot access. The minimum number of valid signatures required for ballot access for this office is three thousand (3,000) signatures of District voters who are duly registered in the District of Columbia. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.7, the Board of Elections Registrar accepted all 6,068 signatures for review.

Registrar's Preliminary Determination

Challenger Elissa Silverman filed a challenge to four thousand, two hundred and sixteen (4,216) signatures, enumerated by line and page number on individual "challenge sheets" filed for each petition page. The petition signatures were challenged pursuant to 3 D.C.M.R. §1607.1 of the Board's regulations on the following grounds: the signer is not a duly registered voter; the signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed; the signature is a duplicate of a valid signature; the signature is not dated; the petition does not include the address of the signer; the petition does not include the name of the signer where the signature is not sufficiently legible for identification; the circulator of the petition sheet did not meet the requirements of the statute or regulations in the circulation process at the time the petition was signed; the circulator of the petition failed to complete all required information in the circulator's affidavit; and finally, the signature is not made by the person whose signature it purports to be. The Registrar of Voters reviewed the challenge to determine the sufficiency of the challenged signatures.

The Registrar indicated that two thousand, nine hundred and sixty-seven (2,967) of the 4,216 challenges are valid. Of the 2,967 valid challenges, 612 are not registered; 845 require address changes; 93 are inactive; 197 are duplicate signatures; 117 are illegible; 50 contain incomplete identification information; 189 signatures do not match; and 864 signatures were collected by nonresident circulators who failed to file their nonresident forms. The Registrar preliminarily determined the candidate's nominating petition contained three thousand, one hundred and one (3,101) presumptively valid signatures, which is 101 signatures above the number required for ballot access.

Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel convened a pre-hearing conference with both parties' counsel on Tuesday, September 4, 2018. In support of the challenger's claim of fraud permeating the petition process, Mr. Gonzalez primarily alluded to a Washington Post newspaper article published August 29, 2018 entitled: "People accused of collecting phony signatures in D.C. race say their names appear forged," by Fenit Nirappil. Mr. Gonzalez's filed a motion requesting the Board subpoena 5 witnesses to attest to their not having signed the nominating petition as signatories nor as circulators. Mr. Gonzalez contended that if petition sheets purportedly circulated by Mr. Leonard Howard, Ms. Temeka Lewter, Ms. DeShawnda Harris were in fact not circulated by them, and their signatures were forged on the petition affidavits, then all of those petition sheets should be discounted. Moreover, Mr. Gonzalez sought testimony from Mr. Kevin Parker, a circulator and the former campaign manager of the Allen campaign as to his responsibility for providing quality control in the petition process. Finally, Mr. Gonzalez asserted Mr. Khalil Thompson and his company, Strategies for Change,

were at the center of this petition gathering effort by the Allen Campaign's own admission, and they should be held to account for the patent defects in the petition.

Of the 864 rejected signatures collected by non-resident circulators, 638 were collected by Mr. David Office. In an effort to reclaim David Office's 638 rejected signatures, Ms. Lindenbaum presented the Non Resident Petition Circulator Registration Form (hereinafter "Non Resident Form") he executed for another candidate in the race, Mr. Rustin Lewis.¹ Ms. Lindenbaum contended Mr. Office met all the requirements of the law and five of the six requirements in the regulations for nonresident circulators; moreover, by filing his nonresident circulator registration form, he consented to the Board's subpoena power. According to Ms. Lindenbaum, Mr. Office's omission did not subvert the spirit of the Nonresident Circulator process. Neither party took issue with the Registrar's findings with respect to individual signature challenges at the pre-hearing; however, both parties reserved the right to assert any differences before the Board.

The Office of the General Counsel instructed the parties to be prepared to brief the particular issue of Mr. Office's qualification as a nonresident circulator for the Allen campaign in anticipation of a hearing before the Board to determine the issue. The Office of the General Counsel further instructed Mr. Gonzalez to submit a motion formally requesting the Board exercise its subpoena powers for the particular witnesses he wished to testify. The Board met with the parties briefly the following day for a scheduling conference to make a determination with respect to the issuance of subpoenas for potential witnesses and schedule a hearing date.

September 5, 2018 Hearing Before the Board

On Wednesday September 5th, the Board convened a Hearing to entertain the Challenger's Motion to subpoena witnesses. The Challenger submitted a motion to subpoena 5 circulators: Mr.

¹ Although Mr. Office only noted Mr. Lewis's name and not the office he sought on the Non Resident Form, Mr. Lewis will be on the ballot for the office of At-Large Member of the Council.

Leonard Howard Jr., Ms. Tameka Lewter, Ms. DaShawnda Harris, Mr. Kevin Parker, and Mr. Khalil Thompson.

The Board was required to resolve this challenge by Monday, September 10, 2018. With this time constraint in mind, the Board offered to issue subpoenas returnable on Monday September 10, the last day to resolve the matter.² Both parties objected to this date as neither party would be available on September 10, and urged the Board to issue the subpoenas returnable on Friday, September 7, 2018. The Board was reluctant to issue a subpoena on one day's notice unless the subject of the subpoena could be contacted and voluntarily agreed to appear.

The Board also agreed to accept affidavits if any of the witnesses did not wish to personally appear.

Mr. Howard was contacted, and he agreed to appear on Friday September 7th. Mr. Howard was therefore issued a subpoena to appear accordingly, and the Board hearing was scheduled for September 7th at 10:00 a.m. for oral argument, in-person testimony and documentary evidence.

September 7, 2018 Board Hearing

During the Board hearing on Friday September 7, 2018, the parties argued the merits of their briefs pertaining to the signatures of Mr. Office. Ms. Lindenbaum argued Mr. Office's petitions should be accepted for three reasons: he registered as a nonresident circulator, albeit for another candidate; discounting the signatures collected due to "formal error" would put form over substance and deny the signatories their voice; and the Board's website does not indicate that a nonresident circulator must register with the Board more than once for multiple candidates. Mr.

² Pursuant to D.C. Code §1-1001.08(o)(2), "The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than 20 days after the challenge has been filed." Although the 20th day fell on Sunday September 9, 2018, such action shall be considered timely if taken on the next regular business day immediately thereafter pursuant to D.C. Code § 1-1021.01.

Gonzalez eschewed Ms. Lindenbaum's characterization of Mr. Office's omission as a formal error. He referred to it as a violation of the Board's regulations and implored the Board to not overlook their own regulation and accept the 638 signatures on the deficient nominating petition sheets of David Office.

Mr. Gonzalez then submitted a memorandum reiterating the challenger's claims raised during the pre-hearing conference and containing an amalgam of instances of petition sheets copied wholesale from the nominating petition of another candidate, Mr. Marcus Goodwin to the sheets attributable to Mr. Howard, Ms. Lewter, and Mr. Parker. The memorandum also contained notarized declarations from purported signatories and circulators and a signed statement from Ms. Tameka Lewter denying any involvement with the Allen campaign and claiming she did not sign any petition as a circulator.

Counsel for the challenger called his first witness, Mr. Rasheed Mathus, a purported signatory who signed an affidavit confirming he did not sign the nominating petition at issue. Upon direct examination, Mr. Mathus was presented with the nominating petition page purportedly containing his signature and information. His testimony under oath was that the signature on the Allen petition was forged. Mr. Mathus was asked if the purported circulator, Mr. Kevin Parker had asked him to sign the nominating petition, to which Mr. Mathus testified that he did not know Kevin Parker. Upon cross-examination, Mr. Mathus was asked if his signature was counted by the Board, but he was unsure. Ms. Lindenbaum offered that the record reflected that his signature was discounted in the Registrar's preliminary determination. Mr. Mathus' signature was on a petition circulated by Mr. Parker, and his signature was not allowed.

Mr. Leonard Howard Jr. was called as the second witness on behalf of the challenger. Mr. Howard had a total of 346 presumptively valid signatures as a result of the Registrar's preliminary

determination. Mr. Howard testified under oath that he did not sign any petitions to nominate S. Kathryn Allen as a circulator; nor did he work for her campaign in any capacity. Moreover, Mr. Howard asserted under oath that all petition pages bearing his signature on the circulator affidavit were false. Upon cross-examination, Mr. Howard testified that he has never circulated nominating petitions, but he has signed petitions in support of candidates. Mr. Howard was asked to sign his name for analysis and comparison to the signatures at issue. When asked if he had any reason to know why his name would be on the petition as a circulator, he testified that he did connect individuals who needed work in connection to the signature gathering process, but that he did not personally circulate petitions. On redirect, Mr. Gonzalez elicited from Mr. Howard that his signature from the voter registry presented to him by Ms. Lindenbaum did not match the signature from the nominating petition presented to him during direct examination.

Mr. Gonzalez then focused on the exhibits from the hearing memorandum. Exhibit 4 of the memorandum was a signed declaration of Ms. Tameka Lewter, one of the circulators challenged in whole by the challenger. Ms. Lewter's declaration states she did not circulate the petitions attributed to her. Furthermore, she asserted that her signature was forged on each petition sheet. In some instances it appears that Ms. Lewter's name was misspelled as "Lewis" on some of the sheets attributed to her. Exhibit 6 compares the petition sheets of Mr. Marcus Goodwin and Ms. Allen. Mr. Gonzalez noted that the signatures match in sequential order on both petition pages notwithstanding the petitions were circulated almost 6 months apart and the signatures themselves do not match.

Ms. Lindenbaum called Ms. Mary C. Lord to testify as to the circumstances of her signature. Ms. Lord testified that she did in fact sign Ms. Allen's nominating petition. Ms.

Lindenbaum noted for the record that Ms. Tameka Lewter was the circulator for the petition Ms. Lord admitted she actually signed once.

On cross-examination, Mr. Gonzalez presented Ms. Lord with challenger's exhibit 3, sheet 142 of 299 of the Allen nominating petition, while the sheet with her actual signature is sheet 72 of 299. Ms. Lord testified that her signature was forged on the document. When presented another petition sheet with her name, Ms. Lord noted that the signature was not hers and the address was not her address. On re-direct, Ms. Lindenbaum verified that Ms. Lord never lived at the address listed for the third signature attributed to her. Ms. Lindenbaum argued that there is a chance that another Mary Lord may have signed the document rather than an instance of forgery. Ms. Lindenbaum raised the prospect that Ms. Lewter's declaration signature differed from her voter registry signature, while her signature on the nominating petition signed by Ms. Lord looked substantially similar to her voter registry signature. Ms. Lindenbaum contends that the affidavit submitted at the September 7 hearing was unreliable because the signature on the affidavit did not match her voter registry signature, and the signatures collected by her should remain in the Registrar's preliminary determination for Ms. Allen.

DISCUSSION

The circulator's responsibility with respect to nominating petitions is to ensure integrity in the collection of signatures. The circulator is responsible for collecting authentic signatures of duly registered voters. In the instant case, the Challenger argues "brazen signature fraud" by several individuals who circulated the Allen petition. These individuals whose purported signatures appear on petition sheets now state that they did not personally circulate Allen's nominating petitions.

The challenger has raised the specter of fraud in the petition process with respect to four of the campaign circulators associated with Kathryn Allen. The Board has cause for concern that the integrity of the signature collection process was flawed. The challengers have presented evidence in the form of affidavits from purported signatories who assert their signatures were forged on the nominating petition. Moreover, Mr. Howard, through his testimony, and Ms. Lewter, through her affidavit, claim they did not circulate petitions nor sign affidavits as circulators for the Allen campaign. Furthermore, Mr. Parker, the former campaign manager, did not testify as to the circumstances surrounding why petition sheets attributed to him as the circulator appeared to be copied in sequential order from a former candidate's nominating petition. Another circulator, Ms. DeShawnda Harris, submitted sixty (60) signatures, and fifty-eight (58) of those signatures were discounted by the Registrar's preliminary determination due to patent forgeries.

The Board through its Office of the General Counsel attempted to contact Mr. Parker to no avail. The signatures attributed to Mr. Parker were not acceptable because they contained many signatures in the same sequential order as those on the nominating petition of Mr. Marcus Goodwin indicating fraud. Thus the petition sheets with Mr. Parker as the circulator were rejected.

In conclusion, the Board was presented with 3,101 presumptively valid signatures after the Registrar of Voters review. The Board eliminated 346 remaining signatures attributable to Mr. Howard as the circulator because he testified that he did not circulate the petitions nor sign as the circulator. This reduced Ms. Allen's signature total to 2,755. The Board eliminated 110 remaining signatures attributable to Ms. Lewter because she executed an affidavit in which she denied circulating nominating petitions and declared her signature was forged. This reduced Ms. Allen's signature total to 2,645. The Board also eliminated 217 remaining signatures attributable to Mr. Parker, because the petition sheets with the most instances of sequential copying from Mr.

Goodwin's nominating petition occurred on sheets listing Mr. Parker as the circulator. This reduced Ms. Allen's signature total to 2,428. The Board eliminated the 2 remaining signatures attributable to Ms. Harris because the remaining 58 signatures were blatant forgeries. Disallowing this subset of circulators reduces the candidate's total of presumptively valid signatures to two thousand, four hundred and twenty-six (2,426), which is five hundred seventy-four (574) signatures below the required minimum for ballot access. Finally while the Candidate's argument regarding Mr. Office's formal error by admission had merit, the irregularities the Board found with respect to the sheets submitted by Mr. Office compelled the Board to reject the signatures attributed to him. "Where petitions have been invalidated because of the failure of the person circulating the petition to comply with the laws, the reasoning generally seems to be that the omission raises doubts as to the validity of the signatures themselves." *Citizens Against Legalized Gambling v. District of Columbia Bd. Of Elections and Ethics*, 501 F.Supp. 786, 790 (D.D.C. 1980).

As in the case of *Brizill v. Williams*, the Board is compelled to disallow all signatures from circulators who disavow circulating the nominating petition sheets attributed to them, and/or have a taint of documented fraudulent activity. In the case of *Williams*, absent the signatures attributable to the offending circulators, it was numerically impossible for Mr. Williams to achieve ballot access, Ms. Allen's petition suffers the same deficiency. The Board is compelled to refer the alleged instances of fraud to the Office of the Attorney General pursuant to D.C. Code § 1-1001.08(b)(4).

CONCLUSION

Ms. Allen collected two thousand, four hundred and twenty-six (2,426) valid signatures, which is below the requisite 3,000 signatures for ballot access. It is hereby:

ORDERED that candidate S. Kathryn Allen is denied ballot access for the At-Large Member of the District of Columbia Council.

It is hereby further:

ORDERED that the Office of the Board's General Counsel is directed to make a referral of all instances of election fraud documented in this matter to the Office of the Attorney General.

Date: 9/10/2018



D. Michael Bennett
Chairman,
Board of Elections