

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Robin Hammond Marlin,)	
Challenger)	Administrative
)	Order #20-022
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Advisory
Nicole Smith-McDermott,)	Neighborhood Commissioner
Candidate.)	for Single Member District
)	7B04

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on September 2, 2020. It is a challenge to the nominating petition in support of Nicole Smith-McDermott’s candidacy for the office of Advisory Neighborhood Commissioner for Single Member District 7B04 filed by Robin Hammond Marlin (“Ms. Hammond Marlin”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). Ms. Hammond Marlin appeared *pro se*. Ms. Smith-McDermott did not appear. Chairman D. Michael Bennett and Board members Michael Gill and Karyn Greenfield presided over the hearing.

Background

On August 5, 2020, Ms. Smith-McDermott submitted a nominating petition to appear on the ballot as a candidate in the November 3, 2020 General Election contest for the office of Advisory Neighborhood Commissioner (ANC) for Single Member District (SMD) 7B04 (“the Petition”). The minimum requirement to obtain ballot access for this office is ten signatures of District voters who are duly registered in the same SMD. The Petition contained ten signatures.

Pursuant to title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, Karen F. Brooks, the Board of Elections' Registrar of Voters ("the Registrar"), accepted all signatures for review.

On August 8, 2020, the Petition was posted for public inspection for 10 days, as required by law. On August 17, 2020, Ms. Hammond Marlin, a registered voter in the District of Columbia, filed a challenge to the Petition.

Ms. Hammond Marlin filed challenges to five signatures pursuant to title 3 D.C.M.R. § 1607.1 of the Board's regulations. She asserted the following grounds; 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 petition does not include the name of the signer where the signature is not sufficiently legible for identification; and the signature is not a registered voter in the ward or SMD from which the candidate seeks nomination at the time the petition was signed.

Registrar's Preliminary Determination

The Registrar reviewed the challenge to determine the validity of the challenged signatures. The Registrar's review indicated that two of the five challenges were valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed. The Registrar determined that this left the candidate's Petition with eight valid signatures, two signatures below the number required for ballot access.

August 28, 2020 Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel ("OGC") convened a prehearing conference with on Friday, August 28, 2020. The parties appeared *pro se*. The parties confirmed that they received the Registrar's preliminary report. Ms. Smith-McDermott stated that she had no dispute with the Registrar's preliminary report. She said that she had not personally

circulated the Petition, and she accepted the conclusion that she would not have ballot access. She confirmed that she did not wish to appear at the September 2 Board hearing.

Ms. Hammond Marlin asked about the Registrar's preliminary determination with respect to two particular signatures. She indicated that there may be a discrepancy between the Board's internal voter registration records and the records Ms. Hammond Marlin had available to review. In one instance, Ms. Hammond Marlin stated that the signer was listed at an active address that differed from the Petition. In another instance, Ms. Hammond Marlin stated that the signer was listed as active at two different addresses. The Registrar had found both of these two signatures in question to be valid signatures. The Registrar was not present at the pre-hearing conference to respond at that time.

Following this conference, the OGC contacted Ms. Smith-McDermott to request that she complete a candidate withdrawal form. Ms. Smith-McDermott did not execute and return this form prior to the September 2, 2020 Board hearing.

September 2, 2020 Board Hearing

On September 2, 2020, the Board included this matter on its agenda for public hearing. Ms. Hammond Marlin appeared *pro se*. Ms. Smith-McDermott did not appear. An attorney with the Office of the General Counsel testified that the parties had been properly notified of the Board hearing. The Board voted to proceed *ex parte*. The Registrar presented the Board with her preliminary determination of the challenges. Ms. Hammond Marlin raised her questions and concerns regarding the Board's voter registration records that are made available to the public.

Discussion

Ms. Smith-McDermott agreed to withdraw her candidacy based on the Registrar's preliminary report, which she did not dispute in any respect. Title 3 D.C.M.R. § 1606.4 states that,

after the receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge. The Board accepts the Registrar's report as the basis for its determination regarding Ms. Hammond Marlin's challenge.

Conclusion

As a result of this challenge, the Board finds that the Petition contains eight valid signatures, which does not meet the requirements for ballot access. It is hereby:

ORDERED that candidate Nicole Smith-McDermott is denied ballot access in the contest for the office of Advisory Neighborhood Commissioner for the Single Member District 7B04 in the November 3, 2020 General Election.

Date: 9/4/2020



D. Michael Bennett
Chairman
Board of Elections