

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Anthony Brown,)	Administrative Hearing
Challenger)	Docket No. 18-025
)	
v.)	Challenge to the Nominating Petition
)	of Eugene Simms, Candidate for
Eugene Simms,)	Advisory Neighborhood
Candidate.)	Commissioner from SMD 6E02
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (hereinafter referred to as “the Board”) on August 29, 2018. It involves a challenge to the nominating petition of Eugene Simms (“Mr. Simms” or “the Candidate”) as a candidate for the office of Advisory Neighborhood Commissioner from Single-Member District 6E02. The challenge was filed by Anthony Brown (“Mr. Brown” or “the Challenger”). The Challenger asserted that his challenges, if valid, would leave the Candidate’s nominating petition below the statutory minimum of 25 signatures of duly registered voters, thereby disqualifying the Candidate from ballot access in the November 6, 2018 General Election.

Chairman D. Michael Bennett and Board members Mike Gill and Dionna Lewis presided over the hearing. The Challenger appeared *pro se*. The Candidate was not in attendance.

This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On August 8, 2018, Eugene Simms submitted a nominating petition containing 28 signatures to appear on the ballot in the November 6, 2018 General Election as a

candidate for the office of Advisory Neighborhood Commissioner from Single-Member District 6E02.

2. The minimum petition requirement for ballot access for the office of Advisory Neighborhood Commissioner is 25 signatures of qualified electors registered in the same Single-Member District as the candidate. D.C. Official Code § 1-309.05 (b)(1)(B).
3. The Candidate's petition was posted for public inspection on Saturday, August 11, 2018 for 10 days as required by law. D.C. Official Code §§ 1-309.09 and 1-1001.08 (o)(1).
4. On August 17, 2018, Anthony Brown, a registered voter in the District of Columbia, filed a challenge to the Candidate's nominating petition. The Challenger challenged a total of 9 signatures. Each signature challenged was referenced by line and page number, citing the specific ground or grounds as required by 3 DCMR § 1606.2 (a). The grounds upon which the Challenger sought to disqualify signatures on the Candidate's petition were that the signer is not a registered voter in the Single-Member District from which the candidate seeks nomination at the time the petition was signed.
5. On August 17, 2018, both the Candidate and the Challenger were sent notice by email confirming receipt of the Challenge, providing a copy of the Challenge and notice of the time period to cure signature defects by change of address. The same email provided notice of the date and time of a scheduled prehearing conference concerning the Challenge. The Candidate notified Board staff that he would not be able to attend the prehearing conference.
6. On August 22, 2018, a copy of the Registrar's preliminary findings was delivered to the Candidate by email. The same email reminded the Candidate of the time period to cure signature defects by change of address.

7. A prehearing conference was held at 11:00 AM on Thursday, August 23, 2018 at the Board's offices at 1015 Half Street SE Suite 750. Only the Challenger was in attendance. The prehearing conference proceeded *ex parte*.
8. At the prehearing conference, the Registrar of Voters ("the Registrar") gave her preliminary report concerning the Challenge. The Registrar's report concluded that 5 of the individual challenges were valid and 4 of the challenges were invalid. The Registrar further concluded that as a result of the 5 valid challenges, the Candidate's nominating petition contained 23 signatures, 2 signatures below the requirement for ballot access.
9. The discussion during the prehearing conference focused on the Challenger's understanding of the Registrar's determinations on each of the challenges. The Challenger raised no specific objections to any of the Registrar's findings.
10. Both the Candidate and the Challenger were notified by email on Thursday, August 23 that the matter was scheduled for a public hearing to be held on Wednesday, August 29 at 10:20 AM.
11. The Candidate availed himself of the opportunity to cure address defects identified in the Challenge by filing a total of 2 voter registration applications on August 27, 2018 as permitted under District law. D.C. Official Code § 1-1001.08 (o)(3)(A)-(B). Of those voter registration applications received, the Registrar validated one changes of address, thereby giving credit to the Candidate for one signature that had been determined as a valid challenge. (James Harper; Page 2, Line 7). Of the remaining voter registration application received, the Registrar determined that she was unable to give credit for the signature because the applicant was inactive at the time the petition was signed (Katherine Boo; Page 1, Line 18).

12. The hearing on this matter occurred as scheduled, on Wednesday, August 29, 2018 at 10:20 AM. The Candidate notified Board staff in advance that he would not be present at the hearing. The Challenger appeared *pro se*. The Board approved a motion to proceed with the hearing *ex parte*.
13. At the hearing, the Registrar provided the Board with her preliminary report of the challenge, which reflected the change of address forms received from the Candidate. In summary, the Registrar concluded that the Candidate's petition contains 24 signatures, 1 below the number required for ballot access.
14. At the hearing, the Challenger did not express any disagreement with the factual findings and recommendation in the Registrar's report.

II. CONCLUSIONS OF LAW

15. The District of Columbia Election Code provides, in relevant part, that nominating petition challenges shall occur in the following manner:

Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition. A copy of the challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition... 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. D.C. Official Code § 1-1001.08 (o)(1)-(2).

16. For the purpose of verifying a signature on a petition, if the address of a petition signer is different than the signer's voter registration record, the address shall be deemed valid if the signer's current address is within the same Single-Member District as the candidate and the signer files a change of address form with the Board within 10 days of the date that a petition challenge was filed. D.C. Official Code § 1-1001.08 (o)(3).

17. District law prohibits the counting of signatures of inactive voters as valid in the verification of signatures on nominating petitions. D.C. Official Code § 1-1001.07 (j)(5)(B).
18. In light of the evidence submitted into the record, the Board accepts the Registrar's report and review of the challenged signatures and the voter registration applications that the Candidate timely submitted. The Board also accepts the Registrar's conclusion that after the valid challenges of 5 signatures, but thereafter properly giving credit for 1 signature through change of address permissible under law, the Candidate's nominating petition contains 24 signatures, 1 signature below the statutory requirement for ballot access.
19. Because the Candidate's nominating petition does not contain the valid signatures of at least 25 qualified electors registered within the same Single-Member District as the candidate, the Board concludes that the Candidate does not qualify for ballot access in the November 6, 2018 General Election.

ORDER

Based on the findings of fact and conclusions of law contained in the Board's Memorandum Opinion, it is hereby **ORDERED** that the Challenge filed by Mr. Brown is upheld. It is further **ORDERED** that Mr. Simms, the Candidate, be denied ballot access in the November 6, 2018 General Election.

August 29, 2018

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", is written over a horizontal line.

D. Michael Bennett
Chairman, Board of Elections