

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Amos Cheeseboro	,	)	
Challenger		)	Administrative
		)	Order #20-003
		)	
V.		)	Re: Challenge to Nominating
		)	Petition Submitted for the
		)	Office of U.S. Representative
Susana Barañano,		)	
Candidate.		)	

**MEMORANDUM OPINION AND ORDER**

**INTRODUCTION**

This matter came before the District of Columbia Board of Elections (“the Board”) on April 1, 2020. It is a challenge to the nominating petition of Susana Barañano (“Ms. Barañano”) for the office of U.S. Representative filed by Amos Cheeseboro (“Mr. Cheeseboro”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). Mr. Cheeseboro was represented by Mr. Adeoye Owolewa, and Ms. Barañano was represented by Mr. James Bubar, Esq. Chairman D. Michael Bennett and Board members Michael Gill and Karyn Greenfield presided over the hearing.

**Background**

On March 4, 2020, Ms. Barañano submitted a nominating petition to appear on the ballot as a candidate in the June 2, 2020 Primary Election for the office of U.S. Representative (“the Petition”). The minimum requirement to obtain ballot access for this office is two thousand (2,000) signatures of District voters who are duly registered Democrats in the District of Columbia. The Petition contained a total of two thousand one hundred and nine (2,109) signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) §

1603.1, the Board of Elections' Registrar of Voters, Mrs. Karen F. Brooks ("the Registrar") accepted all 2,109 signatures for review.

On March 7, 2020, the Petition was posted for public inspection for 10 days, as required by law. On March 13, 2020, the Petition was challenged by Mr. Cheeseboro, a registered voter in the District of Columbia.

Mr. Cheeseboro filed challenges to a total of four hundred fifty-seven (457) signatures pursuant to Title 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's voter registration was designated as inactive on the voter roll at the time the petition was signed; 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 signer is not a registered voter in the ward or Single Member District from which the candidate seeks nomination at the time the petition was signed;<sup>1</sup> and the signer is not registered to vote in the same party as the candidate at the time the petition is signed.

### **Registrar's Preliminary Determination**

The Registrar reviewed the challenge to determine the sufficiency of the challenged signatures. The Registrar's initial review indicated that a total of three hundred forty-seven (347) of the 457 total signature challenges were valid. The review further indicated that the remaining 110 signature challenges were invalid. Accordingly, the Registrar preliminarily determined the

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<sup>1</sup> Although the contest for U.S. Representative is an At-large election, Mr. Cheeseboro used this basis for seventy-one signatories. If the signatory was registered in the District, the challenge was denied; however, the challenge was upheld if the signatory provided an out-of-state address.

Petition contained 1,762 presumptively valid signatures, which is 238 signatures below the number required for ballot access.

### **March 26, 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 both parties on Thursday, March 26, 2020. As a threshold matter, Ms. Barañano’s counsel, Mr. Bubar, took issue with Mr. Cheeseboro’s representative not being a lawyer. However, under 3 D.C.M.R. § 403.2, “[a]ny person or party may be represented by any other person duly authorized in writing to do so.” Ms. Barañano and Mr. Cheeseboro sent email correspondence identifying their respective representatives to the OGC. Mr. Bubar requested that, due to the current COVID-19 public health emergency, the 10-day period to cure signatures requiring address changes under D.C. Code § 1-1001.08(o)(3) be extended. Mr. Bubar also expressed concern that the District of Columbia courts may not be open during this time to hear an appeal of this matter. Finally, Mr. Bubar requested leave to file a formal response to the Registrar’s preliminary findings. Staff Attorney Rudolph McGann granted leave to file a response by close of business on Monday, March 30, 2020.

### **March 30, 2020 Response to Nominating Petition Challenge**

Mr. Bubar served all parties by email correspondence on March 30, 2020 with a response to the Registrar’s preliminary determination. Ms. Barañano took issue with the Registrar’s count of challenges raised and upheld. Ms. Barañano claimed the challenge contained 441 challenges instead of the 457 found by the Registrar. Ms. Barañano also alleged that the number of valid challenges was 346 as opposed to 347. Moreover, Ms. Barañano asserted that 205 of the accepted challenges represented the valid signatures of registered voters and/or legible signatures. To illustrate her point, Ms. Barañano included a line by line summary response to

each challenge.<sup>2</sup> Ms. Barañano also raised two instances where challenges were upheld against registered voters, Mr. Rashad Young (pg. 81 line 2) and Mr. Eugene Kinlow (pg. 81 line 3). Mr. Young was challenged as not being registered, and Mr. Kinlow's signature was challenged as illegible.

Based upon the information submitted in Ms. Barañano's response, the Registrar determined that 71 of the challenges she previously upheld should have been denied. Specifically, she determined that nine signatures rejected on change of address grounds were actually properly registered at the address on the petition; 35 signatures deemed illegible could actually be verified; 24 signatures denied on registration grounds were actually registered; one signature invalidated on change of party grounds was actually a member of the proper political party; and two signatures with illegible addresses were found to be valid. The Registrar's supplemental review left Ms. Barañano's nominating petition with 1,833 signatures, 167 signatures below the number required for ballot access.

Ms. Barañano further alleged that 110 rejected signatories were identified as valid voters who had used an address different from that appearing in the Board of Elections records.<sup>3</sup> Due to the public health emergency, she requested leave to contact those voters to update their voter registrations despite the expiration of the 10-day curing period.

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<sup>2</sup> A cursory review of the summary shows that a number of challenges on the petition are omitted in Ms. Barañano's accounting *i.e.*: Pg. 1, ln. 10, ln. 16; Pg. 4 ln. 7; Pg. 6 ln. 2 (Valid Signature), ln. 5; Pg. 7 ln. 1, ln. 5, ln. 8, ln. 16 (No Challenge Filed); Pg. 9 ln. 17, ln. 20; Pg. 11 ln. 2, ln. 4; Pg. 12 ln. 15, ln. 17; Pg. 13 ln. 9, ln. 11, ln. 18; Pg. 14 ln. 13; Pg. 18 ln. 7, ln. 17, and ln. 18. These omissions could explain the count-discrepancy between Ms. Barañano and the Registrar.

<sup>3</sup> The Registrar determined 117 signatories listed an address different from that appearing in the Board's registry.

Ms. Barañano also objected to the invalidation of the signatures of the 7 inactive voters, arguing that there is no rational basis for preventing these registered voters from signing a candidate's nominating petition.

Ms. Barañano alleged, without any evidence to support her claim, that Mr. Cheeseboro lives at an address that is different from the one on record with the Board of Elections and is therefore not a valid elector in the District of Columbia.

Mr. Cheeseboro's representative Mr. Owolewa, who is also running for the office of U.S. Representative, signed Ms. Barañano's nominating petition. Mr. Owolewa's signature was challenged by Mr. Cheeseboro as not registered, and the Registrar upheld the challenge because Mr. Owolewa did not use his current registered address. Mr. Bubar asserted that, because the Registrar found that Mr. Owolewa is not a registered voter, he is not qualified to either challenge Ms. Barañano's petition or be a candidate for the position of U.S. Representative.

### **March 31, 2020 Supplemental Response**

Mr. Bubar sent a supplemental response alerting the Board to the District of Columbia Superior Court Order addressing the tolling of court deadlines due to COVID-19 ("the Superior Court Order") in an attempt to apply the tolling of Superior Court filing deadlines to the instant case to toll the time to procure change of address forms notwithstanding the 10-day period under D.C. Code § 1-1001.08 (o)(3) (2001 Ed.).

Finally, Mr. Bubar reasserted that both Mr. Cheeseboro's and Mr. Owolewa's residence are in dispute. He submitted the petition page with Mr. Owolewa's signature which was rejected by the Registrar, but he did not submit any evidence to substantiate the claim as to Mr. Cheeseboro. Mr. Bubar requested the Board address these issues during the nominating petition hearing.

### **April 1, 2020 Board Hearing**

During the Board hearing, Mr. Bubar again raised the count discrepancy between Ms. Barañano and the Registrar with respect to the number of challenges raised and upheld. He asserted on the record that Ms. Barañano noted 205 invalid challenges out of 346 upheld by the Registrar. That would leave 141 valid challenges remaining.

Mr. Bubar raised the Superior Court Order in support of his argument that the statutory deadline to procure address changes must be tolled. The Board's General Counsel, Terri Stroud, noted that the Superior Court Order only applies to Superior Court filing deadlines, not statutory deadlines concerning nominating petition challenges.

Mr. Bubar reasserted his claims that Mr. Cheeseboro and Mr. Owolewa were not duly registered voters, and therefore could not bring nominating petition challenges. Under cross-examination by Mr. Bubar, Mr. Owolewa testified that he did sign Ms. Barañano's nominating petition. During the hearing, Mr. Owolewa never explained why he used a former address on the petition. In response to Mr. Bubar's submission on March 30, Mr. Owolewa presented a screenshot of his voter registration information as accessed through the Board's website, which demonstrated that he is, in fact, registered at 1430 Tobias Drive, S.E, Washington, DC 20020. Mr. Bubar did not present any evidence to support his claim that Mr. Cheeseboro lives at an address that is different from the one in the Board's records.

### **DISCUSSION**

The minimum requirement to obtain ballot access for the nomination for the office of U.S. Representative is two thousand (2,000) signatures of District voters who are duly registered Democrats in the District of Columbia. The Petition contained a total of two thousand one

hundred and nine (2,109) signatures. Ms. Barañano asserts that 205 of the 346 challenges are invalid, which would leave her petition with one thousand, nine hundred, and sixty-seven (1,967) presumptively valid signatures. Even if the Board agreed with Ms. Barañano, she would still be short 33 signatures. The Board upholds the finding of the Registrar that the petition contains 1,833 presumptively valid signatures.

Ms. Barañano's request to toll the address change period cannot be honored because that period is set by D.C. Code § 1-1001.08 (o)(3) (2001 Ed.). The Superior Court Order cited by Mr. Bubar is inapplicable to the District's election statute. Therefore, with respect to the 117 signatures denied because the signatories are not registered to vote at the address listed on the petition at the time the petition was signed, the Board upholds the finding of the Registrar and disallows those signatures.

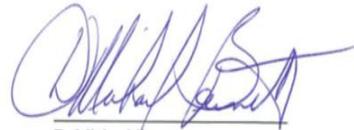
Under D.C. Code § 1-1001.07 (j)(5)(B), "The voter registrations of individuals whose registrations are designated as inactive on the voter roll, pursuant to paragraph (2) of this subsection Shall not be counted as valid in the verification of signatures pursuant to §§ 1-1001.08(o), 1- 1001.16(o), and 1-1001.17(k)." Accordingly, the election statute mandates that the signatures of the 7 inactive voters must be disallowed.

**CONCLUSION**

Ms. Barañano collected one thousand, eight hundred and thirty-four (1,834) valid signatures, which is one hundred and sixty-six (166) signatures below the number required for ballot access. It is hereby:

**ORDERED** that candidate Susana Barañano is denied ballot access in the contest for the nomination for the office of U.S. Representative in the June 2, 2020 Primary Election.

Date: 4/2/2020

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

D. Michael Bennett  
Chairman  
Board of Elections