

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Matt Buechner,)	
Challenger)	Administrative
)	Order #20-020
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Advisory
Lisa Cox,)	Neighborhood Commissioner
Candidate.)	for Single Member District
)	3F07

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 submitted by Lisa Cox (“Ms. Cox”) in support of her candidacy for the office of Advisory Neighborhood Commissioner for Single Member District 3F07 filed by Matt Buechner (“Mr. Buechner”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). The parties appeared *pro se*. Chairman D. Michael Bennett and Board members Michael Gill and Karyn Greenfield presided over the hearing.

Background

On July 20, 2020, Lisa Cox 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) 3F07 (“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 a total of 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, Mr. Buechner, a registered voter in the District of Columbia, filed a challenge to the Petition.

Mr. Buechner filed challenges to all ten signatures pursuant to title 3 D.C.M.R. § 1607.1 of the Board's regulations. He asserted that one signature included a typed name, address and date, and that the signature was electronically copy and pasted into the signature box. He asserted that this violated the requirements of a valid signature and that this called into question the rest of the signatures on the petition sheet.

Registrar's Preliminary Determination

The Registrar reviewed the challenge to determine the validity of the challenged signatures. The Registrar's review indicated that none of the ten signature challenges were valid. Accordingly, the Registrar preliminarily determined the Petition contained ten presumptively valid signatures, which met the minimum requirement for ballot access.

September 1, 2020 Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel convened a prehearing conference with both parties on Tuesday, September 1, 2020. The parties appeared *pro se*. The Registrar attended and presented her report.

Ms. Cox described the facts and circumstances under which she collected a Petition signature from Sarah Appleton ("Ms. Appleton"). Ms. Cox communicated with Ms. Appleton via e-mail and text about the Petition signature. Ms. Appleton appeared as a witness at the pre-hearing

conference and stated that she sent her signature back to Ms. Cox via e-mail.¹ After the pre-hearing conference Mr. Buechner provided an e-mail to the Office of the General Counsel that he had received from Ms. Cox on August 20, 2020 concerning this challenge. In that correspondence, Ms. Cox wrote: “There was no cut and pasting at all.” Ms. Cox further explained that “[Ms. Appleton] filled [the Petition] out with her name address and electronic signature, scanned and emailed it back to me.”

Ms. Cox thus acknowledged that she did not physically witness Ms. Appleton’s signature. She further stated that she felt she had complied with the spirit of the rule requiring that petition circulators “witness” the signature, because she knew the signature was not forged. She requested that the Board credit her with Ms. Appleton’s signature.

Mr. Buechner stated his position that the words of the affidavit on the petition state that the circulator must “personally witness” the signing. He stated that changes in the rules to lower the number of minimum signatures for ANC candidates to obtain ballot access from 25 signatures to 10 signatures was sufficient to address the challenges raised by the COVID-19 public health emergency.²

September 2, 2020 Board Hearing

On September 2, 2020, the Registrar presented the Board with her preliminary determination of the challenges. The parties appeared *pro se*. An attorney with the DCBOE Office of the General Counsel appeared and described Ms. Appleton’s account of her signature offered

¹ After the pre-hearing conference, the parties agreed to stipulate that “Sarah Appleton appeared, and she testified that she received Ms. Cox’s petition electronically. She signed the petition and transmitted it back to Ms. Cox via e-mail.” Ms. Appleton did not appear at the Board hearing on September 2, 2020.

² Mr. Buechner was referencing title 3 D.C.M.R. § 1603.7, which was amended by temporary legislation. The temporary legislation reduced the requirements for ballot access for ANC candidates by specifying their nominating petitions much contain the valid signatures of at least 10 registered qualified electors who are registered in the same Single Member District as the candidate. Absent the temporary legislation, this provision requires at least 25 such signatures. The temporary legislation is the Coronavirus Omnibus Emergency Amendment Act of 2020, B23-0750 (enacted May 13,2020).

during the pre-hearing conference, and read the parties' stipulation concerning the same. Ms. Cox requested that the Board find that Ms. Appleton's signature was valid, and Mr. Buechner maintained his challenge as to the validity of Ms. Appleton's signatures because Ms. Cox did not physically witness the signature.

The Office of the General Counsel offered its recommendation to the Board that it uphold Mr. Buechner's challenge. The General Counsel cited title 3 D.C.M.R. § 1607.1 and § 1602.

Discussion

Given the parties' stipulation regarding the facts and circumstances of Ms. Appleton's signature, the Board's determination is based on the application of those facts to the Board's regulations. Title 3 D.C.M.R. § 1602.3(c) states that by signing the circulator affidavit, the circulator swears under oath or affirms that he or she "personally witnessed the signing of each signature on the petition sheet."

In applying these regulations to the facts concerning Ms. Appleton's signature, the Board determined that Ms. Cox did not "witness" Ms. Appleton's signature because Ms. Cox did not observe Ms. Appleton sign or apply the digital image of the signature to the Petition. Therefore, the Board determined that Ms. Appleton's signature was invalid.

Conclusion

As a result of this challenge, the Board finds that the Petition contains nine valid signatures - one signature below the number required for ballot access. It is hereby:

ORDERED that candidate Lisa Cox is denied ballot access in the contest for the office of Advisory Neighborhood Commissioner for the Single Member District 3F07 in the November 3, 2020 General Election.

Date: 9/4/2020

A handwritten signature in blue ink, appearing to read "D. Michael Bennett". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

D. Michael Bennett
Chairman
Board of Elections