

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Denise Reed,)	
Challenger)	Administrative
)	Order #22-007
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of National
MaryEva Candon,)	Committeewoman
Candidate.)	Democratic State Committee

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on April 22, 2022. It is a challenge to the nominating petition of MaryEva Candon (“Ms. Candon”) in support of her candidacy for the office of National Committeewoman to the Democratic State Committee in the June 21, 2022 Democratic Primary Election (“the Primary Election”). The challenge was filed by Denise Reed (“Ms. Reed”) pursuant to D.C. Official Code § 1-1001.08 (o)(1) (2001 Ed.). Chairman Gary Thompson and Board members Michael Gill and Karyn Greenfield presided over the hearing. Both parties appeared *pro se*.

Background

On March 23, 2022, MaryEva Candon submitted a nominating petition to appear on the ballot as a candidate in the Primary Election contest for the nomination for the office of National Committeewoman to the Democratic State Committee (“the Petition”). The minimum number of signatures required to obtain ballot access for this office is 500 signatures of District voters who are duly registered in the same party as the candidate. The Petition contained 523 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 523 signatures for review.

On March 26, 2022, the Petition was posted for public inspection for 10 days, as required by law. On April 4, 2022, the Petition was challenged by Ms. Reed, a registered voter in the District of Columbia.

Ms. Reed filed challenges to a total of 111 signatures. Specifically, the signatures and affidavits were challenged pursuant to Title 3 D.C.M.R. § 1607.1 of the Board's regulations on the following grounds: the signer is not registered; 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 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 was not a qualified petition circulator at the time the petition was signed; 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's review of the challenge indicated that a total of 90 of the 111 signature challenges were valid. Specifically, the Registrar found that four challenges are valid because the signer is not registered to vote at the address listed on the petition at the time the petition was signed; two challenges are valid because the signers were not registered at the time the petition was signed; one challenge is valid because the petition does not include the address of the signer; three challenges are valid because the petition does not include the name of the signer where the

signature is not sufficiently legible for identification; one challenge is valid because the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; three challenges are valid because the signature is not dated; one challenge is valid because the signer is not registered to vote in the same party as the candidate at the time the petition was signed; seventy challenges are valid because the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;¹ and five challenges are valid because the signatures are predated.

Accordingly, the Registrar preliminarily determined the Petition contained 433 presumptively valid signatures, which is 67 signatures below the number required for ballot access.

April 18, 2022 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 on Monday, April 18, 2022. In her findings report issued prior to the prehearing conference, the Registrar outlined her determinations with respect to the validity of each signature challenged and provided a key code explaining the notations she used to indicate the basis for upholding or denying each challenge.

Ms. Candon objected to the Registrar's findings as to the 70 signatures invalidated due to a circulator defect. She acknowledged that the defect was the fact that those signatures related to petition sheets on which two circulator affidavits appeared. In those cases, the printed circulator affidavit at the bottom of the petition sheet had been completed and dated by one person and, under that affidavit, a hand-written affidavit had been added which was dated after the date inserted in the printed affidavit and which was for a different circulator, Ms. Candon herself. Signatures on

¹ The email forwarding the Registrar's findings to the parties alerted them to the fact that defect in the seventy invalidated signatures was not limited to the reason articulated in the Registrar's report.

such sheets post-dated the date entered by the circulator who completed the printed affidavit. Ms. Candon argued that the signatures on such Petition sheets should be counted because (1) no rule prohibits having two circulator affidavits per sheet and (2) she had previously, without issue, submitted petition sheets in prior elections that had two circulator affidavits and thus understood that adding signatures to a partially completed circulator-signed sheet and then adding a second circulator affidavit was permissible. In response to this latter assertion, Board staff attempted to locate prior petitions submitted by Ms. Candon that had petition sheets attested to by two circulators, but were unable to find any.

In support of her request, Ms. Candon submitted a document entitled “Response of MaryEva Candon to the Registrar of Voter’s Report Re: Reed Challenges to her Nominating Petition (“the Response”). The Response set forth several concerns with the challenges and had five attachments. The Response alleged that challenge sheet 46 was duplicated and that it therefore appeared that the Registrar counted four challenges on that sheet twice. The Response further alleged that the petition sheets actually contain 528 signatures, five more than the 523 signatures that the Registrar indicates. As to the challenges of signatures on sheets found valid because the sheets contained more than one circulator affidavit,² the document stated:

These Sheets in question were returned to me by the Circulators with fewer than 10 signatures each. In most cases, the circulator dated his/her circulator information on the date returned to me. I chose to continue circulating the Sheet to fill out the remainder of signatures. On these sheets, I printed and signed my circulator’s information directly below the initial circulator’s, dated after the 10th signatory signed. Thus, both circulators were qualified and all signatures are valid[.]

The attachments consisted of (1) a letter from attorney Johnny Barnes which characterized the

² With respect to these sheets, the Registrar indicated that the challenge was valid due to the circulator being unqualified.

challenges as “highly technical” and stated that the voters had indicated by signing the Petition that they wanted an opportunity to consider Ms. Candon as a candidate on election day, and (2) four statements signed by the circulators which were intended to remedy petition defects. Ms. Candon also submitted a document identified as “work product” which consisted of handwritten notes of signature tallies per page, and which appears to support her claim of 528 signatures. Ms. Candon did not submit any of her petitions from prior elections.

Ms. Reed stood by her position that none of the signatures on sheets with two circulator affidavits should be counted.³

Pre-Hearing Follow-Up

After the pre-hearing conference, the Registrar revisited the Petition to consider the points made by Ms. Candon. As a result of the Registrar’s additional review, she reversed her initial finding that a challenge to a particular signature should be upheld. The Registrar also found another sheet - number 29 – that had double circulator signatures, causing her to discount ten additional signatures. The Registrar also confirmed her original count of 523 total Petition signatures. This left the Petition with four hundred and twenty-four signatures, seventy-six below the number required for ballot access.

³ Prior to the pre-hearing conference, Ms. Candon had reached out to the Office of General Council to inquire about submitting voter address updates to cure certain challenges. In an April 6, 2022 notice of the challenge to Ms. Candon from the Office of General Counsel, Ms. Candon was advised that she had until April 14, 2022 to have voter registrations updated to address challenges based on the ground that the signer address on her petition did not match the address in the Board’s records. Ms. Candon complained that, as the challenge was filed on April 4, the April 6 notice of the challenge deprived her of time within which to have the voter registrations updated. She did not raise this issue at the pre-hearing conference. Nevertheless, it should be noted that (1) candidates are not required to wait for a challenge to seek voter address updates so that the petition signatures will not be invalidated (indeed, candidates would be ill-advised to await a challenge to update addresses particularly where the margin of petition signatures over the required minimum is low); (2) under the Board’s regulations at 3 D.C.M.R. § 1606.3, notice of the challenge must be served on the candidate within three working days of receipt of the challenge and therefore the 2-day notice in this case actually enhanced Ms. Candon’s ability to address signatures invalidated for address reasons; and (3) few signatures were challenged for reasons of incorrect address and remedying those defects would have still left the Petition with insufficient signatures.

April 22, 2020 Board Hearing

During the Board hearing, Ms. Reed reiterated her position that the existence of double circulator affidavits should invalidate the signatures on the sheets where such double affidavits existed.

Ms. Candon explained that, where there were blank signature lines on a petition sheet, she had gathered more signatures and inserted a second circulator affidavit which was intended to pertain to those added signatures.

Discussion

D.C. Official Code §1-1001.08(b)(3) provides:

(2) Only qualified petition circulators may circulate nominating petitions in support of candidates for elected office pursuant to this subchapter. The Board shall consider invalid the signatures on any petition sheet that was circulated by a person who, at the time of circulation, was not a qualified petition circulator.

(3) All signatures on a petition shall be made by the person whose signature it purports to be and not by any other person. Each petition shall contain an affidavit, made under penalty of perjury, in a form to be determined by the Board and signed by the circulator of that petition which shall state that the circulator is a qualified petition circulator and has:

(A) Personally circulated the petition;

(B) Personally witnessed each person sign the petition; and

(C) Inquired from each signer whether the signer is a registered voter in the same party as the candidate and, where applicable, whether the signer is registered in and a resident of the ward from which the candidate seeks election.

The statutory provisions make clear that there is to be but one circulator of a petition form. The reasons for a single circulator affidavit on the form are self-evident. The averment at the bottom of the petition sheet attests to the circulator's personal witnessing of the signing of the

petition. As indicated by the statutory and regulatory basis for validating petition signatures, all the signatures on a petition sheet (up to ten) can be challenged if the circulator is not qualified. Challenges to the qualifications of a circulator, therefore, can have a dramatic effect on whether the number of signatures on a petition are sufficient.

The Board has authority to waive formal error on petitions. 3 D.C.M.R. § 1606.4. In the past, we have excused minor defects where there was no substantial evidence that the circulator acted in a manner inconsistent with the circulator's oath. *See Moore v. Butler*, Administrative Order #20-024 (issued Sept. 4, 2020) (waiving as formal error pre-signed circulator affidavit). However, the marking-up of the pre-printed petition form to add a second circulator affidavit is problematic for a number of reasons. Notably, it renders the circulator portions of the form irrelevant and conflicts with the statute's contemplation of a single circulator. It also results in oaths that are false insofar as they attest to signatures that one or the other of the circulators did not witness. In addition, sheets with double circulator affidavits put the Board in the untenable position of second-guessing which signatures might be credited if the qualifications of one of the circulators is challenged, and makes it impossible to evaluate whether a circulator improperly attested to a signature which he/she did not witness. While the statements submitted by the circulators in the instant case could allow identification of which signatures should be associated with a particular circulator, the extraordinary effort the Board would have to undertake to salvage a candidate's petition cannot be justified.

Therefore, we find that the signatures on Petition sheets containing two circulator affidavits to be invalid. This finding moot the need to resolve Ms. Candon's objections to other findings by the Registrar.

Conclusion

As a result of this challenge, the Board finds that the Petition contains 424 valid signatures – 76 signatures over the number required for ballot access. It is hereby:

ORDERED that the challenge to the nominating petition of MaryEva Candon for the office of National Committeewoman of the Democratic State Committee is hereby **UPHELD**, and she is therefore denied ballot access in the Primary Election.

Date: April 22, 2022



Gary Thompson
Chairman
Board of Elections