

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

D. Morris Michael,  
Challenger

v.

Calvin H. Gurley,  
Candidate

Administrative Hearing  
No. 18-007

Challenge to the Nominating Petition  
of Calvin Gurley, Candidate for  
Chairman of the Council of the  
District of Columbia

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on Tuesday April, 17, 2018. It is a challenge to the nominating petition of Calvin Gurley (“Mr. Gurley” or “Candidate”) for the office of Chairman of the Council of the District of Columbia. The challenge was filed by D. Morris Michael (“Mr. Michael” or “Challenger”). Mr. Michael asserted that his challenges, if valid, would leave Mr. Gurley nominating petition below the statutory minimum of 2,000 registered voters, and thus disqualify Mr. Gurley from ballot access in the June 19, 2018 Primary election. Chairman D. Michael Bennett and Board members Michael Gill and Dionna Maria Lewis presided over the hearing. The Candidate appeared *pro se*; however, the Challenger did not appear. Accordingly, the hearing proceeded *ex-parte*, with respect to the Challenger, pursuant to Title 3 D.C. Municipal Regulation §4043.4<sup>1</sup>

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<sup>1</sup> 3 DCMR § 403.4 states: “If any person or party waives the right to be present at the hearing or fails to appear at the hearing, the Board may proceed *ex parte*, unless the Board extends the time of such hearing or unless their appearance is required by statute.”

## **PROCEDURAL BACKGROUND**

On March 22, 2018, Calvin Gurley submitted a nominating petition to appear on the ballot as a candidate in the June 19, 2018 Congressional and Council Primary Election for the office of Chairman of the Council of the District of the Columbia. That petition was posted for public inspection for 10 days, as required by law. The petition was challenged on April 2, 2018 by D. Morris Michael, a registered voter in the District of Columbia. Mr. Gurley submitted a total of two thousand six hundred and seventy-seven (2,677) signatures. The minimum requirement to obtain ballot access for this office is two thousand (2,000) signatures pursuant to D.C. Code § 1-1001.08(i)(1)(B).

### **Challenges to Mr. Gurley's Petition**

The petition was challenged on April 2, 2018 by D. Morris Michael, a registered voter in the District of Columbia. Challenger D. Morris Michael filed challenges to a total of one thousand and thirty (1,030) signatures, enumerated by line and page number on individual "challenge sheets" filed for each petition page. Petition signatures 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 a duly registered voter;
- 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; provided that an address on a petition which is different than the address which appears on the Board's records shall be deemed valid if the signer's current address is within the boundary from which the candidate seeks nomination, and the signer files a change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed;
- The signature is a duplicate of a valid signature;

- The petition does not include the address of the signer;
- The signature is not dated; and
- On a petition to nominate a candidate in a primary election, the signer is not registered to vote in the same party as the candidate at the time the petition is signed.

### **Initial Findings**

The Registrar's review of the petition challenge indicates that a total of 837 of the 1,030 signature challenges are valid. This leaves the candidate's nominating petition with 1,840 signatures, 160 signatures below the number required for ballot access. Pursuant to D.C. Code § 1-1001.08(o)(3), the Registrar of Voters received seven (7) changes of address from Mr. Gurley on Thursday, April 12, 2018. After validating six (6) address changes, and thereafter giving credit for six (6) signatures<sup>2</sup> that had been initially determined to be invalid, the candidate now has a nominating petition with one thousand eight hundred and forty six signatures (1,846), 154 signatures below the number required for ballot access.

### **Pre-Hearing Conference**

Pursuant to Title 3 DCMR §415.1, the Office of the General Counsel conducted a Pre-Hearing conference in this matter on Tuesday, April 10, 2018. The Candidate appeared pro se and the Challenger did not appear. During the prehearing conference, Mr. Gurley raised two concerns that are hereby recited for the record. Mr. Gurley took issue with the Challenger's absence and the fact that the responsibility to collect change of address forms did not appear to be the responsibility of the Candidate; rather, the statute specifies that the challenged signatory is vested with the responsibility.

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<sup>2</sup> The seventh change of address form was submitted on behalf of a signatory that was not registered to vote and was accordingly disallowed.

### **Board Hearing**

A hearing before the Board of Elections was scheduled for Tuesday, April 17, 2018, at 11:00 a.m. at the Board's offices located at 1015 Half Street S.E. Suite 750 Washington D.C. 20003. As aforementioned, Mr. Michael did not make an appearance despite notification by electronic mail. Mr. Gurley re-asserted his contention that he should be able to face his accuser. Mr. Gurley also asserted that the Candidate should not have to secure change of address forms in light of a registered elector's ability to update their address at the polls on Election Day pursuant to D.C. Code § 1-1001.07(i)(2). He reasoned that if a person can update on the day of the Election, the Board should, upon its own initiative, update voter registration records that differ from signatories' new address on the nominating petition.

### **Discussion**

The Board is required to post nominating petitions for inspection and submit them to the challenge process pursuant to D.C. § 1-1001.08(o). Once a petition has been properly challenged, by a registered qualified elector, there is no formal requirement that the Challenger make an appearance to prosecute his claims. "If any person or party waives the right to be present at the hearing or fails to appear at the hearing, the Board may proceed ex parte, unless the Board extends the time of such hearing or unless their appearance is required by statute."<sup>3</sup> Mr. Gurley's protestation regarding facing his accuser is inapposite in a civil proceeding such as a nominating petition challenge because the Registrar has made specific findings with respect to the challenge that Mr. Gurley can contest. Consequently, a challenger's absence is of no moment with respect to the resolution of the challenge filed against Mr. Gurley's candidacy.

Mr. Gurley's other novel suggestion that the Board should shoulder the responsibility of

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<sup>3</sup> 3 DCMR § 403.4

updating signatories' addresses is sorely misplaced, because the Board has no way of verifying whether the signatory is the same person who is registered at another address on the voter registry. There are a myriad of voters with the same name, and without direction from the voter at issue, the Board would not be able to discern if changes were being made to the correct voter record. Moreover, the Board cannot change the registry *sua sponte* because there is no provision of the Election Code that allows the Board to do so without the consent of the voter. While the statute places the responsibility squarely upon the voter to make changes, the Board has allowed Candidates to submit changes of address on the signatories' behalf as a courtesy. Mr. Gurley has characterized this courtesy as a burden, but that does not shift the responsibility to the Board to make wholesale changes to the registry on its own accord. Mr. Gurley has just not secured the requisite number of valid signatures for ballot access and he failed to cure enough of the address changes available to him to achieve ballot access.

**ORDERED** that candidate Calvin Gurley is denied access to appear on the ballot for the June 19, 2018, Primary Election for the office of Chairman of the Council of the District of Columbia.

Date 4/23/2018

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

D. Michael Bennett  
Chairman,  
Board of Elections