

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Tori Fernandez Whitney,	)	
Challenger	)	Administrative
	)	Order #20-002
	)	
V.	)	Re: Challenge to Nominating
	)	Petition Submitted for the
	)	Office of Delegate to the
Eleanor Holmes Norton,	)	U.S. House of
Candidate.	)	Representatives

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on March 25, 2020. It is a challenge to the nominating petition of Eleanor Holmes Norton (“Ms. Norton”) for the office of Delegate to the U.S. House of Representatives filed by Tori Fernandez Whitney (“Ms. Whitney”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). Ms. Whitney was represented by Mr. Kweku Toure, Esq., and Ms. Norton appeared *pro se*. Chairman D. Michael Bennett and Board member Karyn Greenfield presided over the hearing.

**Background**

On February 10, 2020, Eleanor Holmes Norton submitted a nominating petition to appear on the ballot as a candidate in the June 2, 2020 Primary Election for the office of Delegate to the U.S. House of Representatives (“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 nine hundred and twelve (2,912) signatures. Pursuant to Title 3, District of Columbia Municipal

Regulations (D.C.M.R.) § 1603.1, the Board of Elections Registrar accepted all 2,912 signatures for review.

On March 7, 2020, the Petition was posted for public inspection for 10 days, as required by law. On the same date, the Petition was challenged by Tori Fernandez Whitney, a registered voter in the District of Columbia.

Ms. Whitney filed challenges to a total of one thousand four hundred and eight (1,408) signatures on the grounds that the circulator affidavits on the pages containing these signatures were defective. Specifically, the affidavits were challenged pursuant to Title 3 D.C.M.R. § 1607.1 of the Board's regulations on the following grounds: the signature is not made by the person whose signature it purports to be; the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; and the circulator of the petition failed to complete all required information in the circulator's affidavit. The circulator affidavits challenged pertained to two circulators: Mr. Paul Strauss and Mrs. Maritza Zermeno.

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

Mrs. Karen F. Brooks, the Registrar of Voters ("the Registrar") reviewed the challenge to determine the sufficiency of the challenged signatures. The Registrar's review indicated that a total of 20 of the 1,408 signature challenges – the ones attributed to Mr. Strauss - were valid, because the signature on Mr. Strauss' circulator affidavit did not match his signature as it appeared in the voter registry. The review further indicated that the remaining 1,388 signature challenges - the ones attributed to Mrs. Zermeno – were invalid, because the signature on Mrs. Zermeno's circulator affidavit matched the signature that appeared on Mrs. Zermeno's Non-resident Petition Circulator Registration Form. Accordingly, the Registrar preliminarily

determined the Petition contained 2,892 presumptively valid signatures, which is 892 signatures over the number required for ballot access.

### **March 20, 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 Friday, March 20, 2020. As a threshold matter, Ms. Whitney took issue with the Registrar's findings because she thought that the Registrar failed to review her claims that Mrs. Zermeno was not a qualified petition circulator at the time the petition was signed, and that she failed to complete all required information in the circulator's affidavit. The Registrar explained that each of Ms. Whitney's claims had been taken into consideration, but noted that Mrs. Zermeno had, in fact, completed the required Non-resident Petition Circulator Registration Form prior to circulating petitions for the campaign. Accordingly, the interrelated challenges were all incumbent upon the authenticity of the signatures on the circulator affidavits.

Ms. Whitney presented a statement from a forensic expert, Ms. Beverley East, CFDE, CAM, MGA, ("the East Report") that raised inconsistencies in Mrs. Zermeno's numerous circulator affidavits. The East Report asserted that, "over twenty signatures on the documents given for examination do not bear an authentic signature of Maritza Zermeno." Ms. Whitney further asserted that the East Report, the volume of signatures attributed to Mrs. Zermeno (1,491, according to Ms. Whitney), and the fact that several of Mrs. Zermeno's petition sheets contain the same start dates but have various end dates, constitute clear and convincing evidence of fraud in the Petition's circulation process as it pertains to the sheets circulated by Mrs. Zermeno, in that they indicate that Mrs. Zermeno did not circulate all of the petition sheets attributed to her. Ms. Whitney likened the alleged irregularities she raised to those found in the matter of *Brizill v.*

*Williams* (D.C. Board of Elections Admin. Op. # 02-016, July 30, 2002), and asserted that the Petition should similarly be disallowed.

In response, Ms. Norton asserted that documents in the Board's possession demonstrate that the challenge is baseless and should be dismissed. She cited that Mrs. Zermeno had submitted a timely filed Non-resident Petition Circulator Registration Form, which was witnessed and signed by a Board official upon submission. Ms. Norton also presented testimony from the circulator in question, Mrs. Zermeno. Mrs. Zermeno explained that her signature may look different because she was signing the affidavits in the cold on a clipboard with no solid surface. When asked by Staff Attorney Rudolph McGann whether she circulated all petition sheets bearing her signature as the circulator, she testified that she collected all of the signatures attributed to her as a circulator. Moreover, Mrs. Zermeno explained that the reason that multiple petition sheets started on the same day was because she carried multiple clipboards to procure as many signatures as possible simultaneously when encountering bigger crowds of potential signatories. Accordingly, many of her pages started on the same day in clusters, as pointed out by Ms. Whitney, but the pages ended on differing days depending upon when she collected enough signatures to complete them.

At the conclusion of the pre-hearing conference, Staff Attorney McGann instructed the parties to be prepared to substantiate their claims before the Board with respect to the one circulator in dispute, Mrs. Zermeno.

## March 25, 2020 Board Hearing<sup>1</sup>

During the Board hearing, the parties argued the authenticity of the petition sheets circulated by Mrs. Zermeno. Ms. Whitney relied primarily upon the East Report in asserting that Mrs. Zermeno did not sign the petition sheets attributed to her as a circulator. Under cross-examination by Ms. Whitney, Mrs. Zermeno testified under oath that she personally circulated each petition sheet attributed to her and that she personally witnessed each signature on the petition sheets attributed to her. She also reiterated that any perceived inconsistencies in her signature was due to her signing the sheets in the cold on a clipboard without the benefit of a steady surface.

Ms. Whitney noted the sheer volume of the signatures collected by Mrs. Zermeno, and asserted that this evinced a clear and convincing case of fraud in the circulation process akin to that found in the Williams campaign nominating petition operation in the matter of *Brizill v. Williams*. Ms. Whitney brought up Mrs. Zermeno's statement during the pre-hearing conference that she, on occasion, circulated signatures with her husband, also a registered non-resident petition circulator, as evidence that Mrs. Zermeno did not circulate all of the petition sheets

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<sup>1</sup> Prior to the hearing before the Board, Ms. Whitney objected to the use of a teleconference for the following reasons: the hearing can be conducted in accordance with the 10-person guideline issued by the Centers for Disease Control and Prevention, ("CDC") and DC Health; the teleconference platform may limit public participation and make it difficult for a stenographer to accurately document the proceedings; the teleconference platform provided by the Board for the March 20, 2020 pre-hearing conference was inadequate for the conduct of official business (inaudible at times and subject to static); and the teleconference platform does not allow for the visual observation of witness demeanor and may conceal coaching of witnesses as they respond to questions from the Board.

Ms. Norton responded that: D.C. government agencies, including the Board of Elections, are operating under the Mayor's State of Emergency Order of March 11, 2020 to conduct business by teleworking; while this hearing constitutes a mandatory service, the Board's regulations allow for electronic hearings; and the Board need only make the hearing public and transcribed. Ms. Norton further asserted that an in-person hearing would violate the 10-person limit established in the emergency order because the Board would have to open the meeting to the public in addition to staff, attorneys, and witnesses.

The Board, in consultation with its General Counsel, considered how a public body may hold meetings remotely and comply with the Open Meetings Act in light of the public health emergency. The Board provided a dial-in number for the public to participate in the meeting, and posted notice on its website of the public meeting 48 hours in advance. These steps were reasonably calculated to allow the public to hear the meeting while it is taking place during the public health emergency.

attributed to her. Mrs. Zermeno took umbrage to the suggestion that she would sign sheets that her husband circulated, and she maintained that she witnessed the signatures gathered on her petitions.

### **Discussion**

The circulator's responsibility with respect to nominating petitions is to ensure integrity in the collection of signatures. The circulator is responsible for collecting authentic signatures of duly registered voters. In the instant case, Ms. Whitney argues that she has presented "clear and convincing evidence of fraudulently circulated petitions" by Mrs. Zermeno who collected the majority of the Norton petition signatures. However, the Board views the comparison of the instant case and the *Williams* case as inapposite. The case of *Brizill v. Williams* established that the Board is compelled to disallow all signatures from circulators who disavow circulating the nominating petition sheets attributed to them, and those which have a taint of documented fraudulent activity. The challengers in *Williams* presented evidence in the form of affidavits from purported signatories who asserted their signatures were forged on the nominating petition. Moreover, the petition was riddled with fictitious names and names of celebrities. Ms. Whitney does not allege nor does she present this type of documented fraudulent activity here; contrastingly, she submitted the East Report, which asserts:

While signatures can vary from one signing to another, there are specific characteristics such as pen lifts, pattern construction and line quality that make a signature as unique as a fingerprint. It is these subtle differences that sets them apart from the authentic signatures. The questioned signatures bear numerous and significant differences when compared to known signatures which [were] provided for my examination. The notable disparities are too numerous to be attributed to chance.<sup>2</sup>

The East report does not illustrate the differences perceived by Ms. East, and the cursory report did not outweigh Mrs. Zermeno's personal testimony under cross-examination by Ms.

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<sup>2</sup> East Report p. 1

Whitney with the assistance of her legal representative, Mr. Toure, which the Board found to be credible.

The Board saw no notable disparities between the signatures found among and between the circulator affidavits signed by Mrs. Zermeno and that which was submitted on her Non-resident Petition Circulator Registration Form. The Board weighed her testimony against the assertions made in the East Report and credited that testimony, in conjunction with the documented evidence of her signatures on the affidavits in comparison to her Non-resident Petition Circulator Registration Form. As a result, the Board concluded that Ms. Whitney did not meet her burden of proving that Mrs. Zermeno did not circulate the numerous petitions attributed to her as a circulator.

**Conclusion**

Ms. Norton collected two thousand, eight hundred and ninety-two (2,892) valid signatures, which is eight hundred and ninety-two (892) signatures over the number required for ballot access. It is hereby:

**ORDERED** that candidate Eleanor Holmes Norton is granted ballot access for the office of Delegate to the U.S. House of Representatives in the June 2, 2020 Primary Election.

Date: 3/27/2020



D. Michael Bennett  
Chairman  
Board of Elections