

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Tori Fernandez Whitney,)	
Challenger)	Administrative
)	Order #20-004
)	
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 April 1, 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 members Michael Gill and 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 contest for the nomination 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 2,000 signatures of District voters who are duly registered Democrats in the District of Columbia. The Petition contained a total of 2,912

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 2,912 signatures for review.

On March 7, 2020, the Petition was posted for public inspection for 10 days, as required by law. On March 15, 2020, the Petition was challenged by Ms. Whitney, a registered voter in the District of Columbia. This was the second challenge Ms. Whitney filed to the Petition; Ms. Whitney's initial challenge, filed on March 7, 2020, was resolved by the Board's order in *Whitney v. Norton I* (D.C. Board of Elections Admin. Op. #20-002, March 27, 2020) ("the Initial Challenge").

Ms. Whitney filed challenges to a total of 858 signatures individually and on the grounds that the circulator affidavits on the pages containing these signatures were defective. 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, 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 circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; the circulator of the petition failed to complete all required information in the circulator's affidavit; the signature is not made by the person whose signature it purports to be; and 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.

Registrar's Preliminary Determination

The Registrar reviewed the challenge to determine the sufficiency of the challenged signatures. The Registrar's review indicated that a total of 136 of the 858 signature challenges

were valid. Specifically, the Registrar found that 39 signatures belong to signers who were not registered to vote at the address listed on the petition at the time the petition was signed; two signatures are illegible; 37 signatures were invalidated because the circulator of the petition failed to complete all required information in the circulator's affidavit; one signature was invalidated because it was not dated; 22 signatures belong to individuals who are not registered; 8 signatures belong to individuals who are not registered Democrats; 7 signatures are missing an address; and 20 signatures are on a page where the circulator's affidavit contains a signature that was not made by the person whose signature it purports to be. Accordingly, the Registrar preliminarily determined the Petition contained 2,776 presumptively valid signatures, which is 776 signatures over the number required for ballot access.¹

March 26, 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 Thursday, March 26, 2020. In her findings report issued prior to the prehearing conference, the Registrar noted that even if every one of the 858 challenges were valid, Ms. Norton would still meet the requisite number to qualify for ballot access. The Registrar also provided a report outlining her determinations with respect to the validity of each signature challenged, as well as a key code explaining the notations she used to indicate the basis for upholding or denying each challenge.

¹ The Registrar's Preliminary Determination Report, as reflected in this order, reflects corrections and updates to the previous version that was issued to the parties and presented at the hearing in this matter on April 1, 2020. The previous version indicated that 37 signatures were disallowed because they were either undated or because the circulator was unqualified. These signatures are more accurately categorized as having been invalidated because the circulator of the petition failed to complete all required information in the circulator's affidavit. This is the case because, with respect to each of these signatures, the circulator either failed to include a date or included the wrong date in the affidavit. The previous version also indicated that 23 signatures belong to individuals who are not registered instead of 22, that 17 signatures lacked a date instead of just one, and failed to include the 20 signature challenges that had been upheld on the basis of a circulator affidavit containing a signature that was not made by the person whose signature it purports to be. These findings, while not reflected in the previous version of the Registrar's initial report, was reflected in her underlying work product.

Ms. Whitney countered that the Registrar’s review “provide[d] no analysis and/or description of the processes undertaken by the Registrar of Voters to make its concluding determinations and fail[ed] to demonstrate a credible and comprehensive review” and “include[d] no criteria or evidence that the Board either procured or has the staff expertise to validate disputed signatures.” To support her claims, Ms. Whitney alleged that the Registrar did not provide dates documenting when voters submitted curative address change information, that the Registrar failed to invalidate signatures dated prior to January 10, 2020, the date that the Board made nominating petitions available, and that the absence of the “staff expertise” necessary to validate disputed signatures resulted in the acceptance of signatures on pages with defective circulator affidavits.² Finally, Ms. Whitney requested that the Registrar be directed “to procure the expertise needed to conduct a comprehensive and thorough review of each component of the challenge [to the Petition].”

Ms. Whitney reincorporated a statement from a forensic expert, Ms. Beverley East, CFDE, CAM, MGA, (“the East Report”) submitted in the Initial Challenge that raised inconsistencies in the circulator affidavits attributed to Mrs. Maritza Zermeno. 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 reasserted her claims from the Initial Challenge that the findings in 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

² Ms. Whitney proffered four Petition sheets in support of this claim. Of these sheets, the sheet circulated by Paul Strauss had, in fact, been disallowed because the Registrar determined that the signature on the circulator affidavit at issue did not appear to match Mr. Strauss’ signature as it appeared in the voter registry. The individual signatures on the other sheets were adjudged on a signature-by-signature basis, and duly notated with an “OK” for a presumptively valid signature, and a “V” for a valid challenge.

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 also asserted that Petition circulators James Davenport, Joyce Robinson Paul, and Vermell Howard did not circulate the Petition sheets attributed to them. However, the East Report does not address the authenticity of these circulators' signatures.

In response, Ms. Norton asserted that the issue of circulator impropriety with respect to Mrs. Zermeno and Mr. Strauss had been settled by the Board's order in *Whitney v. Norton I*, and that, at any rate, Ms. Whitney did not challenge enough signatures to deny her ballot access.

April 1, 2020 Board Hearing³

During the Board hearing, Ms. Whitney requested that the Board examine the four petition sheets submitted and accept them as clear and convincing evidence of irregularity in the Petition circulation process. In addition, Ms. Whitney asked the Board to procure a qualified signature expert for the purpose of conducting a comprehensive and thorough review of her challenge.

Ms. Norton asserted that the challenge was redundant, in that the Board had already resolved the issue of defective circulator affidavits in *Whitney v. Norton I*, which had resulted in the rejection of 20 signatures. Ms. Norton also noted that Ms. Whitney did not challenge enough signatures to remove her from the ballot.

Discussion

The minimum requirement to obtain ballot access for this office is 2,000 signatures of District voters who are duly registered Democrats in the District of Columbia. The Petition

³ Prior to the hearing before the Board, Ms. Whitney reiterated her objection to the use of a teleconference because the teleconference platform provided by the Board for the pre-hearing conferences on March 20, 2020 and March 26, 2020 was inadequate for the conduct of official business (inaudible at times and subject to static). The Board in turn reiterated the need to hold meetings remotely in light of the public health emergency.

contained a total of 2,912 presumptively valid signatures. Ms. Whitney filed challenges to a total of 858 signatures individually and on the grounds that the circulator affidavits on the pages containing these signatures were defective. Even if each of the 858 signatures was rejected, the Petition would still have 2,054 presumptively valid signatures – 54 signatures over the minimum number required for ballot access. The Board upholds the finding of the Registrar that the petition contains 2,776 presumptively valid signatures.

Regarding Ms. Whitney’s claims of inadequate review, the Board notes that the Registrar ultimately upheld each challenge lodged on the grounds that the signer is not registered to vote at the address listed on the petition at the time the petition was signed. Contrary to Ms. Whitney’s understanding that curative changes of address were filed, Ms. Norton did not avail herself of the opportunity to submit such changes of address.⁴ The Board also notes that the Registrar upheld challenges to 38 signatures that were either undated or on pages that bore incomplete or inaccurate circulator affidavits. In addition, the Board notes that 20 signatures on a sheet attributed to Mr. Strauss were invalidated because the signature on the circulator affidavit did not appear to match Mr. Strauss’ voter registry signature. With respect to the 12 signatures that Ms. Whitney insists the Board must disallow on the grounds that they were dated prior to January 10, 2020, the date that the Board made nominating petitions available, the Board waives that formal error, finding that the signatures could not have been circulated prior to January 10, 2020 because the Petition sheets were not issued before that date.

Finally, Ms. Whitney’s argument that the Board must procure experts in the field of hand-writing analysis discounts that the Registrar has over 20 years of practical experience examining signatures in this arena. The Registrar has engaged in this type of analysis during her

⁴ Ms. Whitney apparently misconstrued the Registrar’s notation used in instances where challenges are upheld on the grounds that that the signer is not registered to vote at the address listed on the petition at the time the petition is signed to mean that the challenge was denied.

entire tenure with the Board, and the Board credits her service in this capacity as sufficient qualification to make an informed determination as to the authenticity of the circulators' signatures. Therefore, the Board upholds the Registrar's findings validating the challenged circulators' affidavits, and accepts the signatures otherwise found to be valid that are contained on those pages.

Conclusion

As a result of this challenge, the Board finds that the Petition contains 2,776 valid signatures - 776 signatures over the number required for ballot access. It is hereby:

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

Date: 4/6/2020



D. Michael Bennett
Chairman
Board of Elections