

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

In Re Richard C. Bartel
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Administrative Order  
No: 02-029

**MEMORANDUM OPINION AND ORDER**

This matter came before the Board of Elections and Ethics (hereinafter “the Board”) on Wednesday September 11, 2002, and involved an appeal of a Preliminary Determination of the Registrar of Voters denying the Complainant ballot access as an Independent direct access candidate as U.S. Senator in the November 5, 2002 General Election. The material facts of this case are undisputed. On August 28, 2002, the Complainant submitted the Nominating Petition pages given to him on August 1, 2002 without any signatures. Complainant asserts that the statutes contain no requirements for nominating petition(s) for the office of U.S. Senator.

The Board referred the Complainant to D.C. Code §1-123(d)(2) which states:

The qualifications for candidates for the offices of Senator and Representative shall conform with the provisions of Article I of the United States Constitution and *the primary and general elections shall follow the same electoral procedures as provided for candidates for nonvoting Delegate* of the District of Columbia in the District of Columbia Election Code of 1955, subchapter I of Chapter 10 of this title... (emphasis added).

Although the D.C. Code has been enumerated differently, the electoral procedures for the nonvoting delegate have never been repealed, and are still codified in the D.C. Code at §1-1001.08(j)(1)(B):

Such person shall be nominated by petition: in the case of a person who is a candidate for the office of *Delegate*, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in

number to 1 ½ per centum of the total number of registered voters in the District ... or by 3,000 persons duly registered under §1-1001.07, whichever is less. (emphasis added).

D.C. code section 1-123 is part of the “Constitutional Convention Initiative,” which was Initiative 3. The initiative’s purpose was to form a constitution and provide a process for securing statehood for the territory known as the District of Columbia. The offices of Senator and Representative were created in D.C. Code §1-123(d)(1); however, they were contingent only on the approval of a proposed constitution by a majority of the electors voting thereon. The proposed “Constitution of the State of New Columbia” was submitted to the electors of the District of Columbia for ratification on November 2, 1982. The results of the voting, certified by the Board on November 10, 1982, were 61,405 for the Constitution and 54,964 against the Constitution. The proposed Constitution for the State of New Columbia was approved by Congress June 24, 1987. D.C. Code §1-123(b).

The Complainant argues that §1-123 was based on statehood; however, the statute clearly raises passage of the Constitution as its only limitation to creation of the offices.<sup>1</sup> A careful examination of the rest of §1-123 does not support the Complainant’s position. Under D.C. Code §1-123(f)(2) “A Representative or Senator shall monitor the progress of the petition for admission of New Columbia to statehood pending before Congress and report on the progress to the District of Columbia residents;” §1-123(f)(3) states: “May advise the District of Columbia on matters of public policy that bear on the achievement of statehood.” Clearly, these duties indicate that the offices’ existence was not contingent

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<sup>1</sup> The two Senators and one Representative are local D.C. offices which have the same titles as the federal offices that will exist if the District becomes a state. Elections for these positions were postponed by legislation several times, with the first elections held in the Fall of 1990. The idea of electing “Senators and “Representatives” as part of an effort to achieve statehood originated in the “Tennessee Plan” of 1796.

upon the District becoming a state because the duties include functions associated with attempting to gain entrance into the union as well as keeping abreast of statehood progress.

The Complainant also assumes that the elections held for Senators and Representative would have applied only to the 1980, 1982, and 1990 elections. The Complainant misreads §1-123(d)(1) because the dates used in that section refer only to the initial elections held in 1990: “in the event that the purposed constitution is approved by electors at the general election to be held in November, 1982, the primary and general elections *authorized by this paragraph* shall be held in September, 1990, and November 1990, respectively. (emphasis added). D.C. Code §1-123(d)(2) further explains that

The term of the 1<sup>st</sup> Representative shall begin January 2, 1991, and shall expire on January 2, 1993. The terms of the 1<sup>st</sup> Senators elected pursuant to this initiative shall begin on January 2, 1991 and shall expire on January 2, 1997, and January 2, 1995, respectively. At the initial election, the candidate for Senator receiving the highest number of votes will receive the longer term and the candidate receiving the second highest number of votes will receive the shorter term.

This accounts for staggering the terms of offices for the two Senators. Nothing in the D.C. Code or the Board’s regulations suggest dissolving the office in the event that the District of Columbia does not become a state by some certain date. Therefore, the Board reads the statute in light of the initiative’s purpose as an ongoing attempt to secure statehood through proper channels by the Senators and Representatives chosen pursuant to the same electoral procedures as provided for candidates for nonvoting Delegate.

In view of the legal arguments presented, the Board finds that the Complainant has failed to meet the minimum requirements to appear on the ballot as an Independent direct access candidate as U.S. Senator in the November 5, 2002 General Election.

Therefore, the Board denies the appeal as specified herein and in accordance with the preliminary determination of the Registrar of Voters. Accordingly, it is hereby

**ORDERED** that Candidate Bartel be denied access as an Independent direct access candidate as U.S. Senator in the November 5, 2002 General Election.

10/7/2002  
Date

Benjamin D. Wilson  
Benjamin Wilson,  
Chairman Board of Elections  
& Ethics

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing order was hand-delivered this Monday, October 07, 2002 to Richard C Bartel, 2800 Quebec Street NW #906 Washington D.C. 20008.

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Rudolph McGann