

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

Robert M. Siegel,

Complainant,

v.

Geoffrey A. Kreiss.
Respondent.

Administrative Hearing
No. 08-08

Re: Challenge to Nominating
Geoffrey A. Kreiss,
Advisory Neighborhood Commissioner
Single Member District 6D07

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections and Ethics on October 1, 2008. It is a challenge to the Nominating Petition of Geoffrey Kreiss (“Kreiss”), a candidate for the office of Advisory Neighborhood Commissioner, (ANC) Single Member District 6D07 filed by Robert Siegel (“Siegel”) pursuant to D.C. CODE § 1-1001.08(o)(1) (2006). Chairman Errol R. Arthur and Board members Dr. Lenora Cole and Charles R. Lowery, Jr. presided over the hearing. Both the Complainant and the Respondent appeared *pro se*, but Kreiss was accompanied by his circulator Mr. Michael Coffey.

Background

On September 5, 2008, Kreiss submitted a Nominating Petition for the office of ANC 6D07 containing three (3) petition sheets with thirty-five (35) signatures. On September 8, 2008, the petition was posted for inspection, pursuant to D.C. CODE § 1-1001.08(o)(1) (2006), for a 10-day challenge period.¹ On September 17, 2008, Siegel

¹ D.C. CODE § 1-1001.08(o)(1) (2006) states in relevant part:

filed a challenge to the petition in which he challenged 29 of the 35 signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Specifically, Siegel challenged signatures on the following bases: 1) 3 D.C.M.R. § 1607.2 signatures are not on file to verify whether the purported signatory is the actual person on the voting registry;² 2) 3 D.C.M.R. § 1607.5(b) Signers of the petition were not registered to vote at the address listed on the petition; 2) 3 D.C.M.R. § 1607.5(c) Signers of the petition were not registered to vote; 3) 3 D.C.M.R. § 1607.5(h) Signatures and printed names appearing on the petition sheets were illegible; and lastly, Mr. Siegel alleged that Mr. Kreiss fraudulently obtained signatures not in his presence. In support of Mr. Kreiss' most serious allegation of fraud, he submitted a forwarded email from D.C. State Democratic Committee Woman, Kirsten M. Burgard, which in turn contained an appended message from Mr. Michael Coffey stating that petitions would be available to sign at the front desk. Ms. Burgard appropriately opined that if the petition was circulated unattended, then that is a direct violation of D.C. CODE § 1-1001.08 (b)(3)(B), which states that each circulator must personally witness each person sign the petition.

The Acting Registrar of Voters' ("Registrar") review of the challenges referencing the Municipal Regulations concluded that five (5) of the challenges to the

The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition.

² In cases where Mr. Siegel was unable to locate signatures on the electronic voting registry, the Acting Registrar located the signatories' voting registration cards with their original signature.

Kreiss' nominating petition were valid while twenty-four (24) were invalid—leaving the Candidate with thirty-three (33) signatures. The minimum requirement of signatures for this office is twenty-five (25) pursuant to D.C. CODE § 1-309.05(b)(1)(b) (2006). Accordingly, the Registrar concluded the Candidate had secured enough signatures on his nominating petition for ballot access. The allegation of fraud was a factual dispute, and Siegel decided to take the matter to the Board for a full hearing.

During the hearing on October 1st, Mr. Siegel did not present any witness who actually observed the nominating petition left unattended for people to sign outside the presence of the circulator, nor did he personally observe such activity. Rather, he relied on the previously submitted email inquiring whether this conduct actually occurred in response to Mr. Coffey's prior email indicating that he would have nominating petitions at the front desk of his building.³ Mr. Coffey testified that his original intention was to leave the petition for building residents to sign, until he read the guidelines provided to him by the Board regarding the proper manner of petition circulation. Upon realizing that he could not leave the petition unattended, he resorted to collecting the signatures himself.

Analysis

The Complainant Bears the Burden of Proof.

Pursuant to title 3 D.C.M.R. §424.1, “The party who asserts the claim bears the affirmative duty of establishing the truth of the assertion. In the instant matter, Mr. Siegel asserts that Mr. Kreiss fraudulently obtained signatures on his nominating petition

³ Ms. Burgard never mentions actually witnessing such activity taking place in her correspondence; moreover, Mr. Kreiss testified under oath that Ms. Burgard was on vacation out of town when the petition was circulated—thereby making it impossible for her to witness such activity, and Mr. Siegel did not dispute Mr. Kreiss' testimony.

by collecting them outside the presence of the circulator. This is a serious charge that could result in perjury referrals for the circulators who have signed a nominating petition claiming to have personally witnessed each signature. However, as the person making the claim, Mr. Siegel bears the responsibility to present evidence to support the truth of the matter asserted. Considering his evidence amounts to a letter inquiring whether this conduct occurred, Mr. Siegel has not met his affirmative duty to establish the truth of his assertion. Moreover, Mr. Kreiss presented his circulator, Mr. Coffey, to testify under oath about his actions in gathering signatures on Mr. Kreiss' nominating petition.

The circulator's function with respect to nominating petitions in the District of Columbia—as well as in every jurisdiction that utilizes nominating petitions for ballot access—is to ensure integrity in the collection of signatures. Primarily, the nominating process is intended to ensure a prospective candidate has some modicum of support from the duly registered voters the candidate wishes to represent. With respect to nominating a candidate for ballot access, the circulator is engaged to collect genuine signatures of duly elected voters. More poignantly, the circulator ensures the signatures were collected in a manner free from fraud or undue influence. The fact that Mr. Coffey testified that he personally witnessed the signature of each signatory must outweigh mere allegations of impropriety that were not supported by any eye-witness testimony. Accordingly, the Board gave great weight to the testimony of the circulator in this case.

In sum, the Board affirmed the decision of the acting Registrar of Voters with respect to the challenges referencing the Municipal Regulations because Mr. Siegel did not take issue with her findings. Candidate Kreiss, based on the Board's findings and conclusions, it is hereby:

ORDERED that Geoffrey A. Kreiss be **GRANTED**

Ballot Access in the November 4, 2008 General Election office of Advisory
Neighborhood Commissioner, (ANC) Single Member District 6D07.

October 6, 2008



Errol R Arthur
Chairman, Board of Elections and Ethics

Lenora Cole
Member, Board of Elections and Ethics

Charles R. Lowery, Jr.
Member, Board of Elections and Ethics

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was hand-delivered this 6th day of October, 2008 to Robert Siegel, 919 5th St. SE, Washington, D.C. 20003 and Geoffrey A Kreiss, 1000 New Jersey Ave. SE, Washington, D.C. 20003.
