

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

Lawrence Guyot, et al., Challengers)	
)	
v.)	Administrative Hearing
)	No. 11-003
)	Re: Challenge to Nominating Petition of
Patrick Mara,)	Patrick Mara, Candidate, At-Large
Candidate.)	Member of the Council of the District
)	of Columbia

MEMORANDUM OPINION AND ORDER

I. Introduction

This matter came before the Board of Elections and Ethics (hereinafter “the Board”) on Monday, March 14, 2011 pursuant to challenges filed by Lawrence Guyot and Bandele McQueen to the nominating petition submitted by Patrick Mara in support of his candidacy for the office of At-large Member of the Council of the District of Columbia in the April 26, 2011 Special Election. Lawrence Guyot appeared *pro se*, and was accompanied by Louis Davis. Bandele McQueen was represented by Beth Colleye, Esq. and Rashid Mathus. Patrick Mara was represented by Charles R. Spies, Esq. of Clark Hill PLC. Board Member Charles R. Lowery, Jr. presided over the hearing.¹

II. Statement of Facts

On February 14, 2011, Mr. Mara timely submitted a nominating petition in support of his candidacy for At-large Member of the Council of the District of Columbia in the April 26, 2011 Special Election (“the Petition”).² The Petition contained a total of 5,629 signatures. The

¹ See D.C. CODE § 1-1001.05(g) (2006), which allows Board cases to be heard by a 1 member panel.

² Nominating petitions were due on Wednesday, February 16, 2011, 69 days before the Special Election. See D.C. Official Code §1-1001.08(j)(1)(A).

minimum requirement for this office is 3,000 signatures of duly registered District of Columbia voters.³ On Saturday, February 19, 2011, the Petition was posted for public inspection and review, and for the purpose of allowing any duly registered District of Columbia voter to challenge the validity of the petition.⁴

On February 28, 2011, Bandele McQueen and Lawrence Guyot, both of whom are duly registered District of Columbia voters, each filed challenges to the Petition.⁵ Mr. McQueen challenged a total of 3,660 Petition signatures. The grounds upon which Mr. McQueen sought to disqualify signatures in the Petition are as follows: 1) the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; 2) 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; 3) the signer is not a duly registered voter; 4) the signature is not dated; 5) the petition does not include the printed or typed address of the signer; 6) the petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; 7) the circulator of the petition sheet was not a registered qualified elector of the District of Columbia at the time the petition was signed; or 8) the signature is a duplicate.⁶ The McQueen Challenge purported to specify the petition sheet number petition sheet and line number for each challenged signature, as well as the basis for each challenge. However, the McQueen Challenge did not contain the names of the individuals whose signatures were challenged.

³ See D.C. Official Code §1-1001.08(j)(1)(B).

⁴ See D.C. Official Code §1-1001.08(o)(1).

⁵ The challenges submitted by Messrs. Guyot and McQueen shall hereinafter be referred to as the Guyot Challenge and the McQueen Challenge, respectively.

⁶ See D.C. MUN. REGS. tit. 3, § 1607.5 (2007).

Mr. Guyot challenged a total of 1,047 signatures on the Petition on the grounds that: 1) the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; 2) 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; 3) the signer is not a duly registered voter; 4) the petition does not include the printed or typed address of the signer; 5) the petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; 6) the circulator of the petition sheet was not a registered qualified elector of the District of Columbia at the time the petition was signed; or 7) the signature – of either the signatory or the circulator - is a forgery.⁷

Consistent with Board practice, the Board's Office of the General Counsel held pre-hearing conferences with respect to each of the challenges on Monday, March 7, 2011. During the pre-hearing conference regarding the Guyot Challenge, Karen Brooks, the Registrar of Voters ("the Registrar") rendered a preliminary determination report which indicated that 302 of the 1,047 challenges filed were valid, leaving Mara with 5,327 valid signatures – 2,327 more signatures than were required for ballot access. The Registrar's preliminary determination report concerning the McQueen Challenge indicated that 2,447 of the 3,660 challenges filed were valid, leaving Mara with 3,182 valid signatures – 182 more signatures than were required for ballot access. Mr. Guyot and Mr. McQueen each responded to the Registrar's preliminary determination report in their respective matters by requesting a hearing before the Board. After the pre-hearing conferences were adjourned, an email was sent to all parties informing them that a hearing on both challenges would take place on Thursday, March 10, 2011.

During the course of her review of the challenges to the Petition, the Registrar came across several petition sheets that contained what appeared to be signature forgeries. In an effort to

⁷ *See id.*

verify the authenticity of the signatures at issue, the Registrar reviewed the voter registration cards associated with each signatory. She then brought the sheets to the attention of the Board's Executive Director, Rokey Suleman ("the Executive Director"), who concurred with the Registrar's opinion that, in several instances across the Petition sheets, signatures appearing in close proximity with one another appeared to have been made by the same hand. In light of this discovery, the Board decided to postpone the scheduled hearing in order to further investigate the matter.⁸

On Monday, March 14, 2011, the Board held a joint hearing on the McQueen and Guyot Challenges. During the hearing, Mr. McQueen's representatives indicated that they stood by both the McQueen Challenge and the Registrar's preliminary determination report. Mr. Guyot challenged - for the first time - the Registrar's determination that he had only filed challenges to 1,047 signatures on the Petition, asserting that he also timely submitted, as part of his challenge, a letter alleging a pervasive pattern and practice of fraud, forgery, and falsification in the Petition such that its total rejection was warranted. The Registrar responded to this claim by stating that the Guyot Challenge did not contain the letter to which Mr. Guyot referred. Mr. Mara alleged, through his counsel, that the format of the McQueen Challenge made it impossible to know which signatures were being challenged because it referred only to page and line numbers, but

⁸ Regrettably, the decision to postpone the hearing was made on the day the hearing was scheduled to take place, and not in time to notify the parties in advance. In fact, Mr. Mara's counsel, Mr. Spies, was present in the hearing room at the appointed time and was informed at that time that the hearing had been postponed.

Additionally, staff in the Office of the General Counsel encountered difficulties in its attempts to notify the parties as to both the new hearing date and the Board's concerns regarding apparent forgeries in the Petition. Specifically, staff attorney Rudolph McGann attempted to send an email to the parties on Thursday, March 10, 2011 at approximately 3:55 p.m. The transmission of the email failed due to the size of an attachment containing copies of the Petition sheets at issue. However, Mr. McGann was not made aware of the failure of the transmission until the next day, when a representative of the McQueen Challenge appeared at the Board's offices on an unrelated matter. Once it became clear that the parties had not been notified of either the new hearing date or the apparent forgery issue, Mr. McGann removed the large attachment and successfully transmitted the email. He also made two sets of electronic copies of the Petition sheets at issue on a disk, provided one to the McQueen Challenge representative, and sent the other to Mr. Spies via hand-delivery. Mr. Spies received the delivery shortly after 1:00 p.m. on Friday, March 11, 2011.

failed to also include the name of the challenged petition signer. Mr. Mara also alleged that the Board's staff made a scanning error at page 335 of the Petition which resulted in Petition pages 336-377 being catalogued with an incorrect number in the PDF file names.⁹ As a result of these actions, Respondent alleges that he was unable to know which signatures were being challenged, the basis for the challenge, and which signatures could have potentially been timely cured by permissible corrective action, such as the submission of a change of address form.¹⁰

III. ANALYSIS

A. The McQueen Challenge

As noted above, the McQueen Challenge did not include the names associated with the challenged signatures. Accordingly, the McQueen Challenge failed to meet the Board's rules which provide that nominating petitions "shall contain ... [t]he name(s), if legible, sheet and line number(s) of any challenged signature(s) and the basis for the challenge(s)[.]"¹¹ The rationale behind this rule is to alert both the Board and the challenged candidates as to precisely which signatures are being challenged, so that there may be meaningful review of, and adequate opportunity to respond to, the challenge. Despite the failure to include the names, the entire challenge is not therefore invalid because the McQueen Challenge provided the specific line and page number of the signature being challenged and the basis for the challenge. Therefore, the purpose of the rule was fulfilled; the Board and the challenged candidate were alerted about the precise signatures being challenged. Furthermore, the Board's regulations reflect the sentiment

⁹ As important background, one petition page is actually a two-sided, single sheet document, printed front to back. Mr. Mara submitted Petition page 335 to the Board as a two-sheet document, an improper format. Regardless of this flaw, Board staff accepted this Petition page. Even though Petition page 335 was a two-sheet document, it was correctly marked by Mr. Mara as a single page, thereby not affecting the true number of Petition pages submitted.

¹⁰ D.C. MUN. REGS. tit. 3, § 1607.8 (2007).

¹¹ D.C. MUN. REGS. tit. 3, § 410.3 (2007).

that all pleadings are to be liberally construed in the interests of justice, and no defect in pleading should impair substantial rights that are at issue in the instant case.¹²

The original justification for the Board's regulation becomes *exceedingly* clear in situations such as the one the Board is confronted with in the instant matter. First, Mr. Mara submitted, and the Board accepted, a defective Petition sheet.¹³ Next, in accordance with its established practice, the Board scanned all of the Petition sheets so that it could provide electronic copies for the benefit of the public and those interested in filing challenges, and for purposes of its own data management needs. Ordinarily, each petition page submitted and scanned receives an electronic file name that corresponds precisely with the petition page number. However, because of the defective Petition page, the electronic file numbering, which the McQueen Challenge relied upon, was "off" beginning with Petition page 336. Consequently, for example, where Mr. McQueen actually sought to challenge line 3 on Petition page 338, the Board was directed by the McQueen Challenge to review line 3 on Petition page 339. In sum, beginning with Petition page 335, it cannot be said that either the Board or Mr. Mara had requisite notice as to which signatures were being challenged. The inclusion of signatory names in accordance with the Board's regulation would have done much to avoid this predicament.

Although the Board acknowledges that the incorrect numbering on the McQueen Challenge beginning at page 335 may have prejudiced Mr. Mara with respect to the remainder of the Petition pages, Mr. Mara was not unfairly prejudiced as to challenges made to signatures on Petition pages 1 through 334. Because there was no mis-numbering on the true Petition pages or the file images for the initial 334 pages, Mr. Mara had complete notice as to which signatures

¹² See D.C. Mun. Regs. tit. 3 § 410.11 (“[N]o technical forms of pleadings or motions shall be required.”).

¹³ See note 9 *supra*.

were being challenged concerning those Petition pages. Accordingly, the Board accepts the Registrar's findings with respect to Petition pages 1-334.¹⁴

B. The Guyot Challenge

Pursuant to 3 D.C.M.R. 410.3, “[t]he Board shall not accept any challenge which, on its face, does not allege defects in the petition which, if valid, would render the prospective candidate ineligible.”¹⁵ In her preliminary determination report, the Registrar indicated that the Guyot Challenge contained objections to 1,047 of the 5,629 signatures contained in the Petition. Because the number of signatures required for ballot access is 3,000, it is clear that, even if every challenge in the Guyot Challenge were deemed valid, the Petition would still meet ballot access signature requirements. Accordingly, the Board should not have accepted the Guyot Challenge in the first instance.¹⁶ However, the Board, in contravention of its own rule, *did* accept and process the Guyot Challenge. Having done so, the Board cannot now ignore the outcome of the review of that challenge.

As noted above, Mr. Guyot challenged 1,047 of the 5,629 signatures contained in the Petition. 233 of the signatures challenged by Guyot were also challenged by McQueen. However, eight of the 233 signatures that were challenged in both the McQueen and Guyot

¹⁴ In the course of reviewing the McQueen challenges to petition pages 335-377, as already stated, *supra*, the Board's staff interpreted the McQueen Challenge line and page numbers to refer to the true petition pages, and not the image file numbers. Based upon this interpretation, the Registrar made a preliminary determination that 278 of the challenges made on pages 335 to 377 were valid challenges, and therefore the signatures were not credited to the Respondent's total. However, as a practical matter, even if the Board disregarded the 278 valid challenges to signatures on petition pages 335-377, the Respondent's total signatures would only be *enhanced by 278*, bringing the total number of presumed valid signatures to 3,460. Thus, in this specific case, whether the Board accepts those 278 challenges as valid has no overall impact on the outcome of the McQueen challenge as the Respondent has supplied a sufficient number of valid signatures to earn ballot access.

¹⁵ D.C. MUN. REGS. tit. 3, § 1609.4 (2007).

¹⁶ Although Mr. Guyot testified at the hearing that he submitted a letter alleging a pattern and practice of fraud in the Petition, the Board finds that it cannot credit this testimony. The Registrar and another member of the Voter Services staff both indicated that Guyot brought the letter to the Board, but ultimately did not submit it as a part of his challenge.

Challenges received conflicting determinations.¹⁷ Specifically, eight signatures that were erroneously invalidated through the McQueen Challenge were properly deemed valid in the Guyot Challenge. Therefore, rather than serving to decrease the number of valid signatures contained in the Petition, the Guyot Challenge instead dictates that, *based solely upon the objections levied in the McQueen and Guyot Challenges*, the Petition appears to contain 3,190 valid signatures.

C. Apparent Forgeries Discovered by the Board

During the course of her review of the McQueen and Guyot Challenges, the Registrar came across several Petition sheets that contained what appeared to be signature forgeries. She brought these sheets to the attention of the Executive Director, who agreed that, in several instances across the Petition sheets, signatures appearing in close proximity with one another appeared to have been made by the same hand.

The Board generally has taken the position that its responsibility under D.C. CODE § 1-1001.08(o)(1) (2006) is to address only those alleged defects in a nominating petition that are timely challenged by a complainant. While the Board continues to believe that this position is sound as a general matter, the Board believes that, in the context of a petition challenge, it is not precluded from addressing *sua sponte*, clear defects on the face of a petition of which it becomes aware that go to the heart of the electoral process.¹⁸ This case presents such a circumstance.

¹⁷ The eight Petition signatures that were treated differently are as follows: Page 12, line 3 (Chris Hoadley); Page 16, line 6 (Isabel Eastmon); Page 30, lines 9 (Caitlin Bentley) and 13 (Gary London); Page 77, line 3 (William McGrath); Page 117, line 10 (Layne Amerikaner); Page 123, line 15 (Monique Jackson); and Page 143, line 17 (Dareisha Boyd).

¹⁸ In the context of initiative petition challenges, see *Legalized Gambling v. District of Columbia Bd. of Elections & Ethics*, 501 F.Supp. 786, 789 (1980) (“Verification of the petition signatures does not depend on a challenge alone. The Board has an independent duty to assure sufficiency.”). See also 3 DCMR § 1011.9 (“In the event the Board discovers a fatal defect pursuant to a record search for a specific allegation or challenge, the Board may, on its own motion, declare the signature invalid, notwithstanding the defect was not alleged or challenged.”).

The integrity of the circulator process depends upon the validity of the Circulator Affidavit. “A genuine and complete affidavit . . . undergirds the presumptive validity of voter signatures on a petition.” *Williams v. District of Columbia Board of Elections and Ethics*, 804 A.2d 316, 319 (D.C. 2002); *Montes v. Mesidor*, Admin Hearing No. 07-003 (2007). When signatures are presented for inspection on a nominating petition in arguably the same handwriting, then the circulator affidavit is necessarily defective—either the circulator did not witness the wrongdoing and attested to the signature gathering process, or the circulator allowed someone to sign as multiple signatories.

Based upon its independent review of the Petition signatures that have been called into question, the Board finds that a total of 160 signatures on the Petition appear to be forgeries.¹⁹ 136 of these signatures were already invalidated through the McQueen and Guyot Challenges. The remaining 24 signatures, which were previously credited to Mr. Mara, must now be invalidated pursuant to the Board’s rule that “signature[s] on a petition shall be made by the person whose signature it purports to be and not by any other person.”²⁰ Accordingly, as a result of the McQueen and Guyot Challenges, as well as the Board’s independent review of the Petition, the Board finds that the Petition contains 3,166 signatures that are presumed to be valid – 166 more than the number required for ballot access.

As noted by the D.C. Court of Appeals in *Williams v. D.C. Board of Elections and Ethics*, “nominating petitions tainted by fraud or strong appearance of fraud may be discounted in their

¹⁹ The Petition sheets identified were circulated by seven individuals: 1) Nicole Anderson (Page 140, line 9; Page 146, lines 19 and 20; Page 157, lines 13-20), Byran Clark (Page 51, lines 1-4, 6-10, 11, and 13-20; Page 53, lines 1-10; Page 54, lines 3, 4, and 7-10); Nikita Lee (Page 55, lines 1-13; Page 68, lines 12-20; Page 70, lines 1-20); John Moon (Page 258, lines 11-17; Page 259, lines 8 and 9; Page 261, lines 14-17); Belinda Peace (Page 120, lines 1-20, Page 121, lines 1-13); Myron Thomas (Page 59, lines 14-18, Page 61, lines 1-20); and Roscoe Williams (Page 244, lines 1-2).

²⁰ See D.C. MUN. REGS. tit. 3, § 1607.2 (2007).

entirety by an election board.” 804 A.2d 316 at 319. The Board does not find that the number or level of forgery here rises to the level of *Williams* to warrant the Petition’s rejection. However, the Board cannot turn a blind eye to its findings concerning potential improprieties in connection with the Petition’s circulation. Therefore, the Board sees fit to refer the Petition sheets that were circulated by Nicole Anderson, Byran Clark, Nikita Lee, John Moon, Belinda Peace, Myron Thomas, and Roscoe Williams and identified as containing apparent forgeries to the appropriate authority for further review and investigation.²¹

IV. CONCLUSION

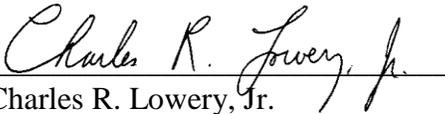
For the reasons outlined above, the Board concludes that the Petition contains the requisite number of signatures for ballot access. Accordingly, it is hereby

ORDERED that Patrick Mara be granted access to the ballot as a candidate for the office of At-Large Member of the Council of the District of Columbia in the April 26, 2011 Special Election.

It is further

ORDERED that the General Counsel refer the Petition sheets that were circulated by Nicole Anderson, Byran Clark, Nikita Lee, John Moon, Belinda Peace, Myron Thomas, and Roscoe Williams and identified as containing apparent forgeries to the appropriate authority for further investigation.

March 15, 2011
Date



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

²¹ See D.C. Official Code §1-1001.08 (b)(4).