

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

_____)		Administrative Hearing
Robert Turner,)		No. 14-18
Challenger)	RE:	Challenge to the Nominating Petition
)		of John Cheeks, Candidate for
)		Chairman of the Council of the
v.)		District of Columbia
)		
John Cheeks,)	DATE:	September 3, 2014
Candidate)		
_____)		

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter came before the District of Columbia Board of Elections (“the Board”) on Wednesday, September 3, 2014. It is a challenge to the nominating petition of John Cheeks (“Mr. Cheeks” or “Candidate”) for the office of Chairman of the Council of the District of Columbia. The challenge was filed by Robert Turner (“Mr. Turner” or “Challenger”). Mr. Turner asserted that his challenges, if valid, would leave Mr. Cheeks’ nominating petition below the statutory minimum of 3,000 registered voters, and thus disqualify Mr. Cheeks from ballot access in the November 4, 2014, election.

Chairman Deborah K. Nichols and Board member Stephen I. Danzansky presided over the hearing. The Challenger appeared *pro se* and the Candidate was represented by Walter T. Charlton of Walter T. Charlton & Associates.

PROCEDURAL BACKGROUND

Mr. Cheeks submitted a nominating petition for the office of Chairman of the Council on August 6, 2014. The nominating petition was posted for a 10 (ten) day challenge period on August 9, 2014, pursuant to D.C. Official Code § 1-1001.08(o)(1). Mr. Cheeks submitted a total of 6,216 signatures. The minimum signature requirement is 3,000 registered qualified electors who are residents of the District pursuant to D.C. Official Code § 1-1001.08(j)(1)(B).

Challenges to Cheeks Petitions

Mr. Turner, a duly registered voter in the District of Columbia, challenged Mr. Cheeks' nominating petition on August 18, 2014. Mr. Turner filed challenges to a total of 3,595 signatures enumerated by line and page number on individual challenge sheets for each nominating petition page.

Petition signatures were challenged pursuant to 3 DCMR §1607.1 of the Board's regulations on the following grounds: (1) the signer is not a duly registered voter; (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 signature is a duplicate of a valid signature; (4) the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; and (5) the signature is not made by the person whose signature it purports to be.

Initial Findings

The Registrar determined that a total of 2,278 of the 3,595 challenges were valid leaving Mr. Cheeks with 3,938 signatures, which is 938 above the amount required for ballot access. Pursuant to D.C. Official Code § 1-1001.08(o)(3),

For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine if the address on the petition is the same as the address shown of the signer's voter registration record. If the address is different than the address which appears on the signer's registration record, the

address shall be deemed valid if: [t]he signer's current address is within the District of Columbia for an at-large election; and [t]he signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions.

The Registrar determined Mr. Cheeks' petition contained 700 signatures with an address that is different than the address which appears on the signer's voter registration record.

Pursuant to 3 DCMR § 1606.3, "[w]ithin three (3) working days of receipt of a challenge, the Board shall serve in person, by certified mail, or email a copy of the challenge upon the candidate." Since the challenge was filed on August 18, 2014, Mr. Cheeks had the opportunity to file change of address forms by August 28, 2014, to cure the invalid signatures.

Pre-Hearing Conference

Pursuant to Title 3 DCMR §415.1, the Office of the General Counsel conducted a Pre-Hearing conference in this matter on Tuesday, August 26, 2014. The Challenger appeared *pro se* and the Candidate was represented by Walter T. Charlton of Walter T. Charlton & Associates.

During the prehearing conference, the parties raised a number of concerns that are hereby recited for the record. The parties were informed pursuant to 3 DCMR § 415.2 that the agreements made by the parties as to any of the matters considered which limit the issues for hearing, to those issues not disposed of by admission or agreement of counsel or parties.

CHALLENGER'S ISSUES FOR REVIEW

Mr. Turner requested that the Board disqualify and reject all of the signatures collected by the following seven circulators on the grounds that all of the signatures constitute "blatant forgeries":

Charles Smith

James Crawley

Jonathan Reed

Mary Thomas

Nakia James

Tina Summers

John Cheeks

The Registrar of voters did not consider the veracity of the affidavits of the circulators listed, nor the validity of any of the signatures that were not challenged individually and enumerated by page and line number, as this task lies within the sole province of the Board of Elections. See *Brizill v. Anthony Williams* 02-016 (July 30, 2002).

Mr. Turner wished to preserve his right to challenge the signatures on the petition sheets submitted by the listed circulators.

Further, Mr. Turner asserted that at least one circulator, Edward Hodges, was not a resident of the District of Columbia and failed to accordingly register with the Board as a non-resident circulator. This was ascertained by the address Mr. Hodges listed on his circulator affidavit, which showed him to be a resident of Maryland.

CANDIDATE'S ISSUES FOR REVIEW

Mr. Cheeks contended that the Pre-Hearing should not have taken place as he believed that Mr. Turner did not submit his challenge timely. This belief was based on Mr. Cheeks' assertion that he was present in the front office of the Board of Elections on August 18, 2014, at or around 5:00 p.m. He asserted that he did not observe Mr. Turner at that time. Thus he questioned the veracity of the time notation on the Challenge Receipt issued by the Board of Elections, indicating 5:00 p.m. Mr. Charlton attempted to testify to this, and was informed that as counsel for Mr. Cheeks, and as not having been personally present, he is not qualified to submit any manner of personal testimony into the record. Mr. Cheeks then personally stated that he did

not observe Mr. Turner, to which Mr. Turner replied that he was indeed present at the Board of Elections, and that he himself observed and was observed by Mr. Cheeks.

Mr. Charlton noted that a Petition for a Temporary Restraining Order and Preliminary and Permanent Injunctive Relief had been filed with the Superior Court of the District of Columbia on August 25, 2014, with the aim of halting the Pre-Hearing.

Further, Mr. Cheeks asserted that the Challenge Receipt contains a blank in the field indicating the number of pages received, which led him to believe that Mr. Turner's challenge was thus not properly filed. It was agreed that this information is customarily entered by a Board of Elections staff member, and has no bearing on the validity of any challenge.

Mr. Cheeks further objected to the assertion that any petition sheets contain "blatant forgeries", and requested that Mr. Turner define and clarify his meaning. Mr. Turner stated that he means the signatures on the petition sheets in question were not actually signed by the voter whose signature it purports to be.

Board Hearing

A hearing before the Board of Elections was scheduled for Wednesday, September 3, 2014, at 10:00 a.m. at the Board's offices located at 441 4th Street N.W. Suite 270N Washington D.C. 20001.

Both parties re-asserted the contentions discussed during the Pre-Hearing Conference. Mr. Turner began an enumeration of the signatures collected by the seven circulators whose sheets he challenged as containing "blatant forgeries". Upon questioning by the Board, he stated that he had not checked any of the signatures collected by the seven circulators against the voter registration roll, and believed that they were forgeries "on their face." Mr. Turner presented no

other evidence as to fraudulent activity other than his personal belief that the signatures were forged. Mr. Turner took no other issue with the Registrar's initial findings.

Mr. Cheeks raised no other issues.

Discussion

Inasmuch as the Board is called upon in its many capacities to act as referee in the electoral nomination process, in no way does the Board claim knowledge or abilities in the specialized field of handwriting analysis. Mr. Turner has requested that the Board determine that entire sheets are "blatant forgeries" based merely on visual inspection and a lay opinion. Mr. Turner has not provided any evidence via a cross-check of voter rolls, or any other documentation that any of the signatures are forged. The Board, via the Registrar, has analyzed and drawn conclusions on the line by line challenges that Mr. Turner had provided, but will not summarily disqualify signatures based on a blanket assertion of fraud. As the burden of proof lies on the Challenger, (see D.C. CODE § 1-1001.08(o)(2)), and no evidence of forgery has been provided by Mr. Turner, the Board must act to expand the franchise rather than limit it, and accept the signatures collected by the seven circulators which were not challenged individually. Inasmuch as the Registrar has determined that Mr. Cheeks has submitted 3,938 valid signatures, he has met the statutory minimum signature requirement.

ORDERED that candidate John Cheeks is granted access to appear on the ballot for the November 4, 2014, election for the office of Chairman of the Council of the District of Columbia.

DATE: September 8, 2014

BY:  _____

Deborah K. Nichols, Esq.
Chairman,
District of Columbia Board of Elections