

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

James Harnett,)	
Challenger)	Administrative
)	Order #24-005
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for
)	Presidential Nominee,
Jill Stein,)	D.C. Statehood Green Party
Candidate.)	

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on March 29, 2024. It is a challenge to the nominating petition submitted by Jill Stein (“the Candidate”) in support of her candidacy for Presidential Nominee in the D.C. Statehood Green Party Presidential Preference Primary held during the June 4, 2024 Primary Election (“the Primary Election”). The challenge was filed by James Harnett (“the Challenger”) pursuant to D.C. Official Code § 1-1001.08(o)(1). Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. The Board’s General Counsel, General Counsel staff, and Registrar of Voters (“Registrar”) were present at the hearing. The Candidate was represented at the hearing by Rick Lass and Jason Call and Challenger Harnett also appeared.

Background

In late January 2024, the Board’s staff received an affidavit from the Candidate whereby she authorized Kelly Merrill (“Candidate’s Agent”) to receive and submit the Candidate’s ballot access documents. Concurrently, the Candidate’s Agent picked up a packet from the Board’s offices that included instructions on the process for inclusion of a candidate’s name on the ballot.

One of the documents included in that packet addressed circulating and filing nominating petitions. That document states that the candidate is “responsible for ensuring that each individual who circulates nominating petitions . . . complies with all pertinent rules and regulations regarding petition circulation.” The document then goes on to note that each circulator must “[p]ersonally witness the signing of each signature on each petition sheet for which they sign a circulator’s affidavit[.]”

In addition, the ballot access package included nominating petition forms for gathering signatures in support of the Candidate’s access to the ballot in the Primary Election (“the Petition”). The Petition forms identify the candidate and office sought at the top of each sheet and then list blank fields for up to ten duly registered voters to print their names and addresses and to sign and date their entries. At the bottom of the sheet is a section captioned “INSTRUCTIONS TO THE CIRCULATOR” followed by a circulator’s affidavit section that must be completed by the individual who gathered the signatures from the voters whose information and signatures appear in the fields above. This circulator instruction section states in part: “As the circulator of this petition sheet, you must personally witness the signing of each signature that appears on this petition, and you must swear or affirm that you have done so in the circulator’s affidavit below.” The affidavit section of the Petition forms requires the circulator to “swear or affirm” that the circulator “personally circulated this petition sheet” and “personally witnessed the signing of each signature hereon[.]” Over a line for the circulator’s signature, the affidavit section includes the following language: “WARNING: READ THE ABOVE AFFIDAVIT AND MAKE SURE IT IS TRUE BEFORE YOU SIGN BELOW. IF YOU ARE CONVICTED OF MAKING A FALSE STATEMENT, YOU CAN BE FINED UP TO \$1,000 AND/OR JAILED UP TO 180 DAYS[.]”

On March 5, and 6, 2024, another agent for the Candidate, David Schwartzman, submitted Petition sheets for the Candidate. The Petition contained seventeen sheets, including a supplement. Although each sheet allowed for the recording of ten voter signatures, most sheets had only one voter's signature and one had the signatures of only two voters who lived at the same address. With one exception, these sheets indicating circulation to only one household were circulated by David Schwartzman.

The minimum number of Petition signatures required to obtain ballot access in the contest at issue is 38 signatures of District of Columbia voters who are U.S. citizens and who are duly registered in the same party as the candidate. The Petition contained 53 signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, Marissa Corrente, the Board of Elections' Registrar of Voters ("Registrar"), preliminarily accepted 53 signatures for review.

When Mr. Schwartzman dropped the Petition off at the Board's offices, the Registrar asked him about the somewhat odd circumstance of only one signature or voter address appearing on most of the sheets. On March 6, 2024, Mr. Schwartzman, sent an email response to the Registrar. The email stated in pertinent part that, on February 9, 2024, Mr. Schwartzman was told in a telephone conversation with Board staff that "Nomination Petitions would be accepted as valid if transmitted as files by email to the signer, returned signed and dated **with the circulator being the one who sent the email and being the recipient of the petition in question by email return, who then fills out the affidavit at the end of the petition.**" (Emphasis in original.) Schwartzman's email stated that he inquired of staff twice and received confirmation both times that this procedure was acceptable.

On March 9, 2024, the Petition was posted for public inspection for 10 days as required by law. On March 11, 2024, the Petition was challenged by James Harnett, a registered voter in the District of Columbia. Harnett filed challenges to a total of 21 signatures, citing and/or referencing the Board's signature validity rules. Notably, many of the signatures were challenged for the reason that the circulator of the petition sheet did not personally witness the voter's signing of the sheet on the following grounds.¹

Later on March 11, 2024, the Board's Office of General Counsel ("OGC") notified the parties that a pre-hearing conference would be convened in the matter on March 25, 2024. The notice of the pre-hearing conference also noted that signatures that had been challenged for the reason that the address on the voter roll for the signer did not match the address on the Petition could be cured through the submission of change of address forms on or before March 21, 2024.

Upon further review of the challenge, OGC observed that a significant number of signatures were challenged by Mr. Harnett for the reason that the named circulator did not witness the signing of the Petition. As this alleged defect was not self-evident from the face of the Petition sheets so challenged, OGC requested by email on March 12, 2024 that Mr. Harnett explain his reasons for asserting this challenge.

Mr. Harnett responded to OGC's inquiry by explaining that the sheets containing the signatures challenged for the reason that the signatures were not properly witnessed showed efforts to obscure the fact that the petition sheet had been emailed and scanned, such as the crossing out of the Google Mail URL address, and an email print date that pre-dated the date listed on the

¹ The other reasons for the challenges were: the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; 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 a duplicate of a valid signature; the signature is not made by the person whose signature it purports to be; the signer is not registered to vote in the same party as the candidate at the time the petition is signed; and the signer is not a U.S. Citizen. 3 D.C.M.R. § 1607.1.

voter's signature line. Mr. Harnett further alleged that the circulator transmitted an electronic copy of the blank Petition, had the voter print out and physically sign that form, then scan or take a picture of and return a copy of that sheet to the circulator, who then printed out and completed the circulator's affidavit.²

On March 14, 2024, OGC notified the parties that the above-described March 6, 2024 email from Mr. Schwartzman would be included in the record.

Registrar's Initial Report

On March 14, 2024, the Registrar issued her report on her review of the challenges. In her report, the Registrar found that 16 of the 21 signature challenges were valid. The Registrar concluded that one signature was invalid because the signer, according to the Board's records, was not registered to vote at the address listed on the petition at the time the petition was signed; one signature was invalid because the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; one signature was invalid because it was a duplicate of a valid signature; 11 signatures were invalid because the circulator did not personally witness the signing; and two signatures were invalid because the signer was not registered to vote in the same party as the candidate at the time the petition is signed. Accordingly, the Registrar determined the Petition contained 37 presumptively valid signatures -- one signature below the number required for ballot access.

March 25, 2024 Pre-Hearing Conference

² Given Mr. Harnett's position that a number of the Petition signatures are not valid because the circulator did not witness the signing, OGC's March 12, 2024 email also requested that the Candidate advise as to whether she planned to present the petition circulator or any other witness (perhaps a voter whose signature has been challenged for the respective reason) at the pre-hearing conference.

The Candidate did not appear at the pre-hearing conference and no one with her campaign was present.³ On the eve of the pre-hearing conference, however, Mr. Schwartzman alerted the Registrar to the timely submission of a change of address form with respect to one Petition signature that was challenged for the reason that the address on the Board's voter roll differed from the address on the Petition.

Mr. Harnett and the Board's Registrar were present at the pre-hearing conference. The OGC attorney overseeing the proceeding noted that the Board's regulations allowed the conference to proceed in the absence of a party.⁴ Mr. Harnett waived a reading of the entire Registrar's report and the Registrar noted her ultimate finding that the Petition was one signature short of the minimum number required for ballot access. Mr. Harnett was then advised that a change of address form had been submitted that could cure one signature defect. Mr. Harnett was also given the opportunity to submit argument and evidence with respect to the challenges he had asserted.

Mr. Harnett stated essentially that he was willing to concede his address challenge to the signature that was subject to cure provided that the voter's address update had been timely submitted and was otherwise valid. He nevertheless maintained that the Petition should still be found numerically insufficient. Mr. Harnett disagreed with the Registrar's rejection of one challenge that he had asserted for the reason that the circulator did not witness the signature. While this signature also appeared on a Petition sheet that bore only one voter signature and that was

³ The OGC attorney assigned to this matter communicated on multiple occasions with appropriate campaign personnel as to the requirements (*see* 3 D.C.M.R. §403) for designating a third party to represent the Candidate at the pre-hearing conference and during Board proceedings. Campaign personnel inquired as to whether Mr. Schwartzman, who was a designated agent for the purpose of receiving and delivering ballot access documents, qualified to represent the Candidate. While, the OGC attorney advised that that authorization was not sufficient and that the Candidate would have to authorize Mr. Schwartzman to bind her, that attorney also pointed out that Mr. Schwartzman was a potential witness in the matter and that, should he appear at the pre-hearing conference in any capacity, the first order of business would be to determine whether he wished to waive his right against self-incrimination.

⁴ 3 D.C.M.R. § 415.2.

circulated by Mr. Schwartzman (circumstances that were subject to an admission against interest by Mr. Schwartzman as to the absence of proper witnessing), the voter's printed name and address were typed in (as opposed to hand-written) and the voter's signature reasonably appeared to have been digitally entered (either apparently because it was electronically cut and pasted into the signature line or drawn with a Microsoft Word pen or similar technology). As with the other signature challenges that the Registrar had found valid for the reason that the circulator did not personally observe the signing, Mr. Harnett explained that the variations in the boldness of the print on the Petition sheets containing one signature suggested that this one "digital" signature was on a sheet that had been printed on a printer used by Mr. Schwartzman at which time the circulator affidavit was completed after being electronically delivered to Mr. Schwartzman.

In response to Mr. Harnett's position, the Registrar stated that she did not have sufficient evidence to say whether this "digital" signature was not generated electronically in the presence of Mr. Schwartzman by a voter who was incapable of signing by hand. Therefore, the Registrar stated that she was inclined to err in favor of ballot access.⁵

Mr. Harnett continued to maintain that, even if he conceded his challenge with respect to the signature deemed valid due to the timely submission of a change of address form, the Petition still had 16 invalid signatures and was thus one signature short of the minimum number required for ballot access. However, the Registrar had concluded that the Petition contains the exact number of signatures needed. In light of this, the presiding OGC attorney advised that it appeared that the matter would have to be resolved by the Board. She explained that a notice of the Board hearing

⁵ We note that the ballot access package provided to candidates or their agents includes a Signature Attestation form. Through the completion of that form, a person, subject to narrow limitations, can assist a voter who is unable to independently sign an election document due to illness, injury, or disability. No such form was completed with respect to the "digital" signature.

date would be sent out later that day.⁶ It was also noted that the Registrar would issue a revised report.

Revised Registrar's Report

On March 28, 2024, the Registrar issued a revised report reflecting the timely receipt of one curative change of address form. The revised report stated that the Candidate had exactly the number of signatures needed to access the ballot. In addition, in her revised report, the Registrar noted that a determinative fact with respect to her finding that several signatures were made outside the presence of the circulator was that she could detect, by running her hand over the back side of the relevant sheets that only one signature of the two signatures (*i.e.*, the circulator's or the voter's) was genuine.

March 29, 2024 Board Hearing

On the eve of the Board hearing, the Candidate authorized two individuals, Rick Lass and Jason Call, to represent her in Board proceedings. Both of these Candidate representatives and Mr. Harnett appeared at the hearing.⁷

The Registrar attended the hearing and presented her final finding that the Candidate had exactly the number of signatures needed for ballot access. She reiterated that she was not comfortable finding that the one "digital" signature was invalid.

The OGC attorney assigned to the matter briefed the Board on the procedural background of the matter (*see* discussion above). She specifically read into the hearing record the portion of Mr. Schwartzman's email in which he indicated that he did not personally witness voters signing

⁶ The parties were in fact notified later that day that a Board hearing would be held on March 29, 2024.

⁷ Circulator Schwartzman was not present. During the hearing, Mr. Call stated that he had spoken to Mr. Schwartzman the evening before and that Mr. Schwartzman had advised Mr. Call that Mr. Schwartzman was precluded from attending the hearing.

the petition. In response to questioning from the Chair, the OGC attorney explained that the Petition contained 11 signatures that appeared on sheets circulated by Mr. Schwartzman that bore the signature of only one voter or, in one instance, signatures from two voters at the same address. As to those 11 cases, the voter name and address fields were filled in with handwriting and the voter's signature appeared to be an original or copy of an authentic handwritten signature. The attorney explained that the Registrar had found Mr. Harnett's challenge to those signatures valid. At issue, the OGC attorney stated, was one signature challenge that Mr. Harnett believed should have been accepted by the Registrar. That signature appeared on Petition sheet 4, a page circulated by Mr. Schwartzman that also contained only one voter signature but, unlike the other sheets where the Registrar accepted Mr. Harnett's circulator-related challenge, the name and address fields had been typed-in and the signature appeared to be a "digital" one.

Mr. Harnett reiterated his reasons for treating the digital signature in the same manner as any other signature that was the sole signature on a Petition sheet. In support of his position, Mr. Harnett asked the Board to compare: (1) sheets on which the sole signature was rejected by the Registrar based on the relevant circulator defect reason, with (2) sheet 4 which contained the case-dispositive signature. Using Zoom's screen-sharing technology, Mr. Harnett drew the Board's attention to faded and broken print on these other sheets with rejected signatures that was nearly identical to faded and broken print that appeared on sheet 4. The similarities in the quality of the print between the sheets, Mr. Harnett argued, showed that they were generated from the same printer.⁸ Mr. Harnett also contrasted: (1) the similar poor print quality on the sheets with signatures

⁸ Mr. Harnett indicated that he was focusing on sheet 13 because that sheet contained additional evidence of having been improperly completed. Namely, Mr. Harnett noted that sheet 13 contained in the bottom left corner a website/URL address that had been crossed out arguably by the circulator (based on the circulator's handwriting as compared to the voter's handwriting). Mr. Harnett indicated that appearance of a website address/URL on sheet 13 confirmed that Petition sheets were being downloaded by the voter, completed by the voter outside of the presence of the circulator and then sent electronically to the circulator who printed the sheets out and completed the circulator

that he had challenged for the reason that the signatures were not personally witnessed by the circulator with (2) the plainly observable sharper printed text on the Petition sheets that contained several voter signatures and that were not subject to a circulator challenge. According to Mr. Harnett, there was no reason to treat the digital signature on sheet 4 differently from the signatures rejected for circulator defect reasons on other sheets given both the reasonable inference to be drawn from the similar print quality on the sheets at issue and Mr. Schwartzman's admission to improper circulation.

In response to Mr. Harnett's argument, Candidate representative Lass noted that the Registrar had based her finding on what she felt was a reasonable inference given the burden on a party opposing ballot access. He urged the Board to adopt the Registrar's finding.

After hearing from the parties and the Registrar, the Chair requested that the General Counsel make a recommendation as to the disposition of the case. General Counsel Stroud explained that the variations in the print quality on the Petition sheets supported finding that signature on sheet 4 was entered under the same improper circumstance as the other signatures that had been rejected for reasons of circulator defect. Her recommendation, therefore, was that the Board find that the number of signatures on the Candidate's Petition was one below the number needed for ballot access, and that the Candidate's name should not appear on the Primary Election ballot.

The Board then voted to go into executive session to discuss the matter. When it reconvened on the record, the Board voted unanimously to deny ballot access. The Chair noted

affidavit. Logically, insofar as sheet 4 showed evidence of having printed from the same device as sheet 13, it could be reasonably inferred that sheet 4 was completed in the same impermissible manner as sheet 13.

that a Board decision to deny a candidate ballot access is never easy,⁹ but that the circulator requirements for personally witnessing signatures are important. In this case, it was clear, the Chair stated, that the circulator did not follow the rules in collecting many of the Petition signatures.

Discussion

The minimum number of signatures required to obtain ballot access in this contest is 38 signatures of District voters who are duly registered voters, U.S. citizens, and members of the D.C. Statehood Green Party. Because the Candidate's Petition contains 53 signatures, that Petition will be numerically sufficient unless 16 signatures are invalidated. The Candidate, by her silence, did not contest the Registrar's findings that four signatures are invalid because the signer was not a member of the D.C. Statehood Green Party; the signature is a duplicate; and the signer was not an active voter at the time of signing. What is at issue is the status of 12 other challenges to signatures made on the grounds that that the circulator did not personally witness the signing of the Petition, 11 of which were upheld by the Registrar. If ultimately upheld, these 12 challenges would bring the total number of valid challenges up to the 16 needed to render the Petition numerically insufficient.

The election laws provide:

All signatures on a petition shall be made by the person whose signature it purports to be and not by any other person. Each petition shall contain an affidavit, made under penalty of perjury, in a form to be determined by the Board and signed by the circulator of that petition which shall state that the circulator is a qualified petition circulator and has [p]ersonally circulated the petition [and p]ersonally witnessed each person sign the petition . . .”

⁹ Although in this case, the Chair noted that any harm was minimized because the Candidate could still pursue being on the General Election ballot by running as a write-in in the June Primary Election and could also be the Presidential candidate for the Green Party in the General Election should she be nominated at the party's national convention in July.

D.C. Code § 1–1001.08(b)(3). Likewise, the Board’s regulations require that the circulator personally circulate and personally witness the signing. 3 DCMR 1402.2(e)(2)-(3).

While ballot measures have a somewhat more relaxed “in the presence of” circulator standard for petition purposes, we have stated in that context:

[T]he circulator is deemed to be the party responsible and accountable for the circulator process as it pertains to the particular petition sheet(s) to which he or she is attesting. The circulator must be sufficiently engaged in the process of gathering signatures so as to be able to ensure the integrity of that process. . . [T]he circulator must be “in the presence of” each signer at the time of signing such that he or she is aware of, and can attest to, the circumstances surrounding the signing . . . [T]he circulator must be sufficiently engaged in the process and in such close proximity to the signer so as to be fully responsible, fully accountable and well versed in the circumstances of the signature gathering effort.

Ronald Drake et al. v. Citizens Committee for the D.C. Video Lottery Terminal Initiative of 2004, et al., BOE Case No. 04-020 (issued Aug. 13, 2004). For circulators of nominating petitions, the level of engagement is greater, the circulator must be in sufficient close proximity to “personally witness” the signing.

The validity of signatures entered outside of the presence of the circulator and then forwarded to the circulator via email was presented in *Buechner v. Cox*, BOE Case No. 20-020 (issued Sept. 4, 2020). There, the Board upheld a challenge where the circulator communicated with the signer via email and the circulator did not observe the signer sign or apply a digital signature image to the Petition. Notwithstanding the fact that the candidate produced the signer at the hearing and the signer affirmed on the record that they signed the petition, the Board concluded that the circulator did not “personally witness[] the signing of each signature” as provided in the circulator affidavit. Accordingly, the Board granted the challenge.

In this case, the Candidate has not refuted the Challenger’s claim. On the contrary, the Candidate’s circulator has admitted in an email that he did not personally observe all the signatures

on the Petition. Mr. Schwartzman’s admission arguably encompasses any Petition sheets with only one voter’s signature and the instance where only two voters who shared a residential address signed the Petition. Given this admission, we are inclined to uphold the challenges made for the reason that the circulator did not personally observe the signing of the Petition. The only issue is whether the one sheet with the single “digital” voter signature should be similarly treated.

We agree with the recommendation of the General Counsel. After reviewing the quality of the print on the sheets for signatures that were rejected by the Registrar for the reason that the circulator did not personally witness the voter sign the Petition and the quality of the print on the one sheet containing the “digital” signature and the quality of the print on the sheets with several voter signatures which suffered no circulator defect, it is reasonably clear that sheet 4 was printed from the same printer used for the other sheets found defective for circulator reasons. In addition, the fact that the disputed signature and other voter entries on sheet 4 were digitally entered (as opposed to being handwritten) further justifies, we think, a reasonable inference that the circulator did not witness the signing.

Conclusion

As a result of this challenge, the Board finds that the Petition contains 37 valid signatures – one signature below the number required for ballot access. It is hereby:

ORDERED that challenge to the nominating petition submitted by Jill Stein in support of her candidacy for Presidential Nominee in the D.C. Statehood Green Party Presidential Preference Primary held during the June 4, 2024 Primary Election is hereby **UPHELD**.

Date: March 29, 2024



Gary Thompson
Chairman
Board of Elections