DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Robbie Woodland,	)	
Challenger	)	Administrative
	)	Order #22-025
	)	
v.	)	Re: Challenge to Nominating
	)	Petition Submitted for the
	)	Office of Advisory
Betty Murray,	)	Neighborhood Commissioner
Candidate.	)	Single Member District 8C06

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections ("the Board") on September 9, 2022. It is a challenge to the nominating petition of Betty Murray in support of her candidacy for the office of Advisory Neighborhood Commissioner ("ANC"), Single Member District ("SMD") 8C06 in the November 8, 2022 General Election ("the General Election"). The challenge was filed by Robbie Woodland pursuant to D.C. Official Code § 1-1001.08(o)(1). Chairman Gary Thompson and Board members Michael Gill and Karyn Greenfield presided over the hearing. Both parties appeared *pro se*.

Background

On August 3, 2022, Ms. Murray picked up from the Board's offices a nominating petition to appear on the ballot as a candidate in the General Election contest for the ANC nomination for SMD 8C06 ("the Petition").

On August 10, 2022, Ms. Murray submitted her Petition. The minimum number of signatures required to obtain ballot access for this office is 25 signatures of District voters who are duly registered in the same SMD as the candidate. 3 D.C.M.R. § 1603.7. The Petition contained

sixty-one (61) signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, the Board of Elections' Registrar of Voters ("the Registrar"), accepted all sixty-one (61) signatures for review.

On August 13, 2022, the Petition was posted for public inspection for 10 days, as required by law. On August 22, 2022, the Petition was challenged by Ms. Woodland, a registered voter in the District of Columbia.

Ms. Woodland filed challenges to a total of fifty-five (55) signatures. She asserted, pursuant to Title 3 D.C.M.R. § 1607.1 of the Board's regulations, signature defects on the following grounds: (1) 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; (2) the signature is not dated; (3) the signature is a duplicate of a valid signature; (4) the petition does not include the name of the signer where the signature is not sufficiently legible for identification; (5) the circulator of the petition failed to complete all required information in the circulator's affidavit; (6) the signature is not made by the person whose signature it purports to be; and (7) the signer is not registered voter in the ward or Single-Member District from which the candidate seeks nomination at the time the petition is signed.

On August 23, 2022, Ms. Murray was sent, via email, a formal notice from the Board's Office of General Counsel informing her of Ms. Woodland's challenge. The notice explained:

> Pursuant to D.C. Official Code § 1-1001.08 (o)(3), an address that is different than the address appearing on the signer's registration record shall be deemed valid if the signer's current address is **within the proper single member district (SMD) for an Advisory Neighborhood Commission election**, … **and the signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions**. Consequently, you may gather change of address forms (also attached to the forwarding email) from signatories challenged on the basis that the signer is not registered to vote at the address listed on the petition at the time the petition was signed. …. **The deadline by which you must file any change of address forms is September 1, 2022.**

Emphasis in original.

Registrar's Preliminary Determination

On August 31, 2022, the Registrar issued her reports of her review of Ms. Woodland's challenge. The Registrar found that forty-four (44) of Ms. Woodland's sixty-one (61) signature challenges were valid. Specifically, the Registrar found

- Four are valid because the signer is not registered to vote;
- Five are valid because the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;
- Thirteen are valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed;
- Two are valid because the petition does not include the name of the signer where the signature is not sufficiently legible for identification;
- One is valid because the circulator of the petition was not a qualified petition circulator at the time the petition was signed;
- One is valid because the circulator of the petition failed to complete all required information in the circulator's affidavit;[1]
- Four are valid because the signature is not made by the person whose signature it purports to be; and
- Fourteen are valid because the signer was not registered voter in the Single-Member District from which the candidate seeks nomination at the time the petition was signed.

[1] In this regard, the challenge upheld by the Registrar was the signature of Ms. Murray herself. The specific reason the Registrar upheld that challenge was because the date of the circulator affidavit at the bottom of the sheet containing Ms. Murray's signature pre-dated that date associated with Ms. Murray's signature. While the circulator of the Petition sheet at issue was also Ms. Murray, the Registrar does not have discretion to disregard the technical violation of the circulator affidavit.

Accordingly, the Registrar preliminarily determined the Petition contained seventeen (17) presumptively valid signatures, which is eight (8) signatures below the number required for ballot access.

September 7, 2022 Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel convened a pre-hearing conference with both parties on Tuesday, September 7, 2022.[2] At the prehearing conference, the Registrar outlined her determinations with respect to the validity of each signature challenged.[3] Just after the prehearing conference commenced, Ms. Murray emailed to counsel for the Board statements from thirteen (13) Petition signers that were intended to affirm that those persons did sign the Petition.[4]

With regard to the thirteen (13) statements that Ms. Murray had submitted during the prehearing conference, counsel for the Board explained that, while she could not predict the Board's position, the Board could consider whether those statements cured the four (4) challenges upheld by the Registrar on signature mismatch grounds. Counsel asked Ms. Murray whether the thirteen (13) statements included any of the signers whose signatures were rejected for mismatch reasons. Ms. Murray was not able during the prehearing conference to determine if that was the case.

[2] The prehearing conference was initially scheduled for September 2, 2022. Due to Ms. Murray's health situation, the Board's counsel agreed to reschedule the conference and granted Ms. Murray the extraordinary relief of continuing the conference until the next hearing date of September 7, 2022.

[3] Prior to convening, the Registrar's written report, her mark-up of the challenge with codes for her findings, and a key code explaining the notations she used to indicate the basis for upholding or denying each challenge had been provided to the parties.

[4] Each document consisted of a form which stated that the signer was "writing this letter to testify that my signature was not forge [sic]" and that he/she "signed the petition" and included lines for the signer to include their telephone number and signature and the date.

In light of the number of challenges that were upheld by the Registrar for wrong address reasons, Ms. Murray questioned whether she had been provided with the correct SMD map and specifically raised signers living on Congress Avenue who were found to be outside her SMD. The Registrar advised that she would review the map provided to Ms. Murray to confirm whether it was the correct map.

Ms. Murray also questioned the basis for challenging her own signature on the Petition. The Registrar explained that the issue in that regard was the fact that the circulator affidavit for that signature pre-dated the date of the signature. As Ms. Murray was the circulator of her petition, she was advised that the Board would have discretion to waive that signature defect.

Ms. Woodland spoke to the effort that she had made to determine whether the signatures were valid. She indicated that she had made sure she was using the applicable data for the SMD to confirm whether a Petition signer lived within the applicable SMD's boundaries.

At the conclusion of the prehearing conference, the parties were unable to reach a resolution with respect to the numerical sufficiency of the Petition. Since the number of signatures challenged was sufficient (if the challenges were upheld) to leave the Petition with less than twenty-five (25) valid signatures, Board resolution of the matter was necessary.[5]

September 9, 2022 Board Hearing

At the hearing, the Registrar placed on the record her finding as to the Petition's numerical sufficiency. The Registrar explained that she had reviewed the thirteen (13) statements submitted

[5] Due largely to Ms. Murray's last minute submission of documents which she thought might cure the signature defects on her Petition, and the effort required (albeit unsuccessful) to elicit from Ms. Murray the specific challenges upheld by the Registrar with which she disagreed (as opposed to the challenges made by Ms. Woodland and rejected by the Registrar), the prehearing conference exceeded its allotted time and had to be prematurely concluded. As a result, counsel for the Board emailed the parties information that would have otherwise been covered at the prehearing conference, including an explanation of the next steps and the fact that either party had three days to appeal any decision by the Board in the matter.

by Ms. Murray and that the signatures of only two (2) of the signers of those statements had been rejected for mismatch but that those signatures could be invalid for other reasons. Accordingly, the Registrar indicated that, however the Board treated the additional documentation with respect to signature mismatches, Ms. Murray's Petition did not contain a sufficient number of valid signatures for ballot access.[6]

Ms. Murray was sworn in and stated that she had just emailed counsel for the Board additional information showing that voters treated as unregistered were registered. She indicated that she understood that the Board could waive or forgive certain Petition defects. In light of the fact that her ability to address the defects identified by Ms. Woodland was impeded by her recent hospitalization for several days and the passing of her aunt, Ms. Murray requested that the Board accept the documentation of her efforts to cure the signature defects on her Petition.

At the request of the Board Chair, Ms. Murray's new documentation was retrieved and, while the meeting was pending, reviewed by the Registrar. The documentation concerned only three (3) Petition signers.

Ms. Woodland requested that the Board adopt the Register's findings.

After hearing from the parties and Board staff, the Board announced that it would recess the hearing matters, meet in executive session to discuss them, and then reconvene on the record. When the Board reconvened, it found that two signatures on Ms. Murray's Petition would be deemed cured. First, the Board concluded that Ms. Murray's own signature on her petition should be credited even though the signature date post-dated its witnessing. Second, the Board found that the signed statement by one of the Petition signers asserting that that person did, in fact, sign the

[6] Although Ms. Murray did not, at the hearing, suggest that she was provided with incorrect SMD data, the Registrar had, following the prehearing conference, confirmed that the maps and SMD data provided to Ms. Murray were accurate. Therefore, the Registrar's original findings as to addresses outside the area to be covered by the Petition had not changed.

Petition showed a signature that matched the Board's records. Accordingly, the Board accepted the signature associated with that submission. Because those two cured signature defects were insufficient to remedy the eight (8) signature shortfall in the Petition, the Board unanimously found that the Petition was insufficient and held that Ms. Murray would not be granted ballot access.[7]

Discussion

While circulator affidavits are vital to the integrity of nominating petitions, the Board has, where the validity of the signature is bolstered by extrinsic evidence, excused minor defects in the date of the circulator affidavit. *See In re: Earle Douglas*, Administrative Order #22-017 (issued August 19, 2022); *Gant v. Douglas*, Administrative Order #22-005 (issued April 22, 2022) (excusing marked-up/written over circulator affidavit dates and citing *Moore v. Butler*, Administrative Order #20-024 (issued Sept. 4, 2020) (waiving as formal error pre-signed circulator affidavit). In such prior cases, we have accepted as valid signatures on petition sheets that contain a defect in the circulator affidavit where there was no substantial evidence that the circulator acted in a manner inconsistent with the circulator's oath. In addition, we have noted that, while an affidavit is ordinarily understood to be a dated attestation, the elections laws do not identify among the material components of the circulator's affidavit the date that the circulator made the attestation. *Compare*, *In re Gurley*, Administrative Order 22-016 (issued Aug. 22, 2022) (declining to waive defect of missing circulator signature given, *inter alia*, that the statute requires circulator affidavits to be signed).

In the instant case, the sole signer on one Petition sheet was Ms. Murray, the candidate and the circulator of that sheet. As it cannot plausibly be doubted that Ms. Murray witnessed her own

[7] While the Board was deliberating in executive session, Ms. Murray emailed counsel for the Board documentation pertaining to two (2) other Petition signatures. Although, due to its untimely submission, the Board was unaware of and did not consider this documentation during its deliberations, we note that even had that documentation had cured two (2) signatures, the Petition would have remained numerically insufficient.

signature and that, given the date when the Petition was in Ms. Murray's possession, she did so within the prescribed time for gathering signatures, we waive as formal error the defect of a pre-dated circulator affidavit on the Petition sheet that Ms. Murray signed in support of her own candidacy.

Ms. Murray also submitted a statement purporting to have been signed by one of the individuals whose signature was discounted because it did not match the signature for that person in the Board's records. The terms of the statement indicated that it was an attestation. The signature on the statement did align with the signature for that voter in the Board's records.

In producing evidence intending to cure a signature mismatch, the best evidence to offer is sworn live testimony from the signer. We understand, however, that Ms. Murray was hospitalized and coping with the death of a close family member during the time that she would have been organizing the appearance of any witness whose signature was discounted for a mismatch reason. Given these exceptional circumstances, the fact that a lesser burden of proof in this case is not outcome-determinative, and that the signer is indeed a registered voter living at the address listed on the Board's records and within the applicable SMD, we will credit one relevant statement submitted by Ms. Murray and accept, as valid, one of the signatures previously discounted for the reason that the signature on the Petition did not match the signature on the Board's records.

Conclusion

Notwithstanding our decision to credit two of the signatures which the Registrar had originally found invalid, the Petition contains only nineteen (19) signatures, six (6) below the minimum needed for ballot access. Accordingly, it is hereby

ORDERED that Betty Murray is **DENIED** ballot access for the office of ANC SMD 8C06.

Date: September 9, 2022

Gary Thompson
Chairman
Board of Elections