

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

Andrew J. Miscuk,)	
)	
Challenger,)	
)	Administrative Hearing
v.)	No. 00-039
)	
Pauline F. Nowak,)	Re: Challenge to Nomination Petition
)	
Candidate.)	
)	

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics on Wednesday, October 4, 2000 and involved a challenge to the candidacy of Pauline Nowak, candidate for the office of Advisory Neighborhood Commissioner in Single Member District ("SMD") 1C03. The challenge was brought by Andrew J. Miscuk. The Board was represented by Chairman Benjamin F. Wilson, and member Stephen Callas. Both the Challenger and the Candidate appeared at the hearing pro se.

According to the evidence presented to the Board, Candidate Nowak submitted a nominating petition containing a total of 38 signatures. The minimum signature requirement to qualify for the ballot for this office is 25 signatures of persons who are duly qualified electors in SMD 1C03.

Challenger Miscuk filed a total of 17 challenges to signatures on the nominating petition. As required by the Board's regulations, Challenger Miscuk specified the alleged defects pursuant to 3 D.C.M.R. § 1609.2. Challenger Miscuk alleged that Candidate Nowak had failed to file the minimum 25 valid signatures of duly registered voters in SMD 1C03 for the following reason(s):

- 1) The signer is not registered to vote at the address listed on the petition at the time

the petition is signed (3 D.C.M.R. § 1607.5(b));

- 2) the signer is not a duly registered voter (3 D.C.M.R. § 1607.5(c));

The review of the challenge conducted by the Registrar of Voters indicated that 11 of the challenges were valid. This decreased the number of valid signatures obtained by Candidate Nowak to 27 registered qualified electors, which exceeds the minimum number required for ballot access.

Challenger Miscuk contends that, while his challenge alleged that certain of the signatures on Candidate Nowak's nominating petition were invalid pursuant to 3 D.C.M.R. §§ 1607.5 (b)-(c), he in fact intended to challenge these signatures based on the fact that the signatories did not reside in SMD 1C03. He asserts that he cited the aforementioned provisions only because 3 D.C.M.R. § 1607.5 does not specify lack of residency in an SMD as a ground for the disqualification of a signature.

While 3 D.C.M.R. § 1607.5 does not specify that an individual's signature may be deemed invalid if he or she does not reside in the same SMD as the ANC candidate whose petition they signed, there does exist a provision which makes clear that petitions for candidates for the office of ANC must contain the signatures of at least 25 persons duly registered to vote in the SMD from which the candidate seeks election. See 3 D.C.M.R. § 1606.7. Challenger Miscuk could have cited this provision as a basis upon which to challenge the signatures on Candidate Nowak's petition, or simply stated that the signatories did not reside in the candidate's SMD, yet he did not. The provisions that he did cite do not serve as a basis upon which to reduce the number of valid signatures obtained by Candidate Nowak.

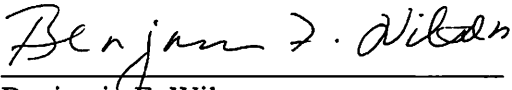
Thus, the challenge fails to provide an adequate legal basis upon which to reduce the number of valid signatures obtained by Candidate Nowak below the legal minimum requirement.

Accordingly, the candidate retains enough signatures to remain eligible for ballot access.

In view of the evidence presented, the Board finds that the challenge is insufficient to remove the candidate's name from the ballot. Therefore, the Board denies the challenge as specified herein and in accordance with the report of the Registrar of Voters. Accordingly, it is hereby,

ORDERED that Ms. Nowak be granted access to the ballot in the November 7, 2000 Presidential General Election as a candidate for Advisory Neighborhood Commissioner in SMD 1C03.

October 4, 2000
Date



Benjamin F. Wilson
Board Chairman