

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

James Harnett,)	
Challenger)	Administrative
)	Order #24-006
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for
)	U.S. Senate,
Wendy Hamilton,)	Democratic Party Nomination
Candidate.)	

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on April 5, 2024. It is a challenge to the nominating petition submitted by Wendy Hamilton (“the Candidate”) in support of her candidacy for the office of U.S. Senator in the June 4, 2024 Democratic Party Primary Election (“the Primary Election”). The challenge was filed by James Harnett pursuant to D.C. Official Code § 1-1001.08(o)(1). Chairman Gary Thompson and Board member J.C. Boggs presided over the hearing. The Board’s General Counsel, Terri Stroud, Registrar of Voters (“Registrar”), Marissa Corrente, and Office of General Counsel (“OGC”) staff were present at the hearing. While both parties appeared *pro se*, the Candidate asked a member of her campaign to offer certain arguments on her behalf.

Background

On January 12, 2024, the Candidate submitted a Declaration of Candidacy form for the purpose of pursuing the Democratic Party nomination for the office of U.S. Senator. As a prerequisite to having her name printed on the ballot in the Primary Election, the Candidate was

required by law to file with the Board a nominating petition that had valid signatures from 2,000 “duly registered” voters who are members of the same party as the Candidate.¹

At the time the Candidate submitted her Declaration of Candidacy form, she signed a Receipt of Ballot Access Documents form on which she indicated that she had received from the Board’s staff the materials regarding the process for inclusion of a candidate’s name on the ballot. One of the documents that the Candidate acknowledged receiving consisted of instructions for circulating and filing nominating petitions. That document states that the requirements for a nominating petition signature to be accepted as valid include that the signer qualify as a duly registered voter and that the signature be accompanied by the signer’s address. The form explains:

[I]f an address on a petition is different than the address which appeared in the Board’s records, it shall be deemed valid if . . . the signer files a change of address form with the Board within ten (10) days after the date the candidate receives notice that a challenge has been filed to the nominating petition.

The Candidate was also provided with blank Petition sheets that included the following circulation instructions:

If the signer is registered at a District address other than the one listed on the petition, and their signature is challenged on that basis, the signer must file a change of address within ten (10) days after the date the candidate receives notice that a challenge has been filed to the nominating petition or the signature will not be counted.

On March 6, 2024, the Candidate submitted her Petition sheets. Together, the sheets contained 2,595 signatures. Given that the Petition contained, on its face, more than the 2,000 minimum number of signatures required, the Board’s Registrar accepted the Petition.²

¹ See D.C. Official Code § 1-123(d)(2) (subjecting U.S. Senate candidates to the same ballot access requirements as are applied to Delegate (see D.C. Official Code § 1-1001.08(i)(1)(B)) and 3 D.C.M.R. 1603.1. To qualify as valid, the signatures must satisfy several signature validity requirements. Those requirements are spelled out in the Board’s regulations (see 3 D.C.M.R. 1607.1) and some of them are discussed *infra*.

² See 3 D.C.M.R. § 1603.1 (providing that facially numerically sufficient petition shall be accepted).

On March 9, 2024, the Petition was posted for 10 days as required by law. During that 10-day period, D.C. voters could inspect the Petition to see if the signatures on it met all signature validity requirements and file challenges to signatures on the Petition that they believed should not be counted as valid.³ On March 18, 2024, the Petition was challenged by James Harnett, a registered voter in the District of Columbia.⁴

Harnett filed challenges to a total of 866 signatures. A cursory review of the challenge would have revealed that about a third of the alleged signature defects were for the reason that the voter's address on the Petition did not match the voter's address in the Board's files.⁵ The submission of the challenge triggered a review by the Registrar of the signatures that Mr. Harnett claimed were invalid.

On March 19, 2024, the Board's Office of General Counsel ("OGC") notified the Candidate of the challenge and advised the parties that a pre-hearing conference would be convened in the matter on April 2, 2024. The notice also explained that signature defects based on a mismatch between the address for the voter on the Petition and the address in the Board's files could be cured if the voter updated their address with the Board "**within ten days after the date that [the Candidate] receive[d] this notice of the challenge.**" (Emphasis in the original.)⁶ The notice further stated the parties would receive the Registrar's determination as to the

³ D.C. Official Code §1-1001.08(o).

⁴ A timely challenge to the Candidate's Petition was also filed by Trezell Ragas, another D.C. voter.

⁵ In addition, the signatures and circulator affidavits were challenged pursuant to Title 3 D.C.M.R. §§ 1603 and 1607.1 of the Board's regulations on the following grounds: the signer is not a D.C. registered voter; the signer is inactive; the signature is a duplicate of a valid signature; the signature is not dated; the signer's address is omitted; the signer's name is omitted and the signature is not sufficiently legible for identification; the circulator's affidavit for the signature is incomplete; the signature is not made by the person whose signature it purports to be; and the signer is not a U.S. citizen.

⁶ The notice incorrectly stated that the last day of the 10-day period was April 1, 2024.

challenges “[p]rior to the pre-hearing conference[.]” On March 20, 2024, the Candidate was advised by OGC that the last day for submitting address cures was March 29, 2024.

After the deadline for submitting address cures, the Candidate sent an email to OGC and the Registrar claiming that her ability to make progress on getting address updates was hampered because she did not have the Registrar’s report. At the time the email was sent, however, the pre-hearing conference had yet to take place and therefore, as per the notice of such conference, the Candidate should not have expected to have been provided with that report. In light of the fact that the deadline for submitting address cures had passed, OGC responded to the email by advising the Candidate that she should provide the names of the voters who she believed would have filed change of address forms so that the existence of such possible changes could be checked prior to the pre-hearing conference. The Candidate did not provide any names.

Registrar’s Report

On April 2, 2024, the Registrar issued her report on her review of the challenges. In her report, the Registrar found that 776 signatures on the Petition were invalid. Accordingly, the Registrar determined the number of valid signatures on the Petition was 181 below the number needed for ballot access. Notably, for purposes of this discussion, 240 challenges to signatures were upheld because the signer was not registered to vote at the address listed on the Petition.

April 2-3, 2024 Pre-Hearing Conference

Challenger Harnett, the Candidate, and members of the Candidate’s campaign were present at the pre-hearing conference.⁷ A representative of the Registrar’s office summarized the Registrar’s finding that the Petition was 181 signatures short of the number needed for ballot

⁷ In addition, because the pre-hearing conference on the challenge filed by Ms. Ragas was scheduled for the same time, challenger Ragas and her counsel also appeared.

access. The OGC attorney presiding over the proceeding then asked the Candidate how she expected to address the shortfall in her Petition of the number of signatures needed for ballot access. The Candidate noted that she had reached out to many Petition signers in an effort to obtain address cures, but that she did not know whether the voters had submitted change of address forms. The OGC attorney explained that the Candidate needed to provide the Registrar with the names of those voters so that she could look into whether a change of address form had been timely submitted. The Candidate indicated that she could provide that information promptly. The Candidate strenuously objected to being required to address the Registrar's report for the reason that it had been sent to the parties a few hours prior to the pre-hearing conference. Given these circumstances, and as the Candidate was new to the ballot access process, the pre-hearing conference was continued to the following morning - about 24-hours after the Registrar's report was sent to the parties - so that the Candidate could identify voters who might have submitted address updates and address challenges she believed were improperly accepted by the Registrar.⁸

At the continued pre-hearing conference, interim submissions made by the Candidate were briefly noted. The Candidate acknowledged that, in those submissions, she had not identified a sufficient number of possible address cures and possible invalid challenges to remedy the 181 signature shortfall in her Petition's signatures.⁹ She stated, however, that she still wished to appear before the Board. The presiding OGC attorney asked the Candidate to explain what she wished to present to the Board. The Candidate raised a couple of concerns.

⁸ In addition, challenger Harnett noted three of his challenges that he suspected should not have been rejected by the Registrar.

⁹ During the continued proceeding, the Registrar advised the parties that she was completing her review of the possible address cures and other issues the challenges alleged by the Candidate and the few challenges that she had rejected that had been questioned by Mr. Harnett and that she would be issuing a revised report that took into account all those concerns.

First, with respect to situations where she had provided a Petition signer a change of address form, she asked whether she had any recourse if the signer did not update their address. She was advised that the submission of change of address forms by voters was voluntary. Along this line and continuing a point she had made the prior day, the Candidate stated that she felt that the requirement that voters include an address on the Petition that matched the address in the Board's voter files was unnecessary given that the signers at issue had names that matched the name of a registered voter. The presiding OGC attorney explained that because no personal identifying information such as date of birth or social security numbers were requested from voters signing a Petition, the inclusion of an address served to insure that the name of a signer was indeed for a particular registered voter as opposed to another individual having the same name as that registered voter. Moreover, the Candidate was advised that the requirements regarding address cures was mandated by law and any change was would be within the authority of the D.C. Council.¹⁰ The Candidate, nevertheless, stated that she wished to pursue her policy concerns with the address cure process before the Board.

In addition, through her campaign staff and again along lines asserted the prior day, the Candidate argued that Mr. Harnett's challenge failed to comply with a requirement for acceptable challenges. Specifically, it was asserted that Mr. Harnett's challenges did not provide a clear and concise explanation of the alleged petition or signature defect. The presiding OGC attorney

¹⁰ D.C. Code §1-100108(o)(3) provides that in the case of an address mismatch, the address on the petition shall be deemed valid if:

- (A) The signer's current address is within the single member district for an Advisory Neighborhood Commission election, within the school district for a school board election, within the ward for a ward-wide election, or within the District of Columbia for an at-large election; and
- (B) The signer files a change of address form with the Board by no later than 5:00 p.m. on the 10th day after the day the candidate receives notice of the challenge.

indicated that this claim lacked merit. She cited several cases where the Board had addressed the issue of the specificity required for challenges and explained that the general rule reflected by the Board's holdings in these other cases is that, as long as the Registrar and the Candidate were able to decipher the nature of the challenge, there was no prejudice and the Board would consider the challenge.

As the Candidate was unwilling to withdraw her candidacy even though she admitted that she lacked a sufficient number petition signatures, the only procedural option to close the case would be a Board ruling with respect to her ballot access. The Candidate and Challenger Harnett were duly notified of the date and time for that hearing.

Updated Registrar's Report

Following up on the Candidate's and the Challenger's questions about some of the Registrar's findings, an updated report was issued on April 4, 2024. In the updated report, the Registrar slightly adjusted her initial finding of 776 valid challenges downward to 762 valid challenges. The valid challenges included 232 signatures that were questioned by Mr. Harnett for address mismatch reasons.

In her initial report, the Registrar found that the Petition was 181 signatures below what was needed. The updated report found the Petition to be 167 signatures short. As a result, the Candidate's Petition remained short of the number of signatures needed for ballot access.

April 5, 2024 Board Hearing

The Registrar attended the hearing and presented her final findings.¹¹ In light of the Registrar's finding that the Petition lacked the number of valid signatures needed for ballot access, the Board Chair asked the Candidate to speak first. Candidate Hamilton argued that an address

¹¹ The OGC attorney who presided over the pre-hearing conferences also briefed the Board on the ballot access instructions that were provided to the Candidate and the Candidate's position during the pre-hearing conference.

match requirement should not be imposed with respect to city-wide offices where all signing registered voters were eligible to vote for the candidate regardless of their address. Apparently assuming that the address match requirement originated from the instruction in the Board's regulations at 3 D.C.M.R. §1603.1 that only the signatures of "qualified" voters would be counted, she contended that the term "qualified" should not be interpreted by the Board to impose an address match. She also alleged that, insofar as the address match requirement was unreasonable, imposing it presented due process concerns.

The Candidate also offered a member of her campaign, Jonathan Scriven, to speak to her position that the entire challenge should be rejected. Mr. Scriven noted that the instructions on the top of the Board's form for submitting challenges to nominating petitions indicated a requirement that challengers "[p]rovide the basis for the challenge, *including the relevant citation*[".] He complained that Mr. Harnett did not include such required citation and that, applying filing requirements in the same strict manner as is the case with candidates, challengers should be strictly held to filing instructions. Mr. Scriven acknowledged that the written challenge explanations provided by Mr. Harnett on the challenge form sufficiently articulated the signature defect at issue and that his point was a "technical" one of strict compliance with the challenge form instructions.

Following argument by the Challenger and Mr. Scriven, Mr. Harnett was invited to speak. He urged that the Registrar's findings be accepted.

After hearing from the parties, the Board Chair requested that the General Counsel make a recommendation to the Board. General Counsel recommended that the Candidate be denied ballot access. Thereafter, the Board members present voted unanimously to deny the Candidate ballot access.

Discussion

With respect to her claims regarding the requirement that Petition signer addresses match their addresses in the Board’s files, the Candidate incorrectly suggests that the Board has some discretion to dispense with that requirement. Contrary to the Candidate’s suggestion, the statute provides that candidates for U.S. Senate “shall be nominated ... by a petition ... [s]igned by at least 2,000 *registered qualified electors*[.]”¹² The statute further provides that “[t]he term “registered qualified elector” means a registered voter who resides at the address listed on the Board’s records.”¹³ Thus, the address match requirement is not, as the Candidate suggests, derived solely from the Board’s regulations. That requirement is grounded in law that the Board cannot ignore. Further, as noted by the Board’s General Counsel at the hearing, the statutory provision allowing address cures that are timely submitted in a 10-day window was enacted in legislation to address the very concerns raised by the Candidate. In light of that, there is no plausible argument that the legislature might have intended that the address match requirement be relaxed beyond the statutory 10-day address cure process.

As to the Candidate’s argument that all of Mr. Harnett’s challenges were not pled with sufficient specificity, the statute merely provides that a challenger file a written signed statement “specifying concisely the alleged defects in the petition.”¹⁴ To the Candidate’s point, a fair application of the law to both parties would mean that they each have to do what is minimally required by the statute. It is essentially undisputed that Mr. Harnett, as minimally required by the statute, concisely alleged the defects in the Petition. Everyone understood the nature of his

¹² D.C. Official Code § 1-1001.08(i)(1)(B) (emphasis added) incorporated into D.C. Official Code § 1-123(d)(2).

¹³ D.C. Official Code § 1-1001.02(19).

¹⁴ D.C. Official Code § 1-1001.08(o)(1).

challenges. Since Mr. Harnett’s challenge complies with the statutory requirements and does not violate our regulations, we do not believe we can disregard it. The purpose of the instructions on the Board’s challenge form is to assist the Registrar in reviewing challenges, not to provide a “technicality” whereby a legally adequate challenge can be disregarded.

Moreover, we note that we adhere to standard liberal rules for accepting pleadings and have accepted challenges over similar objections as to form.¹⁵ In contrast to some of our past cases, Mr. Harnett’s challenges are easily identified by Petition page and line, include the voter’s name, and cite a signature invalidity reason that aligns with our signature invalidity regulations.¹⁶ We therefore find the Candidate’s claim as to the sufficiency of the pleading of Mr. Harnett’s challenges to be without merit.

Conclusion

The minimum number of valid petition signatures for the Democratic nomination for U.S. Senator is 2,000. As a result of this challenge, the Board finds that the Petition contains 1,833 valid signatures – 167 signatures below the number required for ballot access. It is hereby:

¹⁵ *LaGue v. Johnson*, BOE Case No. 14-001 (issued September 24, 2014) (where the Registrar actually reviewed the challenged signatures and found that they were invalid, the challenger drew the Board’s attention to defects and once aware the Board could not turn a blind eye to those defects (citing 3 DCMR 1706.4 (if the staff discovers a defect, the Board may on its own motion invalidate a signature)); *Guyot v. Mara*, BOE Case No. 11-003 (issued March 15, 2011) (indicating that where a challenge could be accurately traced to a petition page and line 3 DCMR § 410.11 (“[n]o technical forms of pleadings or motions shall be required”) and the liberal reading of pleadings in the interest of justice operated to preserve the challenge); *McQueen v. Patterson*, BOE Case No. 11-002 (issued March 15, 2011)(typed coded challenge with line and page of signature challenged that Registrar was able to decipher sufficient); *Lowery v. Holmes*, BOE Case No. 18-004 (issued April 23, 2018) (where challenge included with line and page of signature challenged but no name of signer, the Board noted that the purpose of its pleading regulation was to provide notice of the issues involved and it would waive a requirement as long as there is no prejudice to the rights of a party and the waiver is not otherwise prohibited by law (citing 3 DCMR 400.5); as the candidate did not allege that he was unable to understand the challenges and the Registrar was able to understand them, the Board accepted the challenges).

¹⁶ During the hearing, Mr. Harnett explained that he cut and pasted into his challenge form the reasons for challenging a signature from the list of signature validity requirements posted on the Board’s website. Those reasons track the signature validity requirements set forth in the Board’s regulations.

ORDERED that the challenge to the nominating petition of Wendy Hamilton for the U.S. Senate Democratic nomination in the Primary Election is **UPHELD** and that Candidate Hamilton be denied ballot access in the contest for U.S. Senator in the June 4, 2024 Democratic Party Primary Election ballot.

Date: April 5, 2024



Gary Thompson
Chairman
Board of Elections