

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Kathy Henderson,)	
Challenger)	Administrative
)	Order #22-020
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Advisory
Juan McCullum,)	Neighborhood Commissioner
Candidate.)	Single Member District 5D07

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on September 6, 2022. It is a challenge to the nominating petition of Juan McCullum (“Mr. McCullum”) in support of his candidacy for the office of Advisory Neighborhood Commissioner (“ANC”), Single Member District (“SMD”) 5D07 in the November 8, 2022 General Election (“the General Election”). The challenge was filed by Kathy Henderson (“Ms. Henderson”) 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 10, 2022, Mr. McCullum submitted a nominating petition to appear on the ballot as a candidate in the General Election contest for the ANC nomination for SMD 5D07 (“the 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. The Petition contained thirty (30) 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 thirty (30) 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. Henderson, a registered voter in the District of Columbia.

Ms. Henderson filed challenges to a total of twenty-six (26) signatures. As to each of twenty-three (23) of those challenges, she asserted four (4) or more of the reasons under the Board's petition signature validity regulations (*see* 3 D.C.M.R. § 1607.1) for claiming that the signature should not be counted. Notably, one of the regulations cited in twenty (20) of Ms. Henderson's signature challenges was 3 D.C.M.R. § 1607.1(i) (the signature is not made by the person whose signature it purports to be).¹

Registrar's Preliminary Determination

The Registrar's review of the challenge indicated that only one (1) of the twenty-six (26) signature challenges were valid. Specifically, the Registrar found that one (1) signature was undated.

Accordingly, the Registrar preliminarily determined the Petition contained twenty-nine (29) presumptively valid signatures, which is four (4) signatures above the number required for ballot access.

¹ The other reasons for the twenty-six (26) 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 not dated; the petition does not include the name of the signer where the signature is not sufficiently legible for identification; the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; and the signer is not a registered voter in the ward or SMD from which the candidate seeks nomination at the time the petition is signed.

August 30, 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, August 30, 2022. At the prehearing conference, the Registrar outlined her determinations with respect to the validity of each signature challenged.²

Ms. Henderson questioned the Registrar's findings for the reason that, in her opinion, the signatures were not made by the persons whose signatures they purported to be. She contended that the handwriting for the signatures was uniform.

The Registrar explained that she and her staff check and recheck each otherwise valid challenged signature against the signatures on file for the voter in the Board's records and that more than one staff member may check the authenticity of such signatures. After accounting for challenges that were valid for reasons other than signature authenticity, the Registrar found no signature mismatches and therefore she did not credit Ms. Henderson's challenge on ground that the signature was not made by the person whose signature it purports to be.

Mr. McCullum stated that he was the circulator of the Petition and that he witnessed the signatures and could attest that the voters in fact signed it.

At the conclusion of the prehearing conference, the parties were unable to reach a resolution with respect to the 3 D.C.M.R. § 1607.1(i) issue. Since the number of signatures challenged for that reason 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.

² Prior to convening, the parties had been provided with 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.

September 6, 2022 Board Hearing

At the hearing, the Board not only heard Ms. Henderson's claim that the signatures on Mr. McCullum's Petition were essentially forgeries, but also her challenges to four (4) other ANC candidate petitions. In Mr. McCullum's and two other cases, Ms. Henderson pursued her challenge for the reason that, in her opinion, nearly all the signatures on the three (3) petitions were forgeries. Her evidence of this position was her subjective view of the similarities in the signatures. In the other two (2) cases, the candidates were either the sole circulators of their petitions or reviewed twice the signatures on the petitions and they insisted that the signatures were genuine and denied any forgery.³

In each case, the Registrar reported at the hearing that her office had, in the instances where Ms. Henderson had asserted a signature authenticity issue, checked any otherwise valid signature against the signature for the respective voter in the Board's records. While in a few instances a couple of signatures on any petition did not conform to the signature in the Board's records, the Register explained that none of those defects were outcome-determinative. She noted that the Petition was numerically sufficient.

Ms. Henderson appeared and stated that she did not accept the Registrar's findings. She maintained that the handwriting on the Petition was uniform, which she believed indicated forgery.

Mr. McCullum was sworn in and averred that he circulated his Petition. He testified that the signatures on the Petition are valid and that, after Ms. Henderson filed her challenge, he spoke with several of the Petition signers and they stated that her claims were "bogus."

³ One candidate, Carrie Dellesky, was the circulator of only one of her petition sheets.

Discussion

If a circulator affidavit is genuine and complete, there is a presumption that the voter petition signatures are valid. *Williams v. District of Columbia Bd. of Elections and Ethics*, 804 A.2d 316, 319 (D.C. 2002).⁴ In the instant case, Mr. McCullum was the circulator of the Petition. By executing the circulator affidavit on the bottom of each Petition sheet, he attested, in writing and with knowledge of the risk of prosecution for a false attestation, that he witnessed the signatures on the Petition. Mr. McCullum appeared at the September 6 hearing and likewise testified that he executed the circulator affidavits. While Ms. Henderson's challenge included a claim that the circulator of the petition sheet was not a qualified circulator (a claim that the Registrar rejected), she did not allege that the circulator affidavit was not otherwise genuine. Under these circumstances, we cannot find that Mr. McCullum's circulator affidavits were not genuine. Based on *Williams, supra*, therefore, the signatures on the petition are entitled to a presumption of validity.

The Board's regulations provide: "The party who asserts the claim bears the affirmative duty of establishing the truth of the assertion." 3 D.C.M.R. § 424.1. Given that Ms. Henderson was asserting that the Petition signatures were forgeries and the presumption of validity as to those signatures, Ms. Henderson bore a heavy burden.⁵ Nevertheless, she produced no voter who signed Mr. McCullum's Petition and denied having done so. Nor did she offer credible forensic evidence

⁴ See also, *Nolan v. Cook County Officers Electoral Board*, 768 N.E.2d 216, 221 (App. Ill. 2002) ("the circulator's affidavit requirement is considered a meaningful and realistic method of eliminating fraudulent signatures and protecting the integrity of the political process." (citation omitted)); *Nomination Petition of Cooper*, 643 A.2d 717, 725 (Pa. Cmnlth. 1994) ("Where no evidence is presented to dispute the authenticity of a [petition] signature, it will be presumed genuine.").

⁵ While arguably the burden on Ms. Henderson is to clearly and convincingly show fraud (see *Allen v. D.C. Bd. of Elections*, 663 A.2d 489, 496 (D.C. 1995)), we need not address whether that burden applies as she has not shown by a preponderance of the evidence (much less substantial evidence) that the signatures on Mr. McCullum's Petition were forgeries.

calling into question the validity of the signatures, such as testimony from a handwriting expert. Moreover, Ms. Henderson's subjective opinion as to the authenticity of the Petition signatures was rebutted by the signature authentication conducted by the Board's Registrar as well as Mr. McCullum's contrary testimony.

Conclusion

As a result of this challenge, the Board finds that the Petition contains twenty-nine (29) valid signatures – four (4) signatures over the number required for ballot access. It is hereby:

ORDERED that the challenge to the nominating petition of Juan McCullum for the office of ANC SMD 5D07 is hereby **DENIED**.

The Board issues this written order today, which is consistent with its oral ruling rendered on September 6, 2022.

Date: September 8, 2022



Gary Thompson
Chairman
Board of Elections