

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Kathy Henderson,)	
Challenger)	Administrative
)	Order #22-019
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Advisory
Carrie Dellesky,)	Neighborhood Commissioner
Candidate.)	Single Member District 5D06

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 Carrie Dellesky (“Ms. Dellesky”) in support of her candidacy for the office of Advisory Neighborhood Commissioner (“ANC”), Single Member District (“SMD”) 5D06 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, Ms. Dellesky submitted a nominating petition to appear on the ballot as a candidate in the General Election contest for the ANC nomination for SMD 5D06 (“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 fifty-six (56) 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 fifty-six (56) signatures for review.

On August 13, 2022, the Petition was posted for public inspection for 10 days, as required by law. On August 19, 2022, the Petition was challenged by Ms. Henderson, a registered voter in the District of Columbia.

Ms. Henderson filed challenges to a total of fifty (50) signatures. As to forty-eight (48) of those signatures, 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 contesting the signatures. Notably, all but five (5) of the fifty (50) signatures challenged was contested under 3 D.C.M.R. § 1607.1(i) for the reason that 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 a total of seven (7) of the fifty (50) signature challenges were valid. Specifically, the Registrar found that two (2) challenges are valid because the signer is not registered to vote at the address listed on the petition at the time the petition was signed; one (1) challenge is valid because the petition does not include the name of the signer where the signature is not sufficiently legible for identification; one (1) challenge is valid because the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; and three (3) challenges are valid because the signature is not made by the person whose signature it purports to be.

¹ The other reasons for contesting the fifty (50) signatures were: the signer is not registered; 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 address of the signer; 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 Single-Member District from which the candidate seeks nomination at the time the petition is signed.

Accordingly, the Registrar preliminarily determined the Petition contained forty-nine (49) presumptively valid signatures, which is twenty-four (24) signatures above the number required for ballot access.

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 purport to be. She contended that the handwriting for the signatures was uniform.

The Registrar explained that she and her staff check 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 signature mismatches for only three (3) challenge signatures and therefore credited Ms. Henderson's challenge ground that the signature was not made by the person whose signature it purports to be as to only those three (3) challenges.

Ms. Dellesky stated that she was the circulator as to some of the Petition's signatures and, as to those signatures, she could attest that the voters in fact signed it. She indicated that one of the signature mismatches was attributable to her partner's having changed names and still refining the signature they used.

² 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.

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.

September 6, 2022 Board Hearing

At the hearing, the Board not only heard Ms. Henderson's claim that the signatures on Ms. Dellesky's Petition were essentially forgeries, but also her challenges to four (4) other ANC candidate petitions. In Ms. Dellesky's and two (2) of the 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 the sole circulators of their petitions and they insisted that they witnessed the signing of the petitions and denied any forgery.

Ms. Dellesky was sworn in and testified that she and volunteer circulators gathered the signatures on her petition. She stated that she reviewed the signatures on the Petition twice. She denied any wrongdoing and stated that she acted in good faith and to the best of her abilities in gathering Petition signatures.

In each of the cases where Ms. Henderson asserted forgeries, the Registrar reported at the hearing that her office had, in the instances where Ms. Henderson had asserted a signature authenticity issue, checked and double-checked any otherwise valid signature against the signature for the respective voter in the Board's records. While in a few instances (such as Ms. Dellesky's case), 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.

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).³ In the instant case, Ms. Dellesky was the circulator of the Petition as to eight of the signatures credited by the Registrar. By executing the circulator affidavit on the bottom of each Petition sheet, Ms. Dellesky and her other circulators attested, in writing and with knowledge of the risk of prosecution for a false attestation, that they witnessed the signatures on the Petition. Ms. Dellesky appeared at the September 6 hearing and likewise testified that she executed the circulator affidavits. While Ms. Henderson's challenges included the claim that the circulator was not a qualified petition circulator (an allegation that the Registrar rejected), she did not specifically assert that the circulator affidavits were falsely made. Rather, any contention that the circulator affidavits were not genuine must be inferred from Mr. Henderson's claim that the Petition signatures were not authentic. Under these circumstances, we cannot find that the circulator affidavits on Ms. Dellesky's Petition 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 then bore a heavy burden.⁴ Nevertheless, she produced no voter who

³ 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. Cmwlth. 1994) ("Where no evidence is presented to dispute the authenticity of a [petition] signature, it will be presumed genuine.").

⁴ While arguably the burden on Ms. Henderson is to show clearly and convincingly 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

signed Ms. Dellesky's Petition and denied having done so. Nor did she offer credible forensic evidence 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 Ms. Dellesky's contrary testimony.

Conclusion

As a result of this challenge, the Board finds that the Petition contains forty-nine (49) valid signatures – twenty-four (24) signatures over the number required for ballot access. It is hereby:

ORDERED that the challenge to the nominating petition of Carrie Dellesky for the office of ANC SMD 5D06 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

a preponderance of the evidence (much less substantial evidence) that the signatures on Ms. Dellesky's Petition were forgeries.