

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Latoya Moore,)	
Challenger)	Administrative
)	Order #20-024
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Advisory
James Q. Butler,)	Neighborhood Commissioner
Candidate.)	for Single Member District
)	5D03

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on September 2, 2020. It is a challenge to the nominating petition submitted by James Q. Butler (“Mr. Butler”) in support of his candidacy for the office of Advisory Neighborhood Commissioner for Single Member District 5D03 filed by Latoya Moore (“Ms. Moore”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). The parties appeared *pro se*. Chairman D. Michael Bennett and Board members Michael Gill and Karyn Greenfield presided over the hearing.

Background

On July 17, 2020, Mr. Butler submitted a nominating petition to appear on the ballot as a candidate in the November 3, 2020 General Election contest for the office of Advisory Neighborhood Commissioner (ANC) for the Single Member District (SMD) 5D03 (“the Petition”). The minimum requirement to obtain ballot access for this office is ten signatures of District voters who are duly registered in the same SMD. The Petition contained a total of 35 signatures. Pursuant

to title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, Karen F. Brooks, the Board of Elections’ Registrar of Voters (“the Registrar”), accepted all 35 signatures for review.

On August 8, 2020, the Petition was posted for public inspection for 10 days, as required by law. On August 17, 2020, Ms. Moore, a registered voter in the District of Columbia, filed a challenge to the Petition.

Ms. Moore filed challenges to 31 signatures pursuant to title 3 D.C.M.R. § 1607.1 of the Board’s regulations, on the following grounds: apparent forgery, the signer was not a registered voter, the signer resided outside the SMD, and the circulator of the Petition signed the petition affidavit sheet prior to obtaining signatures. With respect to a number of signatures, Ms. Moore had more than one basis for challenging a single signature.

Registrar’s Preliminary Determination

The Registrar reviewed the challenge to determine the validity of the challenged signatures. The Registrar’s first review indicated that a total of 25 of the 31 signature challenges were valid. Accordingly, the Registrar initially and preliminarily determined the Petition contained ten presumptively valid signatures, and thus meets the minimum requirement for ballot access. The Registrar circulated her preliminary report to the parties on August 26, 2020. In this message, she stated that “the deadline for the submission of changes of address for signatures [with a certain notation] is August 28, 2020.”

Ms. Moore responded to the Registrar on August 27, 2020. She stated that she believed the Registrar had miscounted the number of signatures where the circulator of the Petition had signed the petition affidavit sheet prior to obtaining signatures. She attached a spreadsheet further detailing her tally of invalid signatures. Mr. Butler did not receive a copy of this correspondence.

The Registrar subsequently circulated an updated preliminary report on August 30, 2020. This time, the Registrar determined the Petition contained nine presumptively valid signatures, which does not meet the minimum requirement for ballot access. The Registrar did not provide a new deadline for submission of changes of address, so that deadline remained August 28.

August 31, 2020 Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel convened a prehearing conference with both parties on Monday, August 31, 2020. The parties appeared *pro se*. An attorney with the Office of the General Counsel summarized the Registrar's updated preliminary report. The attorney asked the Registrar to clarify certain aspects of her report. In response to these questions, the Registrar specified which signature she had initially determined to be valid, but which she determined was invalid as indicated in her updated report. She also explained her methodology for tallying invalid signatures that were invalid for multiple reasons. If the only issue with the signature was that the circulator had pre-signed the affidavit, she coded it as "signature not dated." If the signature was invalid under these circumstances and the same signature was also invalid for a second reason, such as the signer was not a registered voter, she coded it as invalid for the additional defect. The attorney with the Office of the General Counsel noted that this was explained in the Registrar's preliminary report in the narrative summary, even though the summary table only coded each signature as invalid on one basis.

Ms. Moore provided an overview of her challenge. She felt that Mr. Butler had not complied with the letter or the spirit of the circulator affidavit at the bottom of each petition sheet, as evidenced by pre-signing the affidavit and by the fact that he had obtained multiple signatures from unregistered voters. She also expressed concern that Mr. Butler had obtained all of his signatures from residents of the same apartment building. Ms. Moore also noted she maintained

her challenge with respect to four signatures that she said appeared to be in the same handwriting and potentially forged, where the Registrar had deemed those signatures valid, and all of her original challenges.

Mr. Butler acknowledged that he signed the affidavit before he began collecting petition signatures. He acknowledged that this affected two pages of his Petition in their entirety. He asked that the Board recognize the voters' intent and credit him with signatures coded as "signature not dated." He stated his position that a particular signature, that of Eddie Brack, which the Registrar determined to be invalid, was actually valid. He questioned whether Ms. Moore had properly filed her challenge because she had not signed the challenge.

Additionally, Mr. Butler raised an issue about the notice he had received regarding the challenge. It subsequently became clear that the Office of General Counsel had used an incorrect e-mail address to provide Mr. Butler with formal notice about the challenge and the dates of proceedings in connection with it. Prior to the pre-hearing conference, Mr. Butler did receive the Registrar's original and preliminary updated reports on August 26 and August 31, which notified him of the August 28 deadline for filing change of address forms. Mr. Butler requested an extension of this deadline, which would enable him to cure one or more of the signatures determined by the Registrar to be invalid. Later that day, on August 31, Mr. Butler did submit address change paperwork for two signatories to his Petition.

September 2, 2020 Board Hearing

On September 2, 2020, the Registrar presented the Board with her preliminary determination of the challenges. The parties appeared *pro se*. Mr. Butler requested that the Board grant him ballot access, primarily on the basis that he had not received proper notice of the challenge in time to cure signatures that, once cured, would give him ten valid signatures on his

Petition. Mr. Butler raised his disagreement with the Registrar's findings concerning the signature of Eddie Brack. Mr. Butler also asked for the Board to waive his error of pre-dating the circulator affidavit.

An attorney with the Board's Office of the General Counsel spoke and confirmed Mr. Butler's assertions about notice. Specifically, she confirmed that Mr. Butler did not timely receive an initial correspondence with formal notification of the challenge.

The Board asked the General Counsel for her opinion on the matter, and she recommended the Board waive Mr. Butler's formal error in pre-dating the circulator affidavit.

Next, Ms. Moore spoke and explained that she had been unable to reach the operator to obtain ability to speak when she had been called upon by Mr. Bennett earlier. She stated that Mr. Butler had pre-dated the circulator affidavit, and that he had not acted consistently with the oath that the circulator affidavit signature represented. She further stated that any extension of deadlines granted to Mr. Butler by the Board would not affect this issue.

Discussion

Ms. Moore challenged multiple signatures because Mr. Butler, by his admission, signed the circulator affidavit prior to obtaining petition signatures. Under title 3 D.C.M.R. § 1602.3, the nominating petition form shall include a circulator's affidavit, providing space for the circulator of a nominating petition to record his or her name and address. By signing the affidavit, the circulator swears under oath or affirms that he or she (a) is a qualified petition circulator; (b) personally circulated the petition sheet; (c) personally witnessed the signing of each signature on the petition sheet; and (d) inquired whether each signer is a registered voter in the District of Columbia, and where applicable, that the signer is a registered voter in the same political party and/or ward or single-member district as the candidate seeking nomination.

However, Mr. Butler requested that the Board waive his formal error in signing the circulator affidavit prior to obtaining petition signatures. Title 3 D.C.M.R. § 1606.4 states:

After the receipt of a properly filed challenge, the Board's staff shall... prepare a recommendation to the Board as to the validity of the challenge.... In the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged; alternatively, the Board, in its discretion, may waive any formal error.

The Board finds it appropriate to waive Mr. Butler's formal error of pre-signing the circulator affidavit in this circumstance. Though Mr. Butler did sign the oath before obtaining voter signatures, there is no substantial evidence on the record that he acted in a manner inconsistent with the oath. Ms. Moore accurately noted that 6 of 35 signers were not registered to vote, but this alone is insufficient to persuade the Board that Mr. Butler failed to make appropriate inquiries about the signatories' voter registration status. As such, the Board considers Mr. Butler's actions in pre-signing the circulator affidavit to be a formal error, which it waives in this instance. The Board thus credits Mr. Butler with 14 signatures determined by the Registrar's preliminary report to be invalid due to this issue.

Additionally, Mr. Butler requested relief, and in particular an extension to cure defects with certain invalid signatures, due to the fact that he did not timely receive the Board's initial notice of the challenge. Under title 3 D.C.M.R. § 1606.3, the General Counsel or her designee shall serve a copy of the challenge upon the candidate in-person, by first-class mail, or email within three working days of receipt of a properly filed challenge. The Board staff acknowledges that they used an incorrect email address for Mr. Butler when they attempted to provide him such notice by email. The Board did not reach the issue of Mr. Butler's request for an extension to cure defects with certain invalid signatures.

Conclusion

As a result of this challenge, the Board finds that the Petition contains 23 valid signatures – 13 signatures above the number required for ballot access. It is hereby:

ORDERED that candidate James Q. Butler is granted ballot access in the contest for the office of Advisory Neighborhood Commissioner for the Single Member District 5D03 in the November 3, 2020 General Election.

Date: 9/4/2020



D. Michael Bennett
Chairman
Board of Elections