

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Kathy Henderson,)	Administrative Order
Challenger)	#22-018
)	
)	Re: Challenge to Nominating
v.)	Petition Submitted for the
)	Office of the Advisory
)	Neighborhood Commissioner
Salvador Saucedo-Guzman,)	for Single Member District 5D05
Candidate.)	

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 submitted by Salvador Saucedo-Guzman in support of their candidacy for the office of Advisory Neighborhood Commissioner for Single Member District (SMD) 5D05 in the November 8, 2022 General Election (“the General Election”). The challenge was filed by Kathy Henderson pursuant to D.C. Official Code § 1-1001.08 (o)(1) (2001 Ed.). Board 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, Mx. Saucedo-Guzman submitted a nominating petition to appear on the General Election ballot as a candidate for the office of Advisory Neighborhood Commissioner for SMD 5D05 in the General Election (“the Petition”). The Petition contained a total of 36 signatures. The minimum number of signatures required to obtain ballot access for this office is

25 signatures of registered qualified electors in the District of Columbia who reside in the same single member district as the candidate.

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 36 signatures pursuant to Title 3 D.C.M.R. § 1607.1 of the Board's regulations on the following grounds:

- 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 signature is not made by the person whose signature it purports to be; 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.

Registrar's Preliminary Determination

The Registrar's initial review of the challenge indicated that a total of 15 of the 36 signature challenges were valid. Specifically, the Registrar found that:

- Five were valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed;
- One was valid because the petition did not include the name of the signer where the signature was not sufficiently legible for identification; and
- Six were valid because the circulator of the petition failed to complete all required information in the circulator's affidavit;
- One was valid because the signature appears not to be made by the person whose

signature it purports to be; and

- Two were valid because the signer was not registered voter in the Single-Member District from which the candidate seeks nomination at the time the petition was signed.

The issue with the circulator affidavits, which the Registrar discovered as a result of reviewing the challenge, is that the dates in the circulator affidavits on the Petition sheets at issue predate six signatures. Specifically, the date in the circulator affidavit on Petition sheet one (June 22, 2022) predates five otherwise valid signatures on that sheet (dated June 27, 2022), and the date in the circulator affidavit on petition sheet two (August 8, 2022) predates one otherwise valid signature on that sheet (dated August 9, 2022).

Accordingly, the Registrar preliminarily determined that the Petition contained 21 valid signatures, four signatures below the number required for ballot access.

The Registrar's preliminary determination was provided to the parties via email on Monday, August 29, 2022, along with a Nominating Petition Challenge Information Sheet that outlined the Registrar's determinations with respect to the validity of each signature challenged, as well as a document titled "Signature Key Codes for Nominating Petitions" that explained the notations used to indicate the basis for upholding or denying each challenge.

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. In response to the Registrar's findings, Mx. Saucedo-Guzman indicated that they had received and would timely provide changes of address with respect to four of the five signatures that were challenged on the basis that the signers were registered at addresses within SMD 5D05 that differed from those that were listed on the petition at the time the petition was signed. They also indicated that they would seek to have

the Board waive the defect concerning the pre-dated circulator affidavits that impacted six signatures. Ms. Corrente indicated that the six signatures invalidated as a result of the circulator affidavit issue were otherwise valid.

For her part, Ms. Henderson asked whether the Board had the authority to waive the circulator defect, and repeated the allegation made in her challenge that the petition appeared to contain many signatures that were made in the same hand. In response, the Board's General Counsel indicated that there was precedent for the Board exercising its discretion to waive circulator affidavit errors, and the Registrar noted that the Voter Services staff had reviewed the petition twice and had determined that only one signature did not appear to match the signature for that voter that was found in the Board's records. Ms. Henderson did not provide any evidence in support of her allegation that the petition contained many signatures that were made in the same hand.

After the pre-hearing conference, Mx. Saucedo-Guzman submitted four changes of address via email. The registrar determined that only two of these changes of address were valid and could therefore serve to "cure" two of the signatures that were challenged on the basis that the signers were registered at addresses within SMD 5D05 that differed from those that were listed on the petition at the time the petition was signed; one could not cure because the voter was designated as inactive at the time the petition was signed, and one could not cure because the data provided in the change of address did not match that of any existing voter in the Board's records. Accordingly, after the two changes of address were accounted for, the petition was found to contain 23 valid signatures, two signatures below the number required for ballot access.

September 6, 2022 Board Hearing

During the hearing, Mx. Saucedo-Guzman testified under oath that they inadvertently put the wrong date on the circulator affidavit on Petition sheet one. Specifically, they put June 22, 2022 on the circulator affidavit for Petition sheet one instead of June 27, 2022.¹ They further indicated that they were also a signatory on that same page, and that they dated their signature correctly on that page. They stated that they were the sole circulator of the Petition. They asked that the Board waive the error and credit the Petition with the five otherwise valid signatures that were invalidated as a result of the incorrect date on Petition sheet one. In addition, they disputed the claims of signature mismatches lodged by Ms. Henderson.

Ms. Henderson requested that the Board not waive the error regarding the incorrect date in the circulator affidavit on Petition sheet one.

Discussion

Title 3 D.C.M.R. § 1606.4 provides that

[a]fter the receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge. The scope of the search shall be limited to matters raised in 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 has exercised its discretion to waive formal errors with respect to circulator affidavits. In *Moore v. Butler*, Administrative Order #20-024 (issued Sept. 4, 2020), the Board waived as formal error the candidate's signing of a circulator affidavit

¹ Mx. Saucedo-Guzman did not address the date in the circulator affidavit on petition sheet two at the hearing.

prior to obtaining petition signatures after determining that there was no substantial evidence that the circulator acted in a manner inconsistent with the circulator's oath.² In light of this, the Board sees fit to similarly exercise its discretion to waive formal error in this instance, where the candidate testified under oath that they did not sign the circulator affidavit prior to obtaining petition signatures, but rather inserted the wrong date in the circulator affidavit after collecting signatures, one of which was their own.

As in *Moore v. Butler*, no substantial evidence was presented that the circulator acted in a manner inconsistent with the circulator's oath. Accordingly, the Board finds it appropriate to waive the error made by Mx. Saucedo-Guzman and credit the Petition with the five otherwise valid signatures that were invalidated as a result of the incorrect date on Petition sheet one.

Conclusion

For the reasons indicated above, it is hereby

ORDERED that the challenge to the nominating petition submitted by Mx. Saucedo-Guzman in support of their candidacy for the office of Advisory Neighborhood Commissioner for Single Member District (SMD) 5D05 in the General Election is hereby **DENIED**, and that Mx. Saucedo-Guzman is hereby granted ballot access.

² By signing the circulator affidavit on a petition sheet, the circulator is swearing or affirming: (a) that they are at least 18 years of age; (b) that they are either a resident of the District of Columbia or a resident of another jurisdiction who registered as a petition circulator with the Board prior to the circulation of the petition sheet; (c) that they personally circulated the petition sheet; (d) that they personally witnessed the signing of each signature thereon; and (e) that they have personally inquired from each signer whether the signer is a duly registered voter in the District of Columbia.

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
Chair
Board of Elections