

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

Dorothy Brizill, et al., Challengers)	
)	
)	
v.)	Administrative Hearing
)	No. 10-006
Leo Alexander, Candidate)	Re: Challenge to Nominating Petition of Leo Alexander, Candidate Mayor of the District of Columbia

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections and Ethics (hereinafter “the Board”) pursuant to a challenge filed on July 19, 2010 by Dorothy Brizill and Gary Imhoff (“Brizill”), registered qualified electors in the District of Columbia, to a nominating petition submitted by Leo Alexander, candidate for the Democratic nomination for the office of Mayor of the District of Columbia (“Alexander”). Board Member Charles R. Lowery, Jr. presided over the hearing. Both Brizill and Alexander appeared *pro se*.

I. STATEMENT OF FACTS

On June 14, 2010, Alexander submitted a nominating petition in support of his candidacy for Mayor of the District of Columbia. The petition contained 3476 signatures. On July 19, 2010, the petition was posted for inspection for a 10-day challenge period pursuant to D.C. CODE § 1-1001.08(o)(1) (2006).¹ Also on July 19,

¹ D.C. CODE § 1-1001.08(o)(1) (2006) states in relevant part:

2010, Brizill filed a challenge to 2657 signatures on the petition. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Among the grounds upon which Brizill sought to disqualify signatures in Alexander's petition were: 1) that the signer's voter registration is designated as inactive on the voter roll at the time the petition was signed; 2) that 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; 3) that the signer is not a duly registered voter; 4) that the signature is not dated; 5) that the signer is not registered to vote in the same party as the candidate; 6) that the petition does not include the printed or typed address of the signer, and; 7) that the petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification. Brizill also challenged entire petition sheets because "the affidavit of the circulator is flawed (either the address on the affidavit (sic) doesn't match the voter registration record, the signature on the affidavit doesn't match the signature on file at [the Board], or the purported signature of the circulator differs substantially among petition sheets)."

Consistent with Board practice, the Board's Office of the General Counsel held a pre-hearing conference concerning the Brizill challenge on July 22, 2010. During the pre-hearing conference, Karen Brooks, the Registrar of Voters ("Registrar") rendered her preliminary determination report, which was based upon her review of the challenge. This report codified the Registrar's determination that 1442 of the 2657 challenges to

The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition.

Alexander's nominating petition were valid—leaving the Candidate with 2075 signatures. During the course of the pre-hearing conference, the Registrar's report was amended to reflect the finding that 17 signatures had been erroneously credited to Alexander. These signatures were collected by an individual, Elliot Chase Mathis, who was not a duly registered voter in the District of Columbia at the time he circulated the petition. Therefore, Alexander was left with 2058 signatures. The minimum number of signatures required for the office sought is 2000. Accordingly, the Registrar concluded that Alexander secured 58 more signatures than required for ballot access.

The discussions during the pre-hearing conference focused primarily on signatures that were challenged because they were on petition sheets with defective circulator affidavits. Brizill had challenged signatures on petition sheets circulated by Valencia Mohammed ("Mohammed"), Erzell Newkirk ("Newkirk"), and Bernard Richardson ("Richardson").² With respect to each of these individuals, Brizill alleged that some or all of the signatures on their circulator affidavits had been forged. In each of these instances, the Registrar denied the challenge.

At the conclusion of the pre-hearing conference, the parties indicated that they wished to proceed with a hearing before the Board wherein they would each challenge the findings of the Registrar regarding signatures that were either credited to Alexander or stricken.

On July 28, 2010, the Board held a hearing on the Brizill challenge. During the presentation of her case, Brizill called Gideon Epstein ("Epstein"), a forensic handwriting examiner, to testify regarding the authenticity of signatures found on the circulator

² Brizill also challenged petition sheets circulated by Carrie Nobles, Elliot Chase Mathis, and Barbra Turner. These challenges were resolved at the pre-hearing conference.

affidavits of 20 petition sheets circulated by Valencia Mohammed and 2 circulated by Erzell Newkirk.³ Epstein's examination of the signatures on the 22 petition sheets consisted of comparing the signatures thereon to those on "known" documents – documents believed to bear the genuine signatures of Mohammed and Newkirk. Epstein submitted oral and written testimony that the individual who wrote the name "Valencia" on the known documents wrote the name "Valencia" on the disputed petition sheets, but the person who wrote the surname "Mohammed" on the known documents did not write the surname "Mohammed" on the disputed petition sheets. Rather, multiple writers other than the person who wrote the surname "Mohammed" on the known documents wrote the surname "Mohammed" on the disputed petition sheets. Regarding Newkirk, Epstein testified that the individual who signed the known documents signed one but not both of the disputed petition sheets.⁴

Mohammed testified under oath that she intentionally signs her name in different ways, while Newkirk testified that there is consistent variation in her signature as a result of suffering from an arthritic condition. Both Mohammed and Newkirk submitted notarized affidavits in which they affirmed that they did, in fact, sign all circulator affidavits attributed to them.

Also during the hearing, Brizill and Alexander challenged the Registrar's findings with respect to signatures that were deemed valid and invalid, respectively.

³ Epstein examined Mohammed petition sheets E4 of 18, E7 of 18, E14-15 of 18, E17 of 18, C9 of 50, C15 of 50, C20-21 of 50, 25 of 50, C31-32 of 50, A72 of 110, A77 of 110, A82-83 of 110, 92 of 110, A98 of 110, A100 of 110, and A102 of 110, and Newkirk petition sheets 9-10 of 18.

⁴ Epstein found that Newkirk signed the circulator affidavit on petition sheet 9 of 18, but not the one on 10 of 18.

II. DISCUSSION

A. CIRCULATOR AFFIDAVITS ALLEGED TO BE DEFECTIVE

1. MOHAMMED

As noted above, Epstein testified that the individual who wrote the name “Valencia” on the known documents wrote the name “Valencia” on the 20 disputed petition sheets, but the person who wrote the surname “Mohammed” on the known documents did not write the surname “Mohammed” on the disputed petition sheets. Rather, multiple writers other than the person who wrote the surname “Mohammed” on the known documents wrote the surname “Mohammed” on the disputed petition sheets.

The Board finds Epstein’s testimony regarding the disputed Mohammed sheets to be somewhat implausible. We are at a loss as to why Mohammed, or any other individual, would sign her first name on a circulator affidavit, and then have other individuals forge her surname. In the absence of an explanation as to the rationale behind this alleged activity, and in light of the notarized affidavit submitted by Mohammed indicating that she signed all circulator affidavits attributed to her, the Board is compelled to adopt the Registrar’s findings and accept the Mohammed circulator affidavits.

2. NEWKIRK

The Board also accepts the sworn oral and written testimony submitted by Newkirk. We find convincing her explanation regarding the reason for the variations in the signatures on her circulator affidavits. The fact that Newkirk, like Mohammed, also submitted a notarized affidavit indicating that she signed all circulator affidavits attributed to her further buttresses her credibility. Accordingly, the Board adopts the Registrar’s findings, and accepts the Newkirk circulator affidavits.

3. RICHARDSON

During the hearing, Mr. Epstein indicated that he did not have enough time to examine the signatures of Mr. Richardson, and no other evidence was offered by Brizill to challenge the authenticity of Mr. Richardson's signature. The Board, upon examining the signature of the petition sheets circulated by Mr. Richardson and the signature on his voter registration card, agree with the findings of the D.C. Registrar, and deny Brizill's challenge with respect to Mr. Richardson.⁵

B. BRIZILL AND ALEXANDER CHALLENGES TO REGISTRAR'S INITIAL FINDINGS REGARDING INDIVIDUAL SIGNATURES

Brizill disputes the Registrar's initial findings with respect to 53 signatures. Alexander disputes the Registrar's initial findings with respect to 81 signatures.⁶

1. Brizill

Brizill disputes seven of the Registrar's initial findings on the grounds that the signatures at issue are forged.⁷ The Board upholds the Registrar's initial findings with respect to these challenges. Brizill disputes 22 of the Registrar's initial findings on the grounds that the signatories at issue, according to the Board's records, are not registered to vote at the address listed on the petition at the time the petition was signed.^{8 9} The

⁵ The Board received a faxed copy of Mr. Richardson's driver's license, and a notarized letter from Mr. Richardson dated July 29, 2010 indicating that the signatures on Leo Alexander's petition sheets were, in fact, his. Since the documents were submitted after the close of the evidentiary hearing, and Brizill did not have an opportunity to review the documents, the Board did not consider this evidence in rendering its decision.

⁶ Although Alexander disputed the Registrar's findings with respect to 81 signatures, one signature was the subject of two disputes, and one was the subject of three disputes.

⁷ Page A2 of 110, Line 19; Page A7 of 110, Line 3; Page A10 of 110, Line 4; Page A96 of 110, Line 20; Page A109 of 110, Line 12; Page C19 of 50, Line 8, Page C37 of 50, Line 13. During the course of the Board's review of the alleged forgery Page C37 of 50, Line 13, the Board determined that the signature at Page C37 of 50, Line 8 was invalid as the signatory is not a duly registered voter.

⁸ Page A36 of 110, Line 6*; Page A41 of 110, Line 9; Page A63 of 110, Line 16*;

Board rejects the Registrar's initial findings with respect to 16 of these challenges, and upholds the Registrar's initial findings with respect to 6 of these challenges. Brizill disputes one of the Registrar's initial findings on the grounds that the signatory at issue is not a duly registered voter.¹⁰ The Board rejects the Registrar's initial findings with respect to this challenge. Brizill disputes 15 of the Registrar's initial findings on the grounds that the signatories at issue are not registered to vote in the same party as the candidate.¹¹ The Board rejects the Registrar's initial findings with respect to 9 of these challenges, and upholds the Registrar's initial findings with respect to 6 of these challenges. Brizill disputes seven of the Registrar's initial findings on the grounds that the petition does not include the printed or typed name of the signatories where the signature is not sufficiently legible for identification.¹² The Board rejects the Registrar's initial findings with respect to 3 of these challenges, and upholds the Registrar's initial findings with respect to 4 of these challenges. Brizill disputes 1 of the Registrar's initial

Page A65 of 110, Line 8*; Page 73 of 110, Line 7*; Page 75 of 110, Line 11*; Page A78 of 110, Line 5; Page A84 of 110, Line 8; Page A88 of 110, Line 2*; Page A96 of 110, Line 2*; Page A101 of 110, Line 16*; Page A108 of 110, Line 16*; Page C1 of 50, Line 4; Page C5 of 50, Line 16*; Page C6 of 50, Line 18*; Page C11 of 50, Line 17*; Page C19 of 50, Line 4*; Page C22 of 50, Line 12; Page C37 of 50, Line 3*; Page C45 of 50, Line 11; Page E4 of 18, Line 11*; Page E16 of 18, Line 8. *

⁹ The asterisks indicate the signatures with respect to which the Board rejects the Registrar's initial findings.

¹⁰ Page A54 of 110, Line 19.

¹¹ Page A37 of 110, Line 6*; Page A75 of 110, Line 12*; Page A91 of 110, Line 14*; Page A93 of 110, Line 13*; Page A94 of 110, Line 11; Page A107 of 110, Line 4*; Page C2 of 110, Line 1*; Page C6 of 50, Line 15*; Page C7 of 50, Line 4; Page C24 of 50, Line 8; Page C26 of 50, Line 7; Page C32 of 50, Line 7; Page C37 of 50, Line 20*; Page C42 of 50, Line 4*; Page E2 of 18, Line 10.

¹² Page C6 of 50, Line 1*; Page C13 of 50, Line 7*; Page C17 of 50, Line 5; Page C19 of 50, Line 6; Page C24 of 50, Line 3*; Page C24 of 50, Line 4; Page C39 of 50, Line 15.

findings on the grounds that the signature at issue is not dated.¹³ The Board upholds the Registrar's initial findings with respect to this challenge.

In sum, the Board rejects the Registrar's initial findings with respect to 29 signatures, and upholds the Registrar's initial findings with respect to the remaining 24.

2. Alexander

Alexander disputes two of the Registrar's initial findings on the grounds that the signatures at issue are not forged.¹⁴ The Board upholds the Registrar's initial findings with respect to these challenges. Alexander disputes one of the Registrar's initial findings on the grounds that the signer's voter registration was not designated as inactive on the voter roll at the time the petition was signed.¹⁵ The Board upholds the Registrar's initial findings with respect to this challenge. Alexander disputes 4 of the Registrar's initial findings on the grounds that the signatories at issue, according to the Board's records, are registered to vote at the address listed on the petition at the time the petition was signed.¹⁶ The Board upholds the Registrar's initial findings with respect to three of these challenges, and rejects the Registrar's initial findings with respect to 1 of these challenges. Alexander disputes 42 of the Registrar's initial findings on the grounds that the signatories at issue are duly registered voters.¹⁷ The Board rejects the Registrar's

¹³ Page C48 of 50, Line 20.

¹⁴ Page A2 of 110, Line 17; Page A2 of 110, Line 20. Both of these signatures were also challenged on the grounds that the address listed on the petition was incorrect, and Page A2 of 110, Line 20 was challenged on the grounds that the signatory was not registered to vote in the same party as the candidate.

¹⁵ Page A14 of 110, Line 16.

¹⁶ Page A2 of 110, Line 17; Page A2 of 110, Line 20; Page A16 of 110, Line 4; Page A16 of 110, Line 7*.

¹⁷ Page A14 of 110, Line 9*; Page A14 of 110, Line 16; Page A14 of 110, Line 19; Page A14 of 110, Line 20; Page A15 of 110, Line 3*; Page A15 of 110, Line 7; Page A18 of 110, Line 7; Page A19 of 110,

initial findings with respect to 5 of these challenges, and upholds the Registrar's initial findings with respect to 37 of these challenges. Alexander disputes 33 of the Registrar's initial findings on the grounds that the signatories at issue are registered to vote in the same party as the candidate.¹⁸ The Board rejects the Registrar's initial findings with respect to 2 of these challenges, and upholds the Registrar's initial findings with respect to 31 of these challenges. Alexander disputes 1 of the Registrar's initial findings on the grounds that the petition does include the printed or typed name of the signatory where the signature is not sufficiently legible for identification.¹⁹ The Board upholds the Registrar's initial findings with respect to this challenge. Alexander disputes 1 of the Registrar's initial findings on the grounds that the petition does include the printed or

Line 18; Page A20 of 110, Line 18*; Page A21 of 110, Line 7; Page A21 of 110, Line 18; Page A22 of 110, Line 3; Page A22 of 110, Line 8; Page A22 of 110, Line 14; Page A24 of 110, Line 2; Page A35 of 110, Line 1; Page A35 of 110, Line 6; Page A35 of 110, Line 8; Page A35 of 110, Line 12; Page A35 of 110, Line 18; Page A36 of 110, Line 3; Page A36 of 110, Line 17*; Page A54 of 110, Line 4; Page A54 of 110, Line 11; Page A54 of 110, Line 15*; Page A54 of 110, Line 20; Page A55 of 110, Line 7; Page A55 of 110, Line 9; Page A55 of 110, Line 14; Page A56 of 110, Line 4; Page A56 of 110, Line 5; Page A56 of 110, Line 8; Page A56 of 110, Line 14; Page A57 of 110, Line 5; Page A57 of 110, Line 6; Page A57 of 110, Line 7; Page A57 of 110, Line 9; Page A58 of 110, Line 12; Page A58 of 110, Line 14; Page A81 of 110, Line 4; Page A89 of 110, Line 17; Page A90 of 110, Line 5. With the exception of the following pages, each of these petition sheets was also challenged on the grounds that the signatory was not registered to vote in the same party as the candidate: Page A14 of 110, Line 9; Page A14 of 110, Line 16; Page A14 of 110, Line 19; Page A14 of 110, Line 20; Page A15 of 110, Line 3.

¹⁸ Page A2 of 110, Line 8; Page A2 of 110, Line 20; Page A3 of 110, Line 13; Page A8 of 110, Line 16*; Page A12 of 110, Line 5; Page A17 of 110, Line 11; Page A27 of 110, Line 6; Page A32 of 110, Line 3; Page A37 of 110, Line 17*; Page A38 of 110, Line 7; Page A38 of 110, Line 9; Page A38 of 110, Line 17; Page A38 of 110, Line 18; Page A40 of 110, Line 5; Page A40 of 110, Line 12; Page A40 of 110, Line 15; Page A40 of 110, Line 18; Page A42 of 110, Line 20; Page A49 of 110, Line 13; Page A50 of 110, Line 11; Page A50 of 110, Line 15; Page A51 of 110, Line 16; Page A52 of 110, Line 18; Page A59 of 110, Line 2; Page A61 of 110, Line 12; Page A63 of 110, Line 2; Page A65 of 110, Line 12; Page A67 of 110, Line 16; Page A68 of 110, Line 10; Page A72 of 110, Line 2; Page A72 of 110, Line 9; Page A72 of 110, Line 10; Page A75 of 110, Line 4; Page A85 of 110, Line 18.

¹⁹ Page A15 of 110, Line 11.

typed name of the signatory ²⁰ The Board rejects the Registrar's initial findings with respect to this challenge.

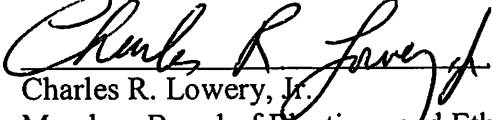
In sum, the Board rejects the Registrar's initial findings with respect to 9 signatures, and upholds the Registrar's initial findings with respect to the remaining 72 signatures.

As a result of its review, the Board has determined that Alexander's nominating petition contains a total of 2037 valid signatures. The minimum requirement of signatures for this office is 2000 pursuant to D.C. CODE § 1-1001.08(i)(1)(B) (2006). Accordingly, we conclude that Alexander has secured enough signatures to secure ballot access as a candidate for the Democratic nomination for the office of Mayor of the District of Columbia in the September 14, 2010 Congressional and Council Primary Election.

III. CONCLUSION

In view of the foregoing, it is hereby **ORDERED** that the challenge to the nominating petition of Leo Alexander, candidate for the Democratic nomination for the office of Mayor of the District of Columbia, is denied, and that Alexander be granted ballot access in the September 14, 2010 Congressional and Council Primary Election.

July 31, 2010


Charles R. Lowery, Jr.
Member, Board of Elections and Ethics

²⁰ Page A4 of 110, Line 7.