

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

Richard Urban,
Complainant,

v.

David Catania,
Respondent.

Administrative Hearing
No. 10-12

Re: Challenge to Nominating
Petition of David Catania,
Candidate, At-Large Member of the
Council of the District of Columbia

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter came before the District of Columbia Board of Elections and Ethics (“the Board”) on September 17, 2010. It is a challenge to the nominating petition of David Catania (“the Respondent”) as a candidate for the office of At-Large Member of the Council of the District of Columbia filed by Richard Urban (“the Complainant”) pursuant to D.C. CODE § 1-1001.08(o)(1) (2006). Board Member Charles Lowery presided over the hearing. The Complainant appeared *pro se*, and the Respondent was represented by Robert Woodson of Holland & Knight LLP, who is also counsel to the “Catania 2010” election campaign.

BACKGROUND

On August 5, 2010, the Respondent submitted a nominating petition for the office of At-Large Member of the Council of the District of Columbia that contained a total of 4,251 signatures. Mr. Catania supplemented his filing with an additional 1,051 signatures on August 25, for a total of 5,302 signatures. On August 28, 2010, the petition was

posted for inspection, pursuant to D.C. CODE § 1-1001.08(o)(1)(2006), for a 10-day challenge period.¹

On September 7, 2010, the Complainant filed a challenge to the nominating petition in which he challenged 1,630 of the 5,302 signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Among the grounds upon which the Complainant sought to disqualify signatures in Respondent's petition were that: 1) the individual signatures on specified petitions are not made by the person whose signature it purports to be; 2) the individual signers, 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; 3) the individual signers are not duly registered voters; 4) the petitions do not include the address of the signers; 5) the petitions do not include the name of the signer where the signature is not sufficiently legible for identification; and 6) the circulators of the petition sheets are not registered qualified electors of the District of Columbia at the time the petitions are signed. The complainant also challenged additional petition signatures, citing "variations in the signatures" of certain circulators, "multiple circulators [who] were not qualified DC electors," and discrepancies regarding certain circulators' addresses.

Consistent with Board practice, the Board's Office of General Counsel held a pre-hearing conference concerning the Complainant's challenge on September 13, 2010.

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

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.

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 1207 of the 1630 challenges to the Respondent’s nominating petition were valid, leaving the Candidate with 4,095 valid signatures. The minimum requirement of signatures for this office is 3000 pursuant to D.C. CODE §1-1001.8(j)(1)(B)(2006). Accordingly, the Registrar concluded that the Respondent secured 1,095 more valid signatures than required for ballot access.

The discussions during the pre-hearing conference focused on 1) the validity of specific petition signatures; and 2) petition sheets with defective circulator affidavits; Complainant challenged signatures on petition sheets circulated by Nicholas McCoy (“McCoy”), Sharon Morgan (“Morgan”), Tanchica Terry (“Terry”), Benjamin Olden Young (“Young”), Jordi Hutchinson (“Hutchinson”), Kevin Stogner (“Stogner”), David Crossland (“Crossland”), Theodore Trabue (“Trabue”), and Susan Mottet (“Mottet”). With respect to each of the above individuals, Urban alleged that some or all of the signatures on their circulator affidavits “appear to have 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 Respondent or stricken.

On September 17, 2010, the Board held a hearing on the complainant’s challenge. During the presentation of his case, the Complainant submitted an affidavit from Michael

Robertson² regarding the authenticity of signatures found on the circulator affidavits of petition sheets circulated by Nicholas McCoy. Robertson's examination of the signatures on these petition sheets consisted of comparing the signatures thereon to those on a "known" document – a document believed to bear the genuine signature of McCoy.³ Robertson submitted written testimony that the individual who wrote the name "Nicholas McCoy" on the known document did not write that name on the disputed petitions sheets.⁴

McCoy testified under oath that he circulated the petitions filed under his name, and that any variation in his signature was due to the speed with which he signed a petition, and/or the angle of the clipboard which he used as a writing surface. McCoy submitted a notarized affidavit in which he affirmed that he did, in fact, sign all circulator affidavits assigned to him.

The Complainant made three other arguments regarding the petitions submitted by the Respondent. First, there was sufficient evidence to warrant an investigation of "the signature collection practices of the Catania Campaign." Second, the Board should not accept the Respondent's supplemental petitions because the Respondent did not have 3,000 valid petition signatures when he submitted supplemental petitions. And third, the Board must reconsider 264 challenged signatures that the Registrar initially upheld as valid.

² Robertson submitted written documentation in an effort to demonstrate that he is an expert forensic document examiner. However, Respondent's counsel refused to stipulate to this.

³ Robertson examine McCoy petition sheets 6 of 267, 41 of 267, 52 of 63, 134 of 267, 135 of 267, 164 of 267, 236 of 267, 240 of 267, 258 of 267, 131 of 267,

⁴ Robertson found that McCoy did not sign the circulator affidavits on any of the petition sheets he examined.

The Respondent countered that no evidence supported the above charges. He provided notarized affidavits from each of the petition circulators alleged to have committed wrongdoing, and noted that even if all the petition signatures challenged were successful, he would still have enough signatures to qualify for the November 2010 ballot.

Also during the hearing, the Respondent challenged the Registrar's findings with respect to signatures that were deemed invalid.

II. DISCUSSION

A. CIRCULATOR AFFIDAVITS ALLEGED TO BE DEFECTIVE

1. MCCOY

As noted above, Robertson testified in writing that the individual who wrote the name "Nicholas McCoy" on the "known" document did not write that name on the disputed petition sheets.

The Board disagrees with Robertson and the Complainant. First, since Robertson was not present at the hearing he could not expound upon his findings, nor be subject to cross-examination.⁵ In light of the notarized affidavit submitted by McCoy indicating that he signed all circulator affidavits attributed to him, and in the absence of an explanation as to the rationale behind this alleged activity, the Board is compelled to adopt the Registrar's findings and accept the McCoy circulator affidavits.

2. OTHER CIRCULATORS

As noted above, the Complainant also alleges that certain other petition circulators -- Morgan, Terry, Young, Hutchinson, Stogner, Crossland, Trabue, and Mottet

⁵ Since Robertson was not present at the hearing, the Board gave little weight to his written testimony in rendering its decision.

-- did not circulate petition sheets filed under their names. The Complainant does not submit any evidence to support these allegations. Rather, he makes observations regarding various petition sheets, and requests that the Board infer "illicit" conduct from these observations. The fact that Morgan, Terry, Young, Hutchinson, Stogner, Crossland, Trabue, and Mottet, like McCoy, also submitted notarized affidavits indicating that they signed circulator affidavits attributed to them buttresses their credibility. Accordingly, the Board adopts the Registrar's findings, and accepts the other circulators' affidavits.

B. CATANIA CAMPAIGN SIGNATURE PRACTICES

As noted above, the Complainant requested an investigation of the "Catania 2010" campaign's signature practices. The Board finds that no such investigation is warranted, as the Complainant did not submit any evidence sufficient to substantiate his claims of a wide-spread, fraudulent signature gathering practice. Moreover, the Respondent provided notarized affidavits from each of the circulators who were alleged to have committed wrongdoing to support that all of the signatures in question were lawfully obtained in compliance with D.C. Official Code § 1-1001.08.

C. VALIDITY OF SUPPLEMENTAL PETITION SIGNATURES

As noted above, the Complainant argues that the Respondent's supplemental petitions should not be accepted because the Respondent did not have 3,000 valid signatures at the time he submitted supplemental petitions. The Board holds that the supplemental petitions are valid. The Respondent has not had fewer than 4,095 valid signatures as per the Registrar's preliminary determination, and the Complainant does not offer evidence demonstrating that the Respondent has ever had fewer than 3,000 valid signatures.

D. RESPONDENT AND COMPLAINANT CHALLENGES TO REGISTRAR'S INITIAL FINDINGS REGARDING INDIVIDUAL SIGNATURES

The Complainant disputes the Registrar's initial findings with respect to 264 signatures. The Respondent disputes the Registrar's initial findings with respect to 185 signatures.

1. COMPLAINANT'S CHALLENGE TO REGISTRAR'S INITIAL FINDINGS

The Complainant disputes 264 of the Registrar's initial findings on the same grounds he provided for his initial challenge. The Board upholds the Registrar's initial finding with respect to these challenges because the Complainant did not submit any additional evidence for these challenges.⁶

2. RESPONDENT'S CHALLENGE TO REGISTRAR'S INITIAL FINDINGS

The Respondent indicated that he would consider disputing 185 of the Registrar's initial findings if the Board determines that he has fewer than the minimum number of signatures necessary to qualify for the November 2010 General Ballot. Since the Board finds that the Respondent has more than the minimum number of signatures necessary to qualify for ballot access for the office pursuant to D.C. Official Code § 1-1001.08(j)(1)(B), the Board need not address the 185 signatures at issue.

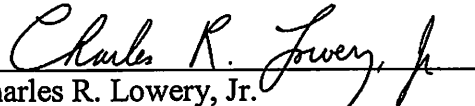
III. CONCLUSION

In view of the foregoing, it is hereby ORDERED that the challenge to the nominating petition of David Catania, candidate for the office of At-Large Member of the

⁶ Some of the Complainant's disputes with the Registrar's initial findings were duplicative and had already been resolved in the Complainant's favor.

Council, is denied, and that Catania be granted ballot access in the November 2nd, 2010
Congressional and Council General Election.

September 23, 2010



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