

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

_____	)		Administrative Hearing
Brian Hart,	)		No. 14-19
Challenger	)	RE:	Challenge to the Nominating Petition
	)		of Kishan Putta, Candidate for
	)		At-Large Member of the Council of
v.	)		the District of Columbia
	)		
Kishan Putta,	)	DATE:	September 3, 2014
Candidate	)		
_____	)		

**MEMORANDUM OPINION AND ORDER**

**INTRODUCTION**

This matter came before the District of Columbia Board of Elections (“the Board”) on Wednesday, September 3, 2014. It is a challenge to the nominating petition of Kishan Putta (“Mr. Putta” or “Candidate”) for the office of At-Large Member of the Council of the District of Columbia. The challenge was filed by Brian Hart (“Mr. Hart” or “Challenger”). Mr. Hart asserted that his challenges, if valid, would leave Mr. Putta’s nominating petition below the statutory minimum of 3,000 registered voters, and thus disqualify Mr. Putta from ballot access in the November 4, 2014, election.

Chairman Deborah K. Nichols and Board member Stephen I. Danzansky presided over the hearing. The Challenger appeared *pro se*, accompanied by his Campaign Manager, Samantha Hicks. The Candidate was represented by Dara Lindenbaum of Sandler, Reiff, Young & Lamb, PC.

## **PROCEDURAL BACKGROUND**

Mr. Putta submitted a nominating petition for the office of At-Large Member of the Council on August 6, 2014. The nominating petition was posted for a 10 (ten) day challenge period on August 9, 2014, pursuant to D.C. CODE § 1-1001.08(o)(1). Mr. Putta submitted a total of 5,557 signatures. The minimum signature requirement is 3,000 registered qualified electors who are residents of the District pursuant to D.C. CODE § 1-1001.08(j)(1)(B).

### **Challenges to Putta Petitions**

Mr. Hart, also a candidate for the office of At-Large Member of the Council, challenged Mr. Putta's nominating petition on August 18, 2014. Mr. Hart filed challenges to a total of 3,045 signatures enumerated by line and page number on individual challenge sheets for each nominating petition page.

Petition signatures were challenged pursuant to 3 DCMR §1607.1 of the Board's regulations on the following grounds: (1) the signer is not a duly registered voter; (2) 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) the signature is a duplicate of a valid signature; (4) the signature is not dated; (5) the petition does not include the address of the signer; (6) the petition does not include the name of the signer where the signature is not sufficiently legible for identification; (7) the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; (8) the circulator of the petition failed to complete all required information in the circulator's affidavit; and (9) the signature is not made by the person whose signature it purports to be.

### **Initial Findings**

The Registrar determined that a total of 2,623 of the 3,045 challenges were valid leaving Mr. Putta with 2,934 signatures, which is sixty-six (66) below the amount required for ballot access. Pursuant to D.C. Code § 1-1001.08(o)(3),

For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine if the address on the petition is the same as the address shown o[n] the signer's voter registration record. If the address is different than the address which appears on the signer's registration record, the address shall be deemed valid if: [t]he signer's current address is within the District of Columbia for an at-large election; and [t]he signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions.

The Registrar determined Mr. Putta's petition contained 851 signatures with an address that is different than the address which appears on the signer's voter registration record.

Pursuant to 3 DCMR § 1606.3, "[w]ithin three (3) working days of receipt of a challenge, the Board shall serve in person, by certified mail, or email a copy of the challenge upon the candidate." Since the challenge was filed on August 18, 2014, Mr. Putta had the opportunity to file change of address forms by August 28, 2014, to cure the invalid signatures.

### **Pre-Hearing Conference**

Pursuant to Title 3 DCMR §415.1, the Office of the General Counsel conducted a Pre-Hearing conference in this matter on Tuesday, August 25, 2014. The Challenger appeared *pro se*, accompanied by his Campaign Manager, Samantha Hicks, and the Candidate was represented by Dara Lindenbaum of Sandler, Reiff, Young & Lamb, PC.

During the prehearing conference, the parties raised a number of concerns that are hereby recited for the record. The parties were informed pursuant to 3 DCMR § 415.2 that the agreements made by the parties as to any of the matters considered which limit the issues for hearing, to those issues not disposed of by admission or agreement of counsel or parties.

### **CHALLENGER'S ISSUES FOR REVIEW**

Mr. Hart asserted that he submitted a total of 3,058 challenges to signatures. Further, he asserted fraud regarding signatures submitted by a circulator named Abu Tala Saeed. Mr. Hart asserted that Mr. Saeed is a resident of Virginia, not the District, and asserted that Mr. Saeed fabricated the signatures on his petition sheets.

Mr. Hart reserved the right to review any change of address forms submitted by Mr. Putta.

Mr. Hart challenged signatures which were out of date order on petition sheets.

Finally, Mr. Hart challenged signatures collected by petition circulator Kevin Coates, on the basis that some of the affidavits signed by Mr. Coates contained an address, and some did not.

### **CANDIDATE'S ISSUES FOR REVIEW**

Mr. Putta reserved the right to review and comment on the Registrar's findings as to the validity of Mr. Hart's challenges.

Mr. Putta submitted eleven (11) change of address forms to the Board as of August 26, 2014.

Mr. Putta objected to signatures being invalidated on the grounds that the dates on the petition sheets were out of order. He submitted signed and sworn affidavits from several petition circulators stating that the reason for out of order signature dates is that some petitions were first signed on the back page, and then the circulator flipped the petition page to the front to continue obtaining signatures. One such example is petition page 111, line 11. Another example is on page 295, wherein an ANC commissioner signed the petition out of date order.

Mr. Putta further submitted several signed and sworn affidavits from signers confirming that the signatures are indeed theirs.

Mr. Putta contended that several of Mr. Hart's challenges did not state a specific challenge under the code, but simply listed an address. Mr. Putta contended there are several such general challenges, and objected to their validity.

Mr. Putta also stated that one of his circulators was homeless at several points while circulating petitions and Mr. Putta provided information regarding the homeless shelter and locations outside of the shelter where the circulator stayed, and maintained his District residency.

Both parties reserved the right to review the information provided by the Registrar and lodge any challenges by the close of business on August 28, 2014.

### **Subsequent Submissions**

Subsequent to the pre-hearing conference, on August 28, 2014, Mr. Putta submitted a letter outlining his contentions disputing several of the registrar's initial findings on the validity of signatures. Mr. Putta also submitted change of address forms for twenty-eight (28) signers.

Mr. Putta submitted a total of twenty-eight (28) voter registration forms to DCBOE. Of the (28) submitted by Mr. Putta, nine (9) were address changes, eight (8) were not registered, four (4) were not properly identified by petition page and line, three (3) had different addresses than what was placed on the petition, two (2) registration forms were incomplete, one (1) was a duplicate registration, and one (1) was an inactive voter. Mr. Putta also submitted a spreadsheet with a total of one hundred and sixty-two (162) signatures he believed should be credited toward his total. After a review of those 162, the Registrar determined that eighty-nine (89) of those challenges would be reversed in Mr. Putta's favor.

On Tuesday, September 2, 2014, Mr. Hart also submitted a spreadsheet asserting twenty-one (21) additional challenges to Mr. Putta's nominating signatures. The Registrar, having reviewed these signatures, determined that fifteen (15) were correctly credited to Mr. Putta, and six (6) were valid challenges that should have accrued in Mr. Hart's favor.

Based on these submissions, the Registrar determined that 2,623 of Mr. Hart's 3,045 challenges are valid, leaving Mr. Putta with 2,934 signatures, sixty-six (66) below the number required for ballot access.

### **Board Hearing**

A hearing before the Board of Elections was scheduled for Wednesday, September 3, 2014, at 10:30 a.m. at the Board's offices located at 441 4<sup>th</sup> Street N.W. Suite 270N Washington D.C. 20001.

Mr. Putta's counsel argued that the signatures invalidated for a wrong address should be allowed, as often the address was off by merely one digit. Ms. Lindenbaum enumerated several challenged signatures as examples. All of these signatures are listed on the spreadsheet provided by Mr. Putta on August 28, 2014.

Mr. Putta's counsel and Mr. Hart's campaign manager further discussed the issue of circulator Kevin Coates who was homeless and failed to notate an address on several of his petition sheets. Mr. Hart took no other issue with those signatures. Mr. Putta produced a written declaration signed by Mr. Coates describing the constantly changing nature of his living situation.

Mr. Putta then produced a witness, Gregory Stewart, a fellow ANC member, who personally testified that the signature purporting to be his on a petition sheet was indeed signed

by him, and that he had made a mistake on the date, as well as writing his address hastily, thus prompting a mistake in the house number.

Mr. Putta further produced a witness, Maria Aragon, who was a petition circulator, and who testified that she had erroneously begun collecting signatures on the back side of petition sheets, and had then flipped the sheets to the front side the next day, thus displaying dates that were out of order on the signatures.

Mr. Putta produced a signed declaration from Robert Schreiber, whose signature had been found invalid due to inactive registration status. The declaration stated that Mr. Schreiber had voted in both the 2008 and 2012 elections. Mr. Putta's counsel stated a blanket objection to any and all signatures invalidated due to inactive status.

Mr. Putta objected to signatures invalidated by reason of a name variation as in the example of Erie Lomax instead of Eric Lomax.

Mr. Hart reasserted his contentions that signatures collected by circulator Saeed are fraudulent and should be thrown out. Upon being informed that none of the signatures were found to be valid, he wished to lodge a general complaint of fraud.

### **Subsequent Review**

Having heard the parties' contentions, the Board directed Board staff to undertake an additional review of the signatures.

Upon review, the following was determined:

- 1) Mr. Schreiber had not voted in either the 2008 or 2012 elections, and was properly moved to invalid status when the Board sent out a mailing to him in 2013, and having received the mailing back marked "undeliverable", took proper actions, and amended his status on the voter rolls. See D.C. Code § 1001.07(j)(2)(A).

2) The Board staff undertook an additional review of the signatures listed on the spreadsheet provided by Mr. Putta. Two staff members who had not previously participated in this signature review process cross-checked the disputed signatures with the voter rolls. The staff members worked independently from each other, and concluded that eleven (11) additional signatures should be credited to Mr. Putta. Of the disputed signatures, the following were accepted:

- a. James Coffield, (page 3 line 1)
- b. Geraldine Bailey, (page 19 line 19)
- c. Sheila Covington, (page 53 line 10)
- d. Tasha Davis, (page 53 line 14)
- e. Johnny Srkine, (page 54 line 19)
- f. Paulette Smith, (page 87 line 9)
- g. Dashawnda Lane, (page 128 line 8)
- h. Erie Lomax, (page 132 line 5)
- i. Charles Sabatier, (page 175 line 2)
- j. Susan Brandon, (page 210 line 13)
- k. Gregori Stewart, (page 245 line 1)

### **Discussion**

The Board rejects the challenges to the Registrar's preliminary determination presented by Mr. Hart on the spreadsheet provided on September 2, 2014, as that information was submitted after the mutually agreed-upon deadline of August 28, 2014. Thus, Mr. Putta is credited with the six (6) signatures the Registrar deemed valid challenges.



### **Wrong Address Challenges**

Concerning the issue of single digit differences in addresses, and based on the Board's decision in *Brizill v. Anthony Williams* 02-016 (July 30, 2002), wherein the Board ruled that an omission of the city quadrant of a residence address was not a fatal error, the Board applies the same standard, and elects to accept the signatures. Provided that the signatures on the petition match those on the voter roll records, the Board elects to accept the signatures as proffered.

### **Out of Date Order Signatures**

On the issue of out of date order signatures, the Board notes that the signature requirement has never stated that signatures be signed in date order, merely that they be signed. See 3 DCMR § 1607.5(d). Therefore, no signatures are invalidated for this reason, and in fact, any signatures challenged on these grounds had been credited to Mr. Putta prior to the Board Hearing on this matter.

### **Homeless Petition Circulator**

Eleven (11) petition sheets representing two hundred and twenty (220) signatures were collected by Kevin Coates, a homeless circulator. However, the address of the circulator, in the circulator affidavit was not filled out in eight (8) of the petition sheets. Mr. Coates listed a homeless shelter address on the remaining three petition sheets.

All of the petition sheets were submitted together and were marked sequentially as sheets 194 – 204 of 295. The challenger argues that 49 of the signatures on the sheets with no address should be thrown out citing Title 3 DCMR § 1607.5 which states that “[s]ignatures appearing in nominating petition sheets shall not be counted as valid unless all required information is provided by circulators in his or her signed affidavit”.

In determining whether these otherwise valid signatures should be disregarded, the Board must consider what the purpose of the affidavit requirement is in the first place. The purpose of requiring a circulator's address is *inter alia* to ensure that an individual can be made available to be deposed and to provide testimony about the circumstances surrounding the collection of his or her signatures.

Here, Mr. Coates turned in eleven (11) petition sheets, and he lists the shelter home address on several but not all of the sheets. So the Board has an address for Mr. Coates, and if necessary, can contact him at the homeless shelter at 425 2<sup>nd</sup> Street NW. When the petition sheets circulated by Mr. Coates were called into question the campaign provided the Board an affidavit from Mr. Coates indicating that he did in fact circulate the petition sheets.

Here, the indication of an address on some but not all of his petition sheets is a formal error and the Board, in its discretion, may waive any formal error. 3 DCMR §1606.4. Mr. Coates provided the shelter address as his place of residence and the District has long held that an elector may use any address within the District that he or she regularly returns to and has the intent to remain. That location may be used as the elector's home base (residential address) for voter registration purposes. Those who cannot afford regular or adequate shelter may use a park, vacant lot, or homeless shelter as a home base for residency purposes. *see In the Matter of: The Application for Voter Registration of Willie R. Jenkins* (Board of Elections [sic], June 7, 1984). Based on a totality of the circumstances presented in this matter, and the evidence that Mr. Coates is both a resident of the District, and can be located, the Board accepts as valid the forty-nine (49) challenged signatures collected by Mr. Coates.

**Conclusion**

Mr. Putta was missing sixty-six (66) signatures to reach the statutory 3,000 requirement. He was credited forty-nine (49) signatures collected by Mr. Coates, six (6) signatures challenged by Mr. Hart in an untimely spreadsheet submitted after the mutually agreed upon deadline, and eleven (11) signatures based on a tertiary review of erroneous address challenges. In total, Mr. Putta holds an additional sixty-six (66) signatures, thus bringing him to the required statutory limit of 3,000 signatures.

**ORDERED** that candidate Kishan Putta is granted access to appear on the ballot for the November 4, 2014, election for the office of At-Large Member of the Council of the District of Columbia.

DATE: 9/8/2014

BY:  \_\_\_\_\_

Deborah K. Nichols, Esq.  
Chairman,  
District of Columbia Board of Elections