

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

IN THE MATTER OF

HON. MAYOR ANTHONY WILLIAMS,
CANDIDATE

Administrative Hearing
No. 02-019
Re: Civil Penalties

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics (the “Board”), pursuant to D.C. Official Code, Section 1-1103.05 (b) (1) (2001), to consider the assessment of civil penalties for violations of the Election Act by the candidate Anthony Williams and the Williams’ campaign committee in the circulation of the nominating petition filed to qualify the candidate for the Democratic nomination for the Office of Mayor in the September 10, 2002 Primary Election.

The Board was represented by its general counsel Kenneth McGhie, Esq., Terri Stroud, Esq., and Rudolph McGann, Esq. The candidate Anthony Williams was represented by Vincent Mark Policy, Esq. The Board, which consists of Chairman Benjamin F. Wilson and members Stephen Callas and Jonda McFarlane, were present for this proceeding.

I. INTRODUCTION

For the past several weeks, the District of Columbia Board of Elections and Ethics has considered three separate matters emanating from the nominating petition filed on July 2 and 3, 2002 by Mayor Anthony Williams (the “Mayor”), to support his candidacy for the Democratic nomination for the Office of Mayor in the September 10, 2002 Primary Election. Two of these matters, the challenge to the nominating petition and the referral of alleged criminal violations have been resolved. The remaining matter will address the assessment of civil penalties.

The nominating petition submitted by the Mayor contained a total of 512 pages, and a total of 10,102 signatures. The circulator's affidavits on the petition pages indicated that Scott Bishop, Sr., Scott Bishop, Jr., or Crystal Bishop circulated 345 (67%) of the total pages submitted.

II. HISTORY OF THE CASE

A. CHALLENGE TO THE NOMINATING PETITION

The Board, pursuant to D.C. Official Code, Section 1-1001.08(o) (1) (2001), considered the challenge filed on July 15, 2002 by Dorothy Brizill, Gary Imhoff, Mark Sibley and Shaun Snyder, registered qualified electors in the District of Columbia, (the "Brizill challenge") to the candidacy of Anthony Williams for the Office of Mayor. As will be more fully discussed below, the Board denied ballot access to Mayor Anthony Williams, and this decision was affirmed by the District of Columbia Court of Appeals.

Dorothy Brizill and Gary Imhoff alleged that approximately 9,250 of the petition signatures were defective for the following reasons: 1) that the signer, according to the Board's records, was not registered to vote at the address listed on the petition at the time it was signed; 2) that the signer was not a duly registered voter; 3) that the signer was not registered to vote in the same party as the candidate at the time the petition was signed; 4) that a signature was not the signature of the person it purported to be; 5) that a signature was listed more than once; and 6) that a signature was not dated. The challenge also alleged that, in some instances, listed circulators were not registered qualified electors at the time the petition was circulated.

In addition, Mark Sibley and Shaun Snyder alleged by separate statement, that the pages submitted by Scott Bishop, Sr. contained the nonexistent date of June 31st, and that Scott Bishop, Jr. collected an unlikely number of signatures, 540, in one 24- hour period. This implied that Scott Bishop Jr. had either forged signatures or had not personally circulated the petition sheets himself.

Of significance, the Mayor, in his response to the Brizill challenge filed July 19, 2002, stated he would not defend 214 of the 512 petition sheets submitted in his nominating petition. During the course of the hearing conducted on July 24, 2002, Benjamin F. Wilson, Chairman of the Board of Elections and Ethics, inquired of Vincent Mark Policy, counsel for the Mayor, why the Mayor would not defend these 214 petition sheets. Mr. Policy responded “we do not defend forgeries”. These pages contained approximately 4,260 signatures. Of these 214 petition sheets, 167 (78%) were petition sheets attributed to the Bishops. Consequently, Kathryn Fairley, the Board’s Registrar of Voters considered only 298 of the 512 petition sheets submitted.

On July 26, 2002, the Registrar of Voters rendered her preliminary determination report on the Brizill challenge. Based upon her review of the signatures of the 298 petition sheets still at issue, Ms. Fairley concluded that the Mayor submitted 2,235 presumptively valid signatures. This figure represented 235 signatures in excess of the 2000 signatures required for ballot access. The report of the Registrar included 178 petition sheets, of which 3,552 signatures appearing thereon were attributable to the Bishops as circulators. In arriving at her total of 2,235 presumptively valid signatures, Ms. Fairley deemed 945 of the signatures submitted by the Bishops to be presumptively valid.

In sum, the Bishops purportedly circulated 345 of the 512 petition sheets submitted by the Williams Campaign; these included 167 of the 214 sheets the Mayor refused to defend. Scott Bishop, Sr. coordinated the petition process, and this fact, coupled with the fact that he and his family members submitted the majority of the petitions at issue, raised concerns over the totality of the nominating process.

In arriving at her conclusion that the Williams campaign had submitted 2,235 presumptively valid signatures, the Registrar of Voters did not consider the veracity of the affidavits of the circulators of these petition sheets as this task lies in the sole province of the Board of Elections and Ethics. During the course of the hearings conducted before the Board, the Board found numerous pages of nominating petition sheets circulated by the Bishops that were replete with signatures in the same hand. These

blatant irregularities raised grave concerns about the validity of the petition sheets circulated by the Bishops, and the circulator affidavits contained therein. These concerns were not allayed because the Bishops asserted their Fifth Amendment right against self-incrimination, and were then unavailable for questioning. The sheer number of petition sheets for which the Bishops were responsible further amplified the potential magnitude of their involvement.

Because the Board found such “widespread obstruction and pollution of the nominating process as it pertained to the nominating petition sheets circulated by the Bishops”, the Board by Memorandum Opinion and Order dated July 29, 2002, concluded that the Mayor did not have the requisite number of signatures for ballot access to qualify as a candidate for Democratic nomination in the September 10, 2002 Mayoral Primary Election, and denied the Mayor ballot access.

The Mayor petitioned for review of the Board’s decision before the District of Columbia Court of Appeals. On August 7, 2002, the District of Columbia Court of Appeals affirmed the Order of the Board of Elections and Ethics following argument on August 6, 2002. See *Williams v. District of Columbia Board of Elections and Ethics*, Appeal No. 02-AA-854 (DCCA, August 7, 2002).

The Court of Appeals found that there was “ample factual and legal support for the Board’s decision to disregard all of the signatures attributable to the Bishop Petitions”. The Court held that “in the circumstances of this case, where the Board found, with the support of substantial evidence in the record, that the integrity of the nominating process has been seriously compromised by the actions of the Bishop circulators...it was within the Board’s authority to disallow all of the signatures affected by the wrongdoing”.

B. REFERRAL OF ALLEGED CRIMINAL VIOLATIONS

The Board convened a hearing on August 6, 2002, which continued through August 9, 2002, upon the Complaints filed by Betsy W. Werronen and Dorothy Brizill, registered qualified electors of the District of Columbia, to address whether apparent criminal violations of the Election Act occurred in the circulation of the nominating petition for Mayor Anthony Williams. The Board considered whether these matters warranted referral to the Corporation Counsel of the District of Columbia, and to the United States Attorney for the District of Columbia.

Specifically, D.C. Official Code, Section 1-1001.08(b)(4) prescribes misdemeanor penalties for willful misconduct by a circulator, and D.C. Official Code, Section 22-2405 specifies criminal penalties for the making of false statements. Upon the recommendation of the General Counsel to the Board, the Board referred Scott Bishop, Sr., Scott Bishop, Jr., Crystal Bishop, Ann Lewis and Robert Yeldell, as well as concerns of campaign wrongdoing, to the Offices of the Corporation Counsel and the United States Attorney for the District of Columbia, because of violations of the Election Act. The Board found forgeries may have occurred in the circulation of the nominating petition where the signatures of circulators and petition signers appeared to have been forged.

III. ASSESSMENT OF CIVIL PENALTIES

The Board, pursuant to D.C. Official Code, Section 1-1103.05(b)(1), initiated a proceeding on August 9, 2002, to consider whether fines should be assessed for violations of D.C. Official Code, Sections 1-1001.08(b)(2) and 1-1001.08(b)(3), in the circulation of the nominating petition for Mayor Anthony Williams. D.C. Official Code, Section 1-1103.05(b)(1) authorizes the Board of Elections and Ethics to assess a civil penalty of not more than \$200 against any person who violates any provision of the Election Act.

The term “person” means an individual, partnership, committee, corporation, labor organization, and any other organization. D.C. Official Code, Section 1-1101.01(8). The term “political committee” means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other groups of individuals organized for the purpose of, or engaged in promoting or opposing a political party, or promoting or opposing the nomination or election of an individual to office. D.C. Official Code, Section 1-1101.01(5).

On April 7, 2002, Anthony Williams registered with the Office of Campaign Finance (OCF) as a Democratic candidate for the Office of Mayor in the Primary Election to be conducted on September 10, 2002. See D.C. Official Code, Section 1-1102.05 (a). Anthony Williams designated the “Committee to Re-elect Tony Williams” as his principal campaign committee, and the Committee filed its Statement of Organization with OCF on April 24, 2000. See D.C. Official Code, Section 1-1102.04.

D.C. Official Code, Section 1-1001.08(b) (3) requires that all signatures on a petition be made by the person whose signature it purports to be and not by any other person. Further, D.C. Official Code, Section 1-1001.08(b)(3) requires that each petition contain an affidavit made under penalty of perjury and signed by the circulator which states that the circulator...”(A) Personally circulated the petition; (B) Personally witnessed each person sign the petition; and (C) Inquired from each signer whether he or she is a registered voter in the same party as the candidate and, where applicable, whether the signer is registered in and a resident of the ward from which the candidate seeks election”.

By Report dated August 9, 2002, the Registrar of Voters found the following violations: 5465 instances where the signature of the petition signer was forged in violation of D.C. Official Code, Section 1-1001.08(b)(3) on both the withdrawn petition sheets and the petition sheets which remained at issue; 32 instances where the signature of the circulator was forged on both the withdrawn petition sheets and the petition sheets which remained at issue in violation of D.C. Official Code, Section 1-1001.08(b)(3); 36 instances where

petition signatures were added after the circulator signed on petition sheets which remained at issue in violation of D.C. Official Code, Section 1-1001.08(b)(3); and 1 instance where the actual circulator had another individual sign the circulator's affidavit on a petition sheet which remained at issue in violation of D.C. Official Code, Section 1-1001.08(b)(3).

A. LEGISLATIVE HISTORY OF D.C. OFFICIAL CODE, SECTION 1-1103.05 (b) (1)

From a historical perspective, what was formerly the "Board of Elections" became the "Board of Elections and Ethics" upon the enactment of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974, by the Congress of the United States on August 14, 1974. Although the foremost purpose of the Act was to provide for the regulation of campaign practices within the District of Columbia, the new Board was given "compliance authority, including civil penalties and general procedures for conduct of the Board's business". See House of Representatives Conference Report No. 93-1225, to accompany H.R. 15074, the "District of Columbia Campaign Finance Reform and Conflict of Interest Act".

On the eve of major political reform in the District of Columbia due to the acceptance by the voters of the Home Rule Charter set forth in the District of Columbia Self Determination and Governmental Organization Act (P.L. 93-198), the Congress endeavored to provide for the regulation of the conduct of campaigns by establishing contribution and expenditure limitations, by establishing requirements for full reporting and disclosure of the financing of campaigns, by strengthening and supplementing the capacity of the Board of Elections and Ethics to administer the election laws generally, and by establishing financial disclosure requirements for candidates and public officials. See Report No. 93-967 of the Committee on the District of Columbia to accompany H.R. 15074. Clearly, the statutory grant of authority to assess civil penalties for violations of the Election Act strengthened the ability of the Board to protect the integrity of the electoral process.

When first enacted in 1974, Section 306(b) (1) of the Campaign Finance Act authorized the Board of Elections and Ethics to assess a civil penalty of not more than \$50 for a violation of the Election Act. The amount of the fine which could be imposed by the Board under this provision remained unchanged until the Board requested an increase which was enacted by the Council of the District of Columbia with the passage of D.C. Law 13-163, the “Campaign Finance Enforcement and Contribution Limitation Amendment Act of 1999”, effective October 4, 2000. D.C. Law 13-163 increased the civil penalty to \$200.

Throughout the relatively short history of the “Board of Elections and Ethics”, the Board has not confronted circumstances which compelled the Board to invoke its statutory authority to assess fees for violations of the Election Act. In this matter, however, the sheer breadth of the violations obligates the Board to act. The Board viewed voluminous and repetitive petition sheets filled with signatures in the same handwriting in violation of the Election Act. In fact, the District of Columbia Court of Appeals noted “[a]mong the purported signatures are those of actors, television (or cartoon) characters, politicians, and sports figures – including Robert De Niro, Wing Woo, Kelsey Grammer, Carroll O’Connor, Dudley Moore, Rosa Parks, George W., [and] Tony Blair [.]” Footnote 2, *Id.* Moreover, the blanket forgeries found covered hundreds of pages of the nominating petition and raised issues concerning the validity of the circulators’ attestations thereto. Because of these egregious violations and blatant disregard for the integrity of the electoral process, the Board must consider the imposition of fines.

The Board recognizes that the Mayor has suffered public embarrassment and been denied ballot access as the Democratic candidate for the Office of Mayor. These circumstances result from the failure of the Mayor to submit valid signatures to qualify for ballot access, and do not preclude the Board from assessing civil penalties where violations of the Election Act occur.

B. MITIGATING FACTORS

Undoubtedly, the Board is navigating through uncharted waters. Consequently, the Board wishes to be circumspect in its review, and fairly assess the appropriate fines. There are some factors which mitigate against the imposition of the maximum fine. To the credit of the candidate, upon being faced with obvious forgeries, the Williams campaign withdrew 214 petition sheets, containing a total of 4260 forged signatures, which represents 4260 violations. These petition sheets also contained 31 instances of forged circulator signature violations. In addition, the Board found no evidence that the “Mayor personally encouraged or directed any circulators or other persons.... to fail to comply with the requirements set out by our laws and regulations”. *

However, there was an obvious lack of institutional control and supervision by senior Williams campaign officials, Max Berry and Gwendolyn Hemphill, Co-Chairs of the campaign, Charles Duncan, Senior Campaign Advisor, and most importantly, Mayor Anthony Williams, the candidate, who failed to exercise control and supervision over his campaign. The administrative record is completely devoid of any consistent affirmative steps taken by the campaign to ensure the authenticity of the signatures appearing on the nominating petition.

While the reasons for the lack of supervision may vary, namely, the desire to obtain five (5) times the number of required petition signatures, and the absence of a campaign manager, the absence of supervision constitutes gross neglect by the candidate Anthony Williams and the Williams campaign. There was no evidence that the Mayor acted in an illegal manner, but as the candidate, he remains ultimately responsible for the veracity of the nominating petition submitted to support his candidacy, and for the work of others.

*Had there been evidence that the Mayor instructed the circulators to forge signatures on nominating petitions or had there been evidence that the Mayor was aware of said forgeries but failed to take action to prevent their submission on behalf of the campaign, the Board would have been compelled to assess a greater fine. The Board reserves the right to impose greater penalties in the future where there is a failure to follow strictly the requirements of the Election Act in the circulation of nominating petitions.

Three persons, the Bishops, all of whom happened to be related, collected the vast majority of the signatures. The activity of so few persons should have been well within the capacity of the candidate and the campaign to monitor.

As the D.C. Court of Appeals noted “[e]ven a cursory examination of petition sheets contained in the record reveals signatures casting doubt on the validity and accuracy of affidavits signed by the Mayor’s circulators, especially Scott Bishop, Jr., and Crystal Bishop, swearing to the validity of those signatures”. Footnote 2, *Id.* It is almost impossible to believe that such massive forgeries occurred without being brought to the attention of senior campaign officials and even the candidate himself. Moreover, there was no allegation of unintentional acts based on a cloudy interpretation of the law.

Further, one does not have to be a lawyer to understand the warning appearing below the affidavit of the circulator on each nominating petition sheet. The warning directs each affiant to read the affidavit of the circulator before signing to “make sure it is true”. In this case, the Board found 32 instances where circulator signatures were attributed to persons who did not in fact sign the affidavits of circulator. See petition sheets attributed to Ann E. Lewis (Sheets 77-79, 81, 84-93/160 in total) (14 forged circulator signatures; 14 violations) (See Transcript, Vol. III, p.42, pps. 46 – 47); Franklin Wilds (Sheets 94-98, 100-110/160 in total) (17 forged circulator affidavits; 17 violations) (See Transcript, Vol. I, pps. 480, 484 -495); and Scott Bishop, Jr. (Sheet 70/160) (1 forged circulator affidavit; 1 violation).

While the candidate has apologized for the campaign’s poor judgment and inexcusable actions in a recent mailing to Democratic households and in his written statement presented to the Board by his counsel, to date the candidate has failed to set out the specific steps he would take to ensure a taint free nominating process in the future.

V. CONCLUSION

The Board, cognizant of its statutory mandate to protect the integrity of the electoral process, and after a thorough evaluation of the record herein, the comments received from the Challengers, the candidate, and the public, concludes that 5533 violations of D.C. Official Code, Section 1-1001.08(b) (3) occurred in the circulation of the nominating petition of the candidate Anthony Williams, and the Board, in its discretion, hereby

ORDERED, that a civil penalty in the total sum of \$277,700.00, be assessed against the candidate, Anthony Williams, and the Committee to Re-Elect Tony Williams, for 5533 violations of D.C. Official Code, Section 1-1001.08(b) (3), and it is further

ORDERED, that in the event the candidate Anthony Williams, and the Committee to Re-Elect Tony Williams, agree in writing within ten (10) business days of this Order to the terms as stated in the attached stipulation, the Board shall suspend the imposition of the sum of \$27,700.00 from the total civil penalty assessed.

The Fine may be made payable by check to the D.C. Treasurer. The Board expects the Candidate and the Campaign to take whatever steps deemed necessary to train their circulators to adhere to the requirements of the Election Act, and to properly supervise campaign operations.

The respondents have thirty days from the entry of this Order to appeal this decision in accordance with the provisions of the District of Columbia Administrative Procedures Act. Payment of the civil penalty should occur within the time frame specified for appeal of the Board's decision.

Lastly, as Abraham Lincoln said in the Cooper Union Address, on February 27, 1860, "NEITHER LET US BE SLANDERED FROM OUR DUTY BY FALSE ACCUSATIONS AGAINST US, NOR FRIGHTENED FROM IT BY MENACES OF

DESTRUCTION TO THE GOVERNMENT NOR OF DUNGEONS TO OURSELVES,
LET US HAVE FAITH THAT RIGHT MAKES MIGHT, AND IN THAT FAITH, LET
US, TO THE END, DARE TO DO OUR DUTY AS WE UNDERSTAND IT.”

Benjamin F. Wilson

Benjamin F. Wilson, Chairman

Date: August 15, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was served via hand delivery this 15th day of August, 2002 to the following parties:

Hon. Mayor Anthony Williams
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Washington D.C. 20010

Committee to Re-elect Tony Williams
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