

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

James Abley,
Complainant,

v.

John Cheeks,
Respondent.

Administrative Hearing
No. 12-010

Re: Challenge to the Nominating Petition of
John Cheeks,
Candidate for Chairman, District of
Columbia Council

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on September 5, 2012. It is a challenge to the nominating petition of John Cheeks (“Mr. Cheeks”) for the office of Chairman, District of Columbia Council filed by James Abley (“Mr. Abley”) pursuant to D.C. CODE § 1-1001.08 (o)(1) (2011). The Complainant was represented by Mary Eva Candon, Esq., and the Respondent was represented by Walter J. Charlton, Esq. Chairman Deborah K. Nichols and Board members Devarieste Curry and Stephen I. Danzansky presided over the hearing.

Background

On August 8, 2012, Mr. Cheeks submitted a Nominating Petition for the office of Chairman, District of Columbia Council with three thousand, ninety-eight (3,098) signatures. On August 11, 2012 the petition was posted for inspection, pursuant to D.C. CODE §1-1001.08(o)(1) (2011), for a full 10-day challenge period.¹

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

On August 20, 2012, Mr. Abley filed a challenge to the petition in which he challenged four hundred six (406) signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations.

A pre-hearing on this matter was scheduled for Tuesday, August 28 at 2:30 p.m. at the Board's offices. At the pre-hearing, the Registrar of Voters ("Registrar") gave her preliminary report concerning the challenge. The Registrar's review of the challenges referencing the Municipal Regulations concluded that two hundred forty-two (242) of the challenges to Mr. Cheek's nominating petition were valid – leaving the candidate with two thousand, eight hundred fifty-six (2,856) signatures. The minimum requirement of signatures for this office is three thousand (3,000), pursuant to D.C. CODE §1-1001.08 (j)(1)(B) (2011). Accordingly, the Registrar concluded that the Candidate failed to secure enough signatures on his nominating petition for ballot access.

All parties were notified that a hearing before the Board was scheduled for Wednesday, September 5, 2012 at 12:30 p.m. While both parties were represented by counsel, the respondent preliminarily objected to the absence of the complainant. Mr. Cheeks, through his counsel, asserted that he could not properly interrogate any claims made by the complaint in his challenge to the nominating petition. The Board denied the objection because the challenge was independently investigated by the Registrar, and the Complainant made no claims that would necessitate his testimony.

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.

Mr. Cheeks also objected to Mr. Abley's use of the letter "(B)" to denote any challenge based upon 3 D.C.M.R. 1607.5(b) where the signer is not registered to vote at the address on the petition. Mr. Cheeks asserted that he had no idea what Mr. Abley was referring to and could not properly mount a defense to the challenge. Mr. Cheeks is not a novice to the nominating petition process having been the subject of a petition challenge in the special election held April 3, 2012 to fill the vacated Ward 5 Councilmember seat. Mr. Cheeks was apprised in his letter giving notice of the pre-hearing conference that any challenge based on an address different than the one on the registry could be cured within 10 days of the filing of the challenge pursuant to D.C. CODE §1-1001.08(o)(3). Moreover, Mr. Cheeks was informed that he could contact the Board's General Counsel Staff with any questions or concerns. Mr. Cheeks did not avail himself of the opportunity to lodge any questions regarding the nominating petition, but he instead opted to consult outside legal counsel who he asserts were similarly confounded by the notation. Mr. Cheeks was also made aware of the particular challenge during the pre-hearing conference, which afforded him at minimum the remaining two days to cure any challenges based upon this criterion and he failed to do so.

The Board does not find it credible that Mr. Cheeks did not know the "(B)" represented §1607.05(b) because the limited circumstances to challenge signatures are all ensconced in that particular section of the municipal regulations that are given to each candidate. Furthermore, Mr. Cheeks is not new to this process, and if he had genuine concerns, he should have raised them with the General Counsel's office upon receipt of the challenges. While challengers are required to state specific reasons for the challenge, Mr. Abley's use of the character "(B)" to denote challenges based upon §1607.5(b)—

namely the only section that he could have been referring to—satisfied the requisite specificity to resolve these particular challenges in the Complainant’s favor.

Mr. Cheeks also asserted that he voluntarily withdrew signatures upon submission of his petition that were nonetheless subjected to challenges. While Mr. Cheeks apparently did notate signatures he wished to concede, the notation was not readily apparent to the Registrar and so she left those particular signatures at issue and subject to challenge. Subsequently, Mr. Abley challenged all of those particular signatures and the Registrar preliminarily determined them to be valid challenges. Because the parties both concede these signatures are invalid, this amounts to a zero sum gain for the Respondent. His totals were not inflated nor were the signatures removed from consideration prior to the challenge.

Mr. Cheeks also raised a total of one hundred fifteen signatures challenged as being illegible where he asserted he was able to find the signatories as being registered. Upon submission of the names, the Registrar concluded that she had already given Mr. Cheeks credit for fifty-seven (57) signatures in her preliminary determination. The remaining signatures included address changes that were not filed with the board accounting for twenty-one (21) signatures; unregistered signatories accounting for fourteen (14) signatures; and illegible partial signatures accounting for the remaining twenty-three (23) signatures. This objection resulted in a zero sum gain for Mr. Cheeks.

Finally, Mr. Cheeks presented a circulator that procured thirty-six (36) signatures on two nominating petition sheets but omitted the date on his circulator affidavit. Mr. John Johnson testified that his pen ran out of ink causing him to omit the date, but he testified as to the date of circulation that was consistent with the signatures appended to

the sheets that included the dates of the signatures. The Board found the circulator's testimony to be credible in light of interrogation by opposing counsel and decided to credit Mr. Cheeks with those thirty-six (36) signatures. This determination resulted in a net gain for Mr. Cheeks raising his total to: two thousand, eight hundred ninety-two (2,892) signatures—still less than the requisite amount for ballot access.

The Board accepts the Registrar's review of the challenges and upon that basis finds that Mr. Cheeks does not have the requisite number of signatures for ballot access.

In view of the evidence presented, the Board finds that the challenge is sufficient to remove the candidate's name from the ballot. Therefore, the Board upholds the challenge as specified herein.

ORDERED that candidate John Cheeks is denied ballot access to appear on the ballot in the forthcoming election for the office of Chairman, District of Columbia Council.

September 10, 2012
Date



Deborah K. Nichols, Chair,
Board of Elections