

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

| | |
|--|--|
| Anthony Muhammad,) Challenger))) v.))) Joshua Johnson,) Candidate.) | Administrative Order #16-012 Re: Nominating Petition Challenge for the Office Advisory Neighborhood Commissioner Single Member District 8E02 |
|--|--|

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter came before the District of Columbia Board of Elections (“the Board”) on September 7, 2016. It is a challenge to the nominating petition of Joshua Johnson (“Mr. Johnson”) for the office of Advisory Neighborhood Commissioner, Single Member District 8E02 filed by Anthony Muhammad (“Mr. Muhammad”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). The Challenger appeared *pro se* accompanied by his witness, Mr. Paul Trantham, but the Candidate did not appear. Accordingly, the hearing proceeded *ex-parte* pursuant to Title 3 of the District of Columbia Municipal Regulations (“DCMR”) §403.4. Chairman Michael Bennett and Board members Dionna Lewis and Michael Gill presided over the hearing.

BACKGROUND

On August 10, 2016, Joshua Johnson submitted a nominating petition to appear on the ballot as a candidate in the November 8, 2016 General Election contest for the office of Advisory Neighborhood Commissioner (ANC) for Single Member District (SMD) 8E02. That petition was posted for public inspection for 10 days, as required by law, and challenged on August 22,

2016 by Anthony Muhammad, a registered voter in the District of Columbia. Mr. Johnson submitted a total of forty (40) signatures. The minimum requirement for this office is twenty-five (25) signatures of District voters who are duly registered in the same SMD as the candidate.

Challenger Anthony Muhammad filed challenges to a total of forty (40) signatures, enumerated by line and page number on individual “challenge sheets” filed for each petition page. Petition signatures were challenged pursuant to Title 3 D.C.M.R. § 1607.1 of the Board’s regulations on the following grounds: the signer’s voter registration was designated as inactive on the voter roll at the time the petition was signed; 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; provided that an address on a petition which is different than the address which appears on the Board’s records shall be deemed valid if the signer’s current address is within boundary from which the candidate seeks nomination, and the signer files a change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed; the petition does not include the name of the signer where the signature is not sufficiently legible for identification; the circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed; the signature is not made by the person whose signature it purports to be; and the signer is not a registered voter in the ward or Single-Member District from which the candidate seeks nomination at the time the petition was signed.

The Registrar’s review of the challenges indicates that a total of 9 of the 40 challenges are valid. This leaves the candidate’s nominating petition with 31 signatures, 6 signatures above the number required for ballot access. Additionally, Challenger Anthony Muhammad asserted that Mr. Johnson is not qualified for the office because he has not resided in the single member district for 60 days prior to submission of his nominating petition as evidenced by his vote cast

from another single member district during early voting in the June 14, 2016 Primary Election. During the Pre-hearing conference, Mr. Johnson averred that he did not in fact vote in the June 14 Primary Election and further asserted that the signature on the sign-in roll was not made by him. Mr. Muhammad responded by asserting that Mr. Johnson only changed his address on July 25, 2016 when he picked up his nominating petitions for Advisory neighborhood Commissioner.

During the hearing before the Board, Mr. Muhammad presented his witness, Mr. Paul Trantham, who testified to seeing Mr. Johnson at the early voting center on the date which Mr. Johnson's signature appears in the sign-in roll identifying early voters. Mr. Muhammad also raised blatant inconsistencies on Mr. Johnson's declaration of candidacy. Specifically, Mr. Johnson states that he has lived at his current address from August, 2013 to the present; however, he also attests to living at his former address from October of 2013 until February 2014. Moreover, notwithstanding his disputing voting in the 2016 Primary Election, Mr. Johnson's voter history shows him voting provisionally from his former address in the 2014 General Election. Mr. Muhammad raised grave concern regarding Mr. Johnson's actual residency in light of him only officially changing his address on July 25 2016; testimony from his witness placing Mr. Johnson at the early voter center on the day he supposedly did not cast a ballot; and the inaccuracies in his Declaration of Candidacy coupled with his voting record.

DISCUSSION

The United States Supreme Court has long recognized that states and localities have a responsibility to protect the integrity and reliability of the election process, and has generally accorded them latitude in establishing rules and procedures toward that end. “[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order is to accompany the democratic process.” Buckley v. American Constitutional Law Foundation, Inc.,

525 U.S. 182, 187 (1999). Accordingly, the District of Columbia has established a nominating petition process that require prospective candidates to demonstrate a modicum of support from a specific number of qualified electors as a condition precedent for ballot access.

As the burden of proof lies on the Challenger, (see D.C. CODE § 1-1001.08(o)(2)), Mr. Muhammad has amply raised questions with regard to the length of Mr. Johnson's residency at his stated address. Pursuant to 3 DCMR § 424.1, "[T]he party who asserts the claim bears the affirmative duty of establishing the truth of the assertion." Mr. Muhammad has presented evidence in the form of the Board's own records that Mr. Johnson changed his residency officially with the Board on July 25, 2016. That date is less than 60 days prior to his submission of nominating petitions for the office of Advisory Neighborhood Commissioner, Single Member District 8E02. In light of ample evidence contesting the residency of Mr. Johnson, and no evidence from him explaining the circumstances behind the inconsistencies on his declaration of candidacy and voting history, the Board lacks confidence and surety that Mr. Johnson resided in the single member district the requisite amount of time to qualify for ballot access.

CONCLUSION

Although Mr. Johnson secured 31 valid signatures, which is 6 signatures above the 25 signatures required for ballot access. Mr. Johnson has not verified the length of his residency in light of substantial evidence that obfuscates his residency status in the single member district from which he seeks office. Accordingly, it is hereby:

ORDERED that candidate Joshua Johnson is denied ballot access for the office of Advisory Neighborhood Commissioner, Single Member District 8E02.

September 12, 2016
Date



D. Michael Bennett
Chairman,
Board of Elections