

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Jeremiah Lowery, Challenger)))	Administrative Hearing Docket No. 18-004
v.))	Challenge to the Nominating Petition of Aaron Holmes, Candidate for At-Large Member of the Council of the District of Columbia
Aaron Holmes, Candidate.)))	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (hereinafter referred to as “the Board”) on April 12, 2018. It involves a challenge to the nominating petition of Aaron Holmes (“Mr. Holmes” or “the Candidate”) as a Democratic Party nominee for the office of At-Large Member of the Council of the District of Columbia. The challenge was filed by Jeremiah Lowery (“Mr. Lowery” or “the Challenger”). Mr. Lowery asserted that his challenges, if valid, would leave Mr. Holmes’ nominating petition below the statutory minimum of 2,000 signatures of registered voters, thereby disqualifying Mr. Holmes from ballot access in the June 19, 2018 Primary Election.

Board members Mike Gill and Dionna Lewis presided over the hearing. The Candidate was represented by his attorney, Steven Surachman. The Challenger appeared *pro se*.

This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On March 22, 2018, Aaron Holmes submitted a nominating petition containing 2,014 signatures to appear on the ballot in the June 19, 2018 Democratic Party Primary Election

as a nominee for the office of At-Large Member of the Council of the District of Columbia.

2. The minimum petition requirement for ballot access in a party's primary election for the office of At-Large Member of the Council of the District of Columbia is 2,000 signatures of qualified electors registered with the same political party as the nominee. D.C. Official Code § 1-1001.08 (i)(1)(B).
3. Mr. Holmes' petition was posted for public inspection on Saturday, March 24, 2018 for 10 days as required by law. D.C. Official Code § 1-1001.08 (o)(1).
4. On April 2, 2018, Jeremiah Lowery, a registered voter in the District of Columbia, filed a challenge to Mr. Holmes' nominating petition. Mr. Lowery challenged a total of 185 signatures. Each signature challenged was referenced by line and page number, citing the specific ground or grounds as required by 3 DCMR § 1606.2 (a). Among the grounds upon which the Challenger sought to disqualify signatures on the Candidate's petition were that: (1) 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; (2) the signature is a duplicate; (3) the petition does not include the address of the signer; (4) the petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; (5) the circulator of the petition sheet failed to complete all required information in the circulator's affidavit; (6) the signature is not made by the person whose signature it purports to be; (7) the individual is not registered as affiliated with the same political party as the nominee; and (8) the signer is not a registered voter.

5. On April 3, 2018, both the Candidate and the Challenger were sent notice by email confirming receipt of the Challenge, providing a copy of the Challenge and notice of the time period to cure signature defects by change of address. The same email provided notice of the date and time of a scheduled prehearing conference concerning the Challenge.
6. A prehearing conference was held at 11:30 AM on Tuesday, April 10, 2018 at the Board's offices at 1015 Half Street SE Suite 750. Both the Candidate and the Challenger were in attendance.
7. At the prehearing conference, the Registrar of Voters ("the Registrar") gave her preliminary report concerning the Challenge. The Registrar's report concluded that 167 of the individual challenges were valid and 18 of the challenges were invalid. The Registrar further concluded that as a result of the 167 valid challenges, the Candidate's nominating petition contained 1,847 signatures, 153 signatures below the requirement for ballot access. The discussion during the prehearing conference focused on the Candidate's concern that the Challenge was not valid as filed because it did not include the challenged signatories' names, as required at 3 DCMR § 410.3 (c) and as directed on the Board's Challenge Form which is signed by the Challenger. At the conclusion of the prehearing conference, the matter was scheduled for a public hearing to be held on Thursday, April 12 at 2:30 PM.
8. The hearing on this matter occurred as scheduled, on Thursday, April 12, 2018 at 2:30 PM. The Candidate was represented by his attorney, Steven Surachman. The Challenger appeared *pro se*.

9. At the hearing, the Registrar provided the Board with her preliminary report of the challenge. The preliminary report was identical to the report read at the prehearing conference.
10. At the hearing, the Challenger did not express any disagreement with the factual findings and recommendation in the Registrar's report. In response to the issue of the validity of the Challenge that was raised in the prehearing conference, the Challenger argued that he submitted the Challenge on sheets that were provided to him by Board staff. The Challenger also provided a copy of two Board of Elections memorandum opinions, *McQueen v. Patterson* (11-002) and *Guyot, et al. v. Mara* (Admin. Order 11-003). The Challenger argued that as a matter of Board precedent in these particular orders, the Board has already ruled on this precise issue, determining that a challenge need not include the name of each individual signer when the petition page and line are used to identify the specific defect.
11. At the hearing, the Candidate did not express any disagreement with the factual findings in the Registrar's report. The Candidate provided a written brief summarizing his position that the Challenge was invalid because the individual challenges did not include the names of the signatories. The brief explained that the Challenger's failure to include this information unduly prejudices him and that the Board should not waive the requirement to include the names of the challenged signatories.

II. CONCLUSIONS OF LAW

12. The District of Columbia Election Code provides, in relevant part, that nominating petition challenges shall occur in the following manner:

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. A copy of the challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition... The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than 20 days after the challenge has been filed. D.C. Official Code § 1-1001.08 (o)(1)-(2).

13. Under the Board's general pleading rules, a pleading which constitutes a challenge to a nominating petition requires "[t]he name(s), if legible, sheet and line number(s) of any challenged signature(s) and the basis for the challenge(s)." 3 DCMR § 410.3 (c). The purpose of the Board's pleading rules is to "provide notice of the issues involved to enable parties to prepare their cases so that they might participate effectively in the hearings." *McQueen v. Patterson* (Admin. Order 11-002) at 4-5.
14. Under the Board's general hearing rules contained in Title 3, Chapter 4, "[t]he Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." 3 DCMR § 400.5.
15. Under the Board's rules concerning nominating petition challenges specifically, the Board defines a properly filed challenge as one which, *inter alia*, "[c]ites the alleged signature or circulator requirement defect, as set forth in the signature validity rules of [Chapter 16], by line and page." 3 DCMR § 1606.2 (a).
16. The crux of Mr. Holmes' argument is that the Board cannot waive the requirement at § 410.3 (c) unless it can be shown that the waiver will not prejudice him. Mr. Holmes' explains that the particular prejudice that he faces if the Board waives its pleading rules is the consequence of not obtaining ballot access. *See* Candidate's Brief at 2. Mr. Holmes' argument misstates the Board's analysis of prejudice. In its determination to waive its pleading rules, the Board must examine whether any party was without notice of the

issues and without meaningful opportunity to participate effectively in the resolution of the issues. Put another way, the Board evaluates whether the pleadings, in spite of their defect, fulfill the purpose behind the rule – to provide notice of the issues involved.

17. As was the case in *McQueen*, the Board is satisfied that Mr. Lowery filed a challenge which meets the purpose behind the Board's regulation at § 410.3 (c) by indicating the specific line and page number of the signature being challenged and the basis for that challenge. Further the Board is satisfied that the Challenge meets the definition of a properly filed challenge under 3 DCMR § 1606.2 (a). In this particular matter, Mr. Holmes has failed to persuade the Board that the Challenge as filed did not provide adequate notice of the issues involved. Mr. Holmes has not alleged that he was unable to understand the Challenge or the specific defects that it contained. The Registrar, in her responsibility of reviewing the individually challenged signatures, had no difficulty discerning which signatures were being challenged and the basis for each challenge. She was able to perform the review and determination in the ordinary course. Accordingly, the Board concludes that the Challenge meets the requirement to properly provide notice of the issues to all parties. Therefore, the Board waives its pleading requirements at § 410.3 (c).


18. Since no evidence was submitted by either the Candidate or the Challenger contesting the factual findings of Registrar, the Board accepts the Registrar's report and review of the challenged signatures. The Board also accepts the Registrar's conclusion that after the valid challenges of 167 signatures, Mr. Holmes' nominating petition contains 1,847 signatures, 153 signatures below the statutory requirement for ballot access.

19. Because Mr. Holmes' nominating petition does not contain the valid signatures of at least 2,000 qualified electors registered with the same political party as the nominee, the Board concludes that Mr. Holmes' does not qualify for ballot access in the June 19, 2018 Primary Election.

ORDER

Based on the findings of fact and conclusions of law contained in the Board's Memorandum Opinion, it is hereby **ORDERED** that the Challenge filed by Mr. Lowery is upheld. It is further **ORDERED** that Mr. Holmes, the Candidate, be denied ballot access in the June 19, 2018 Primary Election.

April 23, 2018



Mike Gill
Acting Chairman, Board of Elections