

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:)	
)	
Lori Furstenberg,)	Administrative Order
Candidate.)	No. 2022-002
)	Re: Appeal from Adverse Determination of Eligibility
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (“the Board”) on Wednesday, April 6, 2022, and involved an appeal from an adverse determination of eligibility regarding Lori Furstenberg, candidate for nomination in the contest for Mayor in the June 21, 2022 Republican Primary Election (“the Primary Election”). The basis for the adverse determination of eligibility was that Ms. Furstenberg did not submit the minimum number of signatures necessary to achieve ballot access in the contest for Mayor. Chair Gary Thompson and Board Members Mike Gill and Karyn Greenfield presided over the hearing. The candidate appeared at the hearing *pro se*.

BACKGROUND

On January 28, 2022, Lori Furstenberg picked up ballot access documents to run as a candidate for nomination in the contest for Mayor in the Primary Election (“the Mayoral contest”). These documents included, among other things, 60 nominating petition sheets (each containing space for 10 signatures), a Calendar of Important Dates and Deadlines for the Primary Election (“the Calendar”), and a document titled, “Circulating and Filing Nominating Petitions.” The Calendar specified that the Board determines signature requirements for the various offices and contests as of the 144th day before the Primary Election, in this case, January

28, 2022, and indicates that the “[c]omputation of the exact number of registered qualified electors and the entire list of registered qualified electors upon which such count was based are posted in the Board’s offices until the end of the petition challenge period.” The Circulating and Filing Nominating Petitions document informed candidates that “it is [their] responsibility to ensure that [their] petition is complete and contains the minimum number of signatures for ballot access before [they] file it with the Board. It further advises candidates that “[w]hile not required, filing the minimum number of signatures prior to the filing deadline can be very helpful. This will give ... time to correct any errors before the deadline[,]” and that “[they] can always file supplemental petition sheets until the deadline once [they] have made the initial filing with the minimum signature requirement.” Before leaving with her ballot access documents on January 28, 2022, Ms. Furstenburg certified that she had received the aforementioned items by signing a “Receipt of Ballot Access Documents” form.

It is the policy and practice of Board staff to notify candidates at pickup of the precise number of signatures they must collect and submit, based upon their party and the office sought, in order to achieve ballot access. For this purpose, Board staff utilizes a document titled, “Signature Requirements for the June 21, 2022 Primary Election (“the Signature Requirements Sheet”),” a document that contains a breakdown of the specific signature requirements for each office by party.

Ms. Furstenburg was advised when she picked up her ballot access documents that, in order to gain ballot access in the Mayoral contest, she was required to submit a nominating petition that contained the signatures of one percent of the total number of District voters registered in the Republican party as indicated in the Board’s official records on January 28, 2022, the 144th day before the Primary Election. Prior to picking up her ballot access documents,

she was provided a list that contained the names and addresses of approximately 28,900 District voters registered in the Republican party. The number of active District voters registered in the Republican party as indicated in the Board’s official records on January 28, 2022 was 28,985. Accordingly, Ms. Furstenburg was required to submit a nominating petition that contained the signatures of 290 District voters registered in the Republican party.

On March 23, 2022, Ms. Furstenberg submitted a nominating petition in support of her ballot access effort (“the Petition”). The Petition contained 33 petition signature sheets and a total of 240 signatures. On that same date, the other candidate in the Mayoral contest, Stacia Hall, also a woman, submitted a petition that contained 525 signatures. In addition, on or before the deadline for filing nominating petitions, three candidates for other at-large offices submitted petitions that contained at least the minimum number of signatures required for ballot access in their respective contests.¹

By a letter dated March 28, 2022, the Board’s Executive Director, Monica Holman Evans, informed Ms. Furstenburg of her preliminary determination that she did not meet the requirements to have her name appear on the ballot in the Mayoral contest because she failed to file the required number of signatures.

On April 3, 2022, Ms. Furstenburg filed a written appeal of the Executive Director’s adverse determination of her eligibility (“the Appeal”). In the Appeal, Ms. Furstenburg admits that “BOE stated [to her] that a Mayoral candidate must obtain 1% of duly registered voters in the same political party as the candidate[.]” She also acknowledges that she was “provided with

¹ Nelson F. Rimensnyder, candidate for nomination in the Delegate to the U.S. House of Representatives contest, Nate Derenge, candidate for nomination in the Chairman of the Council of the District of Columbia (“the Council”) contest, and Giuseppe Niosi, candidate for nomination in the At-large Member of the Council contest, each submitted a nominating petition that contained the minimum number of signatures required for ballot access, which was the same amount that Ms. Furstenburg was required to submit.

[a] set of voter rolls [that] consisted of approximately 28,900 names and addresses[.]” However, Ms. Furstenburg claims that, notwithstanding her failure to submit the requisite number of signatures, she should be granted ballot access primarily because “the BOE never listed the specific amount of duly registered qualified Republican voters,” and she was not “officially informed of the precise number of valid signatures [she] was required to get” in order to achieve ballot access. She further contends that the “the BOE 1% rule,”² combined with what she generally asserts are “corrupt” and “inaccurate” voter rolls, means the number of signatures she was required to obtain is so vague that its effect has been to discriminate against [her], as a woman, and as a member of a party which is a ‘discreet [sic] and insular Minority’ of voters in the District of Columbia, thereby preventing [her] from getting on the ballot[, and that this amounts to] Voter Suppression” in violation of the U.S. Constitution and the Voting Rights Act of 1965. At no point prior to filing to filing the Appeal did Ms. Furstenburg express confusion to Board staff as to the number of signatures she was required to collect and submit, or raise any concerns with Board staff about the accuracy of the Board’s voter rolls.

During the hearing on April 6, 2022, Ms. Furstenburg reiterated the claims she set forth in the Appeal, and demanded that she be granted ballot access in the Mayoral contest in the Primary Election. Despite her claims regarding the inaccuracy of the Board’s voter rolls, Ms. Furstenburg did not present any evidence of such inaccuracy, or any evidence that the number of signatures she submitted reflected at least one percent of the number of registered Republican voters in the District of Columbia.

² What Ms. Furstenberg refers to as the “BOE 1% rule” is the requirement that certain at-large candidates in primary elections, including candidates for Mayor, must submit a nominating petition containing one percent of registered voters registered in their same political party. *See* D.C. Official Code §1-1001.08(i)(1)(B).

ANALYSIS

D.C. Official Code § 1-1001.08(i)(1) is exceedingly clear; it provides that

Each individual in a primary election for candidate for the office of Delegate, Chairman of the Council, at-large member of the Council, Mayor, or Attorney General shall be nominated for any such office by a petition ... [f]iled with the Board not later than 90 days before the date of such primary election; and ... [s]igned by at least 2,000 registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, *as shown by the records of the Board as of the 144th day before the date of such election.*

(emphasis added). This provision not only gives candidates for at-large offices in primary elections notice as to when nominating petitions are due; it also gives them notice as to precisely how many signatures such nominating petitions must contain in order to be accepted: the lesser figure as between 2,000 and one percent of the number of voters in the same political party as the candidate *as shown by the records of the Board as of the 144th day before the date of such election.* The Board's records as of the 144th day before the Primary Election – here, January 28, 2022 – indicated that the number of active registered voters affiliated with the Republican party was 28,985. One percent of 28,985 is 289.85, which rounds up to 290. As 290 is less than 2000, Ms. Furstenburg was required to collect and submit at least 290 signatures of active registered Republicans to get on the ballot.

There is no indication that other candidates in the same contest had any difficulty comprehending the ballot access requirements. Stacia Hall, the other candidate seeking to be the Republican nominee for the office of Mayor, submitted a nominating petition that exceeded the minimum number of signatures required by 235 signatures. In fact, all other Republican candidates for at-large offices in the Primary Election submitted petitions that contained at least the number of signatures required for ballot access, which was 290.

This is not surprising. As noted above, the Calendar makes clear that the Board determined signature requirements as of January 28, 2022, the 144th day before the Primary Election, and indicates that the information concerning the signature requirements was posted in the Board's offices. Moreover, each staff member in the Board's Voter Services Division (VSD) has posted at their desk the Signature Requirements Sheet, which specifies the minimum signature requirements for each office by party. When candidates come to pick up ballot access documents, they sit with the VSD staff at their desks to review ballot access requirements, and VSD staff draws their attention to the Signature Requirements Sheet so that candidates are apprised of their signature requirement obligations.

In her demand to be placed on the ballot in the Mayoral contest despite failing to meet ballot access requirements, Ms. Furstenburg claims not only ignorance of the signature requirement but also that the Board's voter rolls are so inaccurate that neither she nor the Board itself could know the actual number of "duly registered Republican voters ... actually currently ... living in DC." First, as noted above, the Board *did* know the number of voters in the Republican party as shown by its records as of January 28, 2022, the 144th day before the Primary Election: 28,985. This is the number that it was required to know to determine the precise signature requirements for ballot access in the Mayoral contest. Second, these "precise signature requirements" were reflected in the Signature Requirements Sheet that was available in the Board's offices, and made known to all Republican candidates seeking ballot access in the Primary Election. Third, it appears that the first time Ms. Furstenburg raised concerns about the accuracy of the Board's voter rolls with the Board was in her Appeal, not during the petition circulation process. Finally, while Ms. Furstenburg claims that she submitted a sufficient number

of signatures for ballot access, she presented no evidence to counter the validity of the Board's records of the number of registered Republican voters in the District as of June 28, 2022. While the voter registration list at any given point in time is never 100% accurate (as voter information is in a constant state of flux, for many reasons), a candidate may not unilaterally deem the list to be "inaccurate" and unilaterally claim an exemption from providing the requisite number of valid signatures.

Turning to Ms. Furstenburg's claim that the Executive Director's adverse determination of her eligibility amounts to her being discriminated against on the basis of her status as a woman and as a Republican in violation of the U.S. Constitution and the Voting Rights Act of 1965, there is no support for this contention. Setting aside the facts that Ms. Furstenburg's status as a Republican does not render her a member of a "discreet [sic] and insular group" under the law as she alleges,³ and that the Voting Rights Act of 1965 was designed to secure voting rights for racial minorities who had historically been disenfranchised, two facts contradict this allegation. First, Stacia Hall, a Republican woman, will appear on the ballot in the Mayoral contest in the Primary Election, having met all necessary ballot access requirements, including submitting the minimum number of signatures. Second, three other Republicans achieved ballot access in at-large contests in the Primary Election. Ms. Furstenburg's claims of discrimination on the basis of gender and party are without merit and must be rejected.

³ See, for e.g., *Davis v. Bandemer*, 478 U.S. 109 at 152 ("Clearly, members of the Democratic and Republican Parties cannot claim that they are a discrete and insular group vulnerable to exclusion from the political process by some dominant group: these political parties *are* the dominant groups, and the Court has offered no reason to believe that they are incapable of fending for themselves through the political process.")

CONCLUSION

At all times relevant to this matter, Ms. Furstenburg was aware that she had the responsibility to ensure that her Petition was complete and contained the minimum number of signatures for ballot access. She was required to submit a nominating petition that contained at least 290 signatures in order to appear on the ballot in the Mayoral contest in the Primary Election, and she failed to meet this requirement. She has in no way demonstrated that, despite this failure, she is nonetheless entitled to appear on the ballot. For this reason, the Board declines the Appeal, and sustains the Executive Director's determination of adverse eligibility.

Accordingly, it is hereby

ORDERED, that Ms. Furstenburg be denied ballot access in the Mayoral contest in the Primary Election.

The Board issues this written order today, which is consistent with its oral ruling rendered on April 6, 2022.

Dated: April 11, 2022



Gary Thompson
Chair, Board of Elections