

**DISRTICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

Reform Party,
Complainant

v.

D.C. Board of
Elections and Ethics
Respondent

Administrative Hearing
No. 00-021

Re: Appeal of Board decision
to deny late-filed nominating
petition

MEMORANDUM OPINION AND ORDER

I. BACKGROUND

A. Statement of Proceedings

This complaint arises out of a Board decision to reject the nominating petition of the Reform Party candidate for President of the United States, John Hagelin. The Board denied the nominating petition on the basis of a late filing. On September 5, 2000, counsel for the Reform Party notified the Board via facsimile of their intention to appeal the administrative decision of the Board's staff before the Board members. Specifically, the Reform Party claims that they substantially complied with the letter of D.C. CODE §1-1312(f), which is the applicable Code provision for minor party nominating petition filings. Counsel for the Reform Party raised the burden and expense of counting write-in ballots; additionally, Reform Party counsel claims voters' First and Fourteenth amendment rights of speech and association are undermined when relegated to a write-in campaign.

Pursuant to D.C. Mun. Regs. tit. 3, §408 (2000), the Board held a hearing during its regularly scheduled monthly meeting on Spetember 6, 2000 to hear the matter. The Board informed the Reform Party's legal counsel of the hearing date and convened to hear the merits of the case.

B. Statement of the Facts

The facts of this case are uncontested and present a case of tardiness caused by mistake on the part of the Reform Party. On August 15, 2000 at 5:02 p.m., Ms. B.J. Park of the Reform Party attempted to file a nominating petition for presidential elector candidates pledged to Mr. Hagelin, but the Board's administrative office was closed. The practice of the Board is to close its office doors precisely at 5:00 p.m. In order to comply with D.C. CODE §1-1312(q), which requires all petitions be received no later than 5:00p.m. on the due date. Apparently, the Reform Party's certification of presidential elector candidates was filed earlier in the day; however, the actual petition did not arrive until 5:02 due to their courier's unfamiliarity with the District of Columbia coupled with rush hour traffic, and the resultant difficulty finding the Board's administrative office.

The registrar of voters, Ms. Kathy Fairley, opened the door upon hearing Ms. Park knocking in order to inform her that she was unauthorized to accept nominating petitions after 5:00p.m. The Board's practice is to call the National Observatory to get an official accounting of the time, and place the call on speaker phone so that all present in the office may hear. Further, when the Observatory indicates that the time is five p.m., an administrative assistant peers outside to ensure no one visibly in the immediate hallway or corridor seeking entrance is locked out of the office when the doors close. Anyone who has arrived prior to five p.m. is ensured his or her petition will be processed.

II. ANALYSIS

The District of Columbia Code codifies the requirements for filing a "Minor Political Party" nominating petition for a presidential candidacy. Specifically, D.C. CODE §1-1312(f) states:

A political party...may have the names of its candidates for President and Vice President printed on the general election ballot provided a petition...signed by at least 1 per centum of registered electors...is presented to the Board on or before the 3rd Tuesday in August preceding the date of the presidential election.

The reform party presented their nominating petition at 5:02 P.M.; consequently, they failed to comply with another code provision which requires all petitions to be filed no later than 5:00 P.M. Specifically, D.C. CODE §1-1312(q) states:

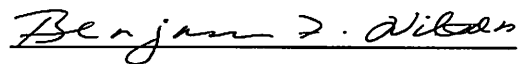
Any petition required to be filed under this subchapter by a particular date must be filed no later than 5:00P.M. on such date.

Regrettably, the Board is without discretion to consider extenuating circumstances because these measures have been codified and are not merely Board regulations that may be circumvented when instances such as these arise. Therefore, ballot access can not be granted to the Reform Party candidate Mr. Hagelin.

Accordingly, it is this 7th day of September, 2000,

ORDERED, that Claimant's complaint be dismissed

September 7 2000



Benjamin F. Wilson, Chairman
D.C. Board of Elections & Ethics.