

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Didier Sinisterra)	Administrative Hearing
Challenger)	Docket No. 18-006
)	
v.)	Challenge to the Nominating Petition
)	of James Butler, Candidate for
James Butler,)	Mayor of the District of Columbia
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 James Butler (“Mr. Butler” or “Candidate”) as a Democratic Party nominee for the office of Mayor of the District of Columbia. The challenge was filed by Didier Sinisterra (“Mr. Sinisterra” or “the Challenger”). Mr. Sinisterra asserted that his challenges, if valid, would leave Mr. Butler’s nominating petition below the statutory minimum of 2,000 signatures of registered voters, thereby disqualifying Mr. Butler from ballot access in the June 19, 2018 Primary Election.

Board members Mike Gill and Dionna Lewis presided over the hearing. The Candidate appeared *pro se*. The Challenger was not present at the hearing and the Board voted on and approved a motion to proceed *ex parte* pursuant to 3 DCMR § 403.4.

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

I. FINDINGS OF FACT

1. On March 22, 2018, James Butler submitted a nominating petition containing 2,693 signatures to appear on the ballot in the June 19, 2018 Democratic Party Primary Election as a nominee for the office of Mayor of the District of Columbia.

2. The minimum petition requirement for ballot access in a party's primary election for the office of Mayor 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. Butler's 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, Didier Sinisterra, a registered voter in the District of Columbia, filed a challenge to Mr. Butler's nominating petition. Mr. Sinisterra's challenge consisted of two parts: (1) challenges to a total of 565 individual signatures, challenged pursuant to the Board's regulations at 3 DCMR § 1607.1, citing the specific ground or grounds for challenge; and (2) challenges to the qualifications of the following circulators: Virgil Young; Leon Valentine; Mercedes Averytt; and Davinia Reid. The challenges to the various circulators put an additional 487 signatures in issue. Across both parts of his challenge, Mr. Sinisterra challenged 1,052 signatures in total.
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 AM on Tuesday, April 10, 2018 at the Board's offices at 1015 Half Street SE Suite 750. The Candidate was in attendance at the conference but the Challenger was not.

7. At the prehearing conference, the Registrar of Voters (“the Registrar”) gave her preliminary report concerning the challenge. The Registrar’s review of the challenges concluded that 631 challenges were valid and 421 of the challenges were invalid. The Registrar further concluded that as a result of the 631 valid challenges, the Candidate’s nominating petition contained 2,062 signatures, 62 signatures above the requirement for ballot access. At the conclusion of the prehearing conference, the matter was scheduled for a public hearing to be held on Thursday, April 12 at 2 PM.
8. Following the prehearing conference on April 10th, Mr. Sinisterra was reached by telephone and advised that the prehearing conference occurred despite his absence. In the same telephone call, Mr. Sinisterra was advised of the hearing date and time. Additionally, a copy of the Registrar’s preliminary report was delivered to Mr. Sinisterra through Dropbox, an online file sharing program.
9. The hearing on this matter occurred as scheduled, on Thursday, April 12, 2018 at 2 PM. The Candidate appeared *pro se*. The Challenger was not in attendance. The Board voted on and approved a motion to proceed *ex parte* pursuant to 3 DCMR § 403.4.
10. 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. At the hearing, the Candidate accepted the findings contained in the Registrar’s report and submitted no additional evidence concerning the Challenge.

II. CONCLUSIONS OF LAW

11. 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).

12. Pursuant to Board regulation codified at 3 DCMR § 403.4:

If any person or party waives the right to be present at the hearing or fails to appear at the hearing, the Board may proceed ex parte, unless the Board extends the time of the hearing or unless their appearance is required by statute.

13. In nominating petition challenge proceedings, the District of Columbia Election Code does not make mandatory the attendance of either the challenger or the candidate at prehearing conferences or hearings. The challenger's in-person filing of a challenge to a nominating petition by itself triggers the Board's obligation to review the challenge and hear evidence in support and opposition to it. Further, the Board's regulations place no burden of attendance or requirement to submit evidence or testimony on either the challenger or challenged candidate. Accordingly, the Board properly proceeded in its hearing evidence concerning the challenge despite the absence of Mr. Sinisterra.

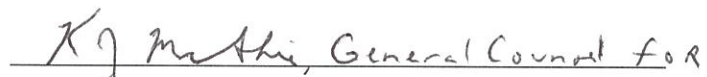
14. Since no evidence was submitted by either the Candidate or the Challenger contesting the findings of Registrar, the Board accepts the Registrar's report and review of the challenged signatures. The Board also accepts the Registrar's conclusion that after the valid challenges of 631 signatures, Mr. Butler's nominating petition contains 2,062 signatures, 62 signatures above the requirement for ballot access.

15. Because Mr. Butler's nominating petition contains the valid signatures of at least 2,000 qualified electors registered with the same political party as the nominee, the Board concludes that Mr. Butler qualifies 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. Sinisterra is rejected. It is further **ORDERED** that Mr. Butler, the Candidate, be granted ballot access in the June 19, 2018 Primary Election.

April 23, 2018


Mike Gill
Acting Chairman, Board of Elections