

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

|                     |   |                             |
|---------------------|---|-----------------------------|
| Michael Eichler,    | ) |                             |
| Challenger          | ) | Administrative              |
|                     | ) | Order #20-011               |
|                     | ) |                             |
| v.                  | ) | Re: Nominating Petition     |
|                     | ) | Challenge for the Office of |
|                     | ) | Advisory Neighborhood       |
| Mary J. Sutherland, | ) | Commissioner for SMD 6E01   |
| Candidate           | ) |                             |

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on September 2, 2020. It is a challenge to the nominating Petition submitted by Mary J. Sutherland (“Ms. Sutherland”) in support of her candidacy for the Office of Advisory Neighborhood Commissioner for Single Member District 6E01, filed by Michael Eichler (“Mr. Eichler”) pursuant to D.C. Code § 1-1001.08(o)(1) (2001 Ed.). Ms. Sutherland and Mr. Eichler appeared *pro se*. Chairman D. Michael Bennett, Board members Michael Gill and Karyn Greenfield presided over the hearing.

**Background**

On July 30, 2020, Ms. Sutherland submitted a nominating petition to appear on the ballot as a candidate in the November 3, 2020 General Election, for the office of Advisory Neighborhood Commissioner (ANC) for the Single Member District (SMD) 6E01. The minimum requirement to obtain ballot access for this office is 10 signatures of District of Columbia voters, who are duly registered in the same SMD as the Candidate. Ms. Sutherland’s Petition contained exactly 10 signatures. Pursuant to Title 3, District of Columbia Municipal

Regulations (D.C.M.R.) § 1603.1, Karen F. Brooks (“Ms. Brooks”), the Board of Elections’ Registrar of Voters (“the Registrar”) accepted 10 signatures for review.

On August 8, 2020, the Petition was posted for public inspection for 10 days, as required by D.C. Official Code § 1-1001.08(o)(1). On August 14, 2020, the Petition was challenged by Mr. Eichler, a registered voter in the District of Columbia. On August 17, 2020, Office of the General Counsel (“OGC”) Staff Attorney Terrica Jennings (“Ms. Jennings”) sent Ms. Sutherland an email informing her that Mr. Eichler challenged her Petition.

Mr. Eichler filed challenges to two signatures on the Petition, enumerated by line and page number on individual “challenge sheets” filed for each Petition page. The signatures were challenged pursuant to Title 3 D.C.M.R. § 1607.1 of the Board’s regulations on the following grounds: 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; 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.

### **Registrar’s Preliminary Determination**

After the Registrar’s initial review, it was determined that both challenges filed by Mr. Eichler were valid. One challenge was valid because 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.<sup>1</sup> The other challenge was valid because the signer’s voter registration was designated as inactive on the voter roll at the time the petition was signed.<sup>2</sup> This left Ms. Sutherland’s nominating petition with eight signatures, two signatures below the number required for ballot access.

<sup>1</sup> Title 3 D.C.M.R. § 1607.1(b).

<sup>2</sup> Title 3 D.C.M.R. § 1607.1(a).

On August 24, 2020, Ms. Sutherland submitted two change of address forms to the Registrar, to refute Ms. Eichler's challenges against Mrs. Gwendolyn Brisbon's signature (page 1, line 8) and Mr. Eugene Brisbon's signature (page 1, line 9). After evaluating the two change of address forms, the Registrar determined that only the challenge against Mr. Brisbon's signature remained valid. Ms. Sutherland was credited with one additional signature. However, her nominating petition only contained nine valid signatures, one signature below the number required for ballot access.

#### **August 25, 2020 Pre-Hearing Conference**

Pursuant to Title 3 D.C.M.R. § 415.1, the OGC convened a telephonic pre-hearing conference on Tuesday, August 25, 2020. Mr. Eichler and Ms. Sutherland appeared *pro se*. The Registrar read her preliminary report into the record, and informed both parties that Ms. Sutherland failed to qualify for ballot access, because her nominating petition only contained eight valid signatures. The Registrar specifically informed Ms. Sutherland that she upheld Mr. Eichler's challenge to Mr. Eugene Brisbon's signature (page 1, line 9). Mr. Eichler agreed with the Registrar's preliminary determination. However, Ms. Sutherland immediately objected to the findings.

At the end of the pre-hearing conference, Ms. Sutherland asserted that she would not appear before the Board on Wednesday, September 2, 2020, to appeal the Registrar's preliminary determination that she did not qualify for ballot access.

#### **August 26, 2020 Response to the Registrar's Preliminary Determination**

On Wednesday, August 26, 2020, Ms. Sutherland sent Ms. Jennings an email correspondence asserting her decision to appear before the Board to defend the validity of Mr.

Brisbon's signature (page 1, line 9). Ms. Sutherland was subsequently sent a notice to appear before the Board on September 2, 2020.

### **September 2, 2020 Board Hearing**

At the hearing on September 2, 2020, both parties appeared pro se. At the start of the hearing, the Registrar presented the Board with her preliminary determination of the challenges. Ms. Sutherland again asserted her objection to the challenge upheld against Mr. Brisbon's signature (page 1, line 9), on her nominating petition. However, Ms. Sutherland was unable to substantiate her claim that the challenge was invalid.

Terri Stroud ("Ms. Stroud"), the Board's General Counsel, recommended that the Board deny Ms. Sutherland ballot access in the contest for the Office of Advisory Neighborhood Commissioner for Single Member District 6E01. The Board unanimously accepted Ms. Stroud's recommendation, and Ms. Sutherland was denied ballot access.

### **Discussion**

Ms. Sutherland asked to appear before the Board to appeal the Registrar's finding that Mr. Brisbon's signature (page 1, line 9) was invalid. Ms. Jennings explained to the Board that Mr. Brisbon's signature was invalid because his voter registration was designated as inactive on the voter roll at the time the petition was signed.<sup>3</sup>

Ms. Sutherland also argued that the Board of Elections' staff may have incorrectly entered Mr. Brisbon's home address into the voter registration system. The Registrar of Voters was able to verify that the address listed on Mr. Brisbon's previously submitted Voter Registration Application (VRA) was handwritten, and the same exact address appeared in the

<sup>3</sup> Title 3 D.C.M.R. § 1607.1(a).

agency's voter registration system. Therefore, if the address in the system was wrong, it was not due to an administrative error.

**Conclusion**

For the reasons indicated above, it is hereby:

**ORDERED** that candidate Mary Sutherland is denied ballot access for the Office of Advisory Neighborhood Commissioner for Single Member District 6E01, in the November 3, 2020 General Election.

Date: September 4, 2020

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", is written over a faint rectangular stamp.

D. Michael Bennett  
Chairman  
Board of Elections