

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

In Re:	)	
	)	Administrative Order
Aaron Dequan Brown,	)	No. 24-016
Harold Cunningham,	)	Appeals of Preliminary Determinations
Nikia Cunningham-Vance,	)	Consolidated Cases
Shameka Hayes,	)	
Iesha Marks, and	)	
Jeffrey M. Young-Bey, Candidates	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

This matter came before District of Columbia Board of Elections (“the Board”) Member Karyn Greenfield at a special meeting on August 15, 2024. It is an appeal from the Board’s Executive Director’s preliminary determination that several candidates for the office of Advisory Neighborhood Commissioner (“ANC”) for Single Member District (“SMD”) 7F08, could not have their names appear on the ballot.<sup>1</sup> Renee Alexander, an employee at the D.C. Department of Corrections (“DOC”), appeared as a witness. The Board’s General Counsel was also present.

**BACKGROUND**

For a candidate’s name to be printed on the ballot for an ANC seat, the candidate must file various documents with the Board including a Declaration of Candidacy form, a petition signed by at least twenty-five registered voters living in the same SMD as the candidate, and an affidavit attesting to the fact that the petition is complete and contains the legally required number of valid signatures.<sup>2</sup> Within three days of a candidate’s submission of the petition, the Board’s Executive

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<sup>1</sup> Given that the candidates are all similarly situated and that facts relevant to the preliminary determination are generally the same, the appeals filed by the candidates were consolidated by the presiding Board member.

<sup>2</sup> 3 D.C.M.R. §§ 1605.2 (Declaration of Candidacy), 1603.7 (petition signature requirement), and 1605.3(b) (affidavit requirement).

Director makes a preliminary determination as to whether the petition has the minimum number of signatures, is on the proper form, and is accompanied by the affidavit, set forth at the bottom of a form titled Receipt for Completed Ballot Access Documents, attesting to the petition's completeness and sufficiency.<sup>3</sup> A candidate who is aggrieved by the Executive Director's preliminary determination may appeal to the Board.<sup>4</sup> Such appeals may be heard by one member of the Board.<sup>5</sup>

SMD 7F08 covers the D.C. Jail and Correctional Treatment Facility where persons in the custody of the DOC are housed. Due to limitations on the ability of voters in the DOC's care and custody to follow the ballot access process, the D.C. Code requires the DOC to facilitate the circulation of petitions in support of the candidacy of persons in the DOC's care and custody for the ANC 7F08 seat.<sup>6</sup> The DOC has adopted procedures that identify the ballot access documents that must be filed with the Board, including the Receipt for Completed Ballot Access Documents.<sup>7</sup> Those procedures provide that the DOC staff will support the ballot access efforts of persons in the DOC's care and custody.

On July 12, 2024, Declaration of Candidacy forms were filed with the Board for candidates Harold Cunningham, Nikia Cunningham-Vance, Shameka Hayes and Jeffrey M. Young-Bey. On July 17, 2024, a Declaration of Candidacy form was filed for Iesha Marks. On July 30, 2024, that

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<sup>3</sup> 3 D.C.M.R. § 1605.3(b).

<sup>4</sup> 3 D.C.M.R. § 1605.7.

<sup>5</sup> 3 D.C.M.R. § 1605.9.

<sup>6</sup> D.C. Code § 1-309.05(b)(5)(A)(ii).

<sup>7</sup> See <https://doc.dc.gov/publication/doc-advisory-neighborhood-commissioner-anc> and linked DOC policy and procedure at pp. 7-8.

form was filed for candidate Aaron Dequan Brown.<sup>8</sup> These candidates then had until August 7, 2024 to file their petitions and affidavits.<sup>9</sup>

On August 1, 2024, the Registrar sent an email to the DOC's Voting Registration Liaison confirming the ANC SMD 7F08 candidate names and reminding him of the deadline for the submission of the petitions and the Receipt for Completed Ballot Access Documents.

On August 6, 2024, petitions signed by at least twenty-five voters were filed by all candidates. The required Receipts for Completed Ballot Access Documents were not, however, provided to the Board.

On August 7, 2024, after the deadline for filing ballot access documents, the DOC's Voting Registration Liaison sent in the missing Receipts for Completed Ballot Access Documents.

On August 12, 2024, the Board's Executive Director issued preliminary determinations finding that all of the candidates should be denied ballot access because they failed to file the requisite affidavits attesting to the completeness and signature sufficiency of their petitions.

On August 14, 2024, the DOC's Voting Registration Liaison emailed appeals from all of the candidates. All of the candidates' appeals explain that they had to rely on the DOC to receive and submit all the required ballot access documents and that they complied with the ballot access process to the best of their abilities.

In response to the submission of the appeals, the Board's Office of General Counsel notified the DOC's Voting Registration Liaison that an emergency hearing would be convened on

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<sup>8</sup> On July 30, 2024, the Registrar emailed the DOC's Voting Registration Liaison regarding the ballot access process and emphasized to him that the Receipt for Completed Ballot Access Documents form differed from a Receipt of Ballot Access Documents.

<sup>9</sup> 3 D.C.M.R. § 1605.2 (filing deadline).

August 15, 2024.<sup>10</sup> Prior to the hearing, the DOC's Voting Registration Liaison submitted a notarized statement whereby he explained that the failure to file the required affidavits was the result of an administrative error. Specifically, he advised that the Receipt of Ballot Access Documents form that the candidates were provided with as part of their ballot access packet did not contain the affidavit that is on the Receipt for Completed Ballot Access Documents. The Voting Registration Liaison explained in his sworn statement that the error was not identified until it was too late to file the required affidavit. The statement asserts that the candidates should not be found at fault as the situation was beyond their control.

A DOC representative, Renee Alexander, appeared at the August 15, 2024 hearing. Ms. Alexander read the Voting Registration Liaison's affidavit into the record. The facts presented by the DOC were corroborated by the Board's Registrar.

After hearing from the witness, Board Member Greenfield requested that the General Counsel make a recommendation with respect to the appeals. The General Counsel recommended waiver of the regulatory requirement that the affidavit as to the petition's completeness and signature sufficiency be timely filed with the petition. Board Member Greenfield then announced her decision to waive the deadline for the affidavit as formal error and to reverse the Executive Director's preliminary determinations denying the candidates' ballot access.

### **ANALYSIS**

As noted above, the Board's regulations require that, in addition to the submission of a nominating petition, candidates must also submit an affidavit attesting to the petition's

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<sup>10</sup> The notice advised of the candidates' hearing rights and requested that the DOC Voting Registration Liaison share that information with the candidates.

completeness and signature sufficiency. The Board has discretion, however, to waive non-compliance with its regulations where the waiver is not inconsistent with the statute.<sup>11</sup>

In this case, waiver is particularly appropriate. To begin with, the required affidavits were, in fact, submitted, albeit a day late. Accordingly, compliance with the pertinent regulation was perfected. Second, and importantly, declining to waive the ballot access defect would mean that voters in the SMD 7F08 would have no choice on the ballot other than to write-in a candidate and therefore there would be no benefit to the voter in terms of managing the ballot content. Third, there is no prejudice to any candidate from waiving the regulatory affidavit requirement because all of the candidates suffered the same ballot access defect. Finally, the ballot access defect was not the fault of the candidates, who have otherwise met with somewhat greater challenges in running for office than those faced by candidates for all other D.C. offices. For all of these reasons, I have concluded that the requirement of a timely-filed affidavit attesting to the completeness and signature sufficiency of the candidate's petitions should be waived for the candidates at issue.

### **CONCLUSION**

For these reasons, it is hereby

**ORDERED** that the Executive Director's preliminary determinations that ANC SMD 7F08 candidates Aaron Dequan Brown, Harold Cunningham, Nikia Cunningham-Vance, Shameka Hayes, Iesha Marks, and Jeffrey M. Young-Bey be denied ballot access is **REVERSED**. The

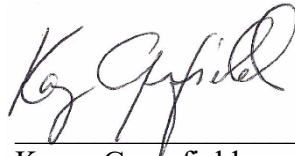
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<sup>11</sup> *Calvin H. Gurley*, BOE Case No. 22-016 (August 22, 2022) (where 3 D.C.M.R. § 1605.4 requires that petition sheets that do not contain a complete circulator affidavit be rejected, missing address for circulator in affidavit waived as formal error given that the circulator was also the candidate and his address was otherwise known) *In re: Obama for DC Slate*, BOE Case No. 08-003 (July 18, 2008) (failure to file timely statements of slate registration. waived as formal error).

candidates shall, subject to any petition challenges that may be upheld, be granted access to the 2024 General Election ballot.

This written order, which is consistent with my oral ruling rendered on August 15, 2024, is issued today.

Dated: August 19, 2024

A handwritten signature in black ink, appearing to read "Karyn Greenfield", written in a cursive style.

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Karyn Greenfield  
Member, D.C. Board of Elections