

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

James Harnett,)	
Challenger)	Administrative
)	Order #24-028
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for
)	State Board of Education, Ward 7
Sherice Muhammad,)	
Candidate.)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (“the Board”) on September 6, 2024. It is a challenge to the nominating petition submitted by Sherice Muhammad (“Candidate”) in support of her bid for the office of State Board of Education (“SBE”) Member for Ward 7 in the November 5, 2024 General Election (“the General Election”). The challenge was filed by James Harnett (“the Challenger”), a registered voter in the District of Columbia, pursuant to D.C. Official Code § 1-1001.08(o)(1). Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. All parties appeared *pro se*. The Board’s Registrar of Voters (“Registrar”) and General Counsel was also present.

BACKGROUND

Proceedings prior to Board hearing

On June 14, 2024, the Candidate picked up from the Board’s offices a ballot access package that included, among other things, nominating petition forms to be used to collect at least two hundred (200) valid voter signatures for the SBE Ward 7 race and a document entitled “Circulating and Filing Nominating Petitions” that contained guidance on the signature validity requirements

(“Guidelines”). One of the signature validity requirements addressed in the Guidelines was that the signer must be a registered voter residing at the address listed in the Board’s records at the time the petition is signed. The Guidelines went on to explain that, if the address entered for a voter on a petition differed from the address that appears in the Board’s records, the signature could still be deemed valid if the signer filed a change of address form with the Board within ten (10) days after the date the candidate receives notice that a challenge was filed to their nominating petition. The Guidelines also noted that a voter could verify their registration status on-line through the Board’s website.

On July 15, 2024, the Candidate submitted a nominating petition to appear on the ballot in the 2024 General Election for the office of SBE Member, Ward 7 (“the Petition”). Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, the Registrar accepted two hundred six (206) signatures for review.

On August 10, 2024, the Petition was posted for public inspection for ten (10) days, as required by law.

On August 18, 2024, the Challenger filed challenges to a total of seventy-one (71) signatures (“the Challenge”). Specifically, 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 is not a registered voter; the signer’s voter registration was designated as inactive on the voter roll at the time the Petition was signed; 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; the signature is not dated; the Petition does not include the address of the signer; the Petition does not include the name of the signer and the signature is not sufficiently legible for identification; the circulator of the Petition sheet was not a qualified petition circulator at the time the Petition was signed; the

signature is not made by the person whose signature it purports to be; and the signer is not a registered voter in the ward from which the candidate seeks nomination at the time the Petition was signed. Additionally, signatures lines or circulator affidavits where white-out was used were challenged.

The Board's Office of General Counsel ("OGC") promptly notified the Candidate of the Challenge via email. The notice also apprised the parties that a prehearing conference would be convened in the matter on September 4, 2024. The notice also advised that, pursuant to D.C. Official Code § 1-1001.08(o)(3), the Candidate had an opportunity to cure signatures that were invalid for the reason that the address on the petition was different than the address appearing on the signer's registration record.

On August 23, 2024, the Registrar issued a report of her findings with respect to the Challenge. The Registrar agreed that thirty-eight (38) of the seventy-one (71) signatures challenged by the Challenger were indeed invalid.

On August 29, 2024, the Candidate notified the Challenger and Board staff of several signers who she believed had timely submitted change of address forms. The Registrar investigated the registration activity of those signers and ascertained that some of them had timely updated their addresses. She revised her report to reflect the address mismatch cures and adjusted her ultimate finding to conclude that thirty-two (32) signatures were invalid instead of thirty-eight (38).

On September 4, 2024, the prehearing conference before OGC was convened.¹ The Registrar presented her findings. The Candidate maintained that the Registrar's findings were

¹ 3 D.C.M.R. § 415.1 (General Counsel's conference authority). The OGC attorney assigned to the matter initiated the proceeding by reminding the Candidate that there were possible criminal concerns with Petition signatures that had been challenged and confirming that the Candidate wished to proceed notwithstanding her Fifth Amendment rights.

incorrect and asserted that she could present the signers as witnesses to contradict, for example, findings by the Registrar that the signer was not a registered voter.² In a follow-up to the pre-hearing conference discussion regarding signatures on a sheet where the circulator affidavit was left blank, the OGC attorney assigned to the matter emailed the parties:

I have checked Board decisions and see that the Board will not waive the defect of a circulator affidavit that is entirely blank. *See In re: Calvin H. Gurley*, BOE Case No. 2022-016. That is largely because the statute requires that the circulator affidavit contains certain information and the Board cannot waive a failure to comply with the statute.

As a result of discussions during the prehearing conference, the Candidate identified twenty-seven (27) of the Registrar's thirty-two (32) signature invalidity findings that she contested. The list included four (4) signatures that were on a sheet where the circulator affidavit was left blank.

The Registrar re-reviewed these twenty-seven (27) signatures in light of additional information provided by the Candidate regarding the names of signers. That information aided the Registrar in locating in the Board's files two (2) of the signers and allowed her to credit back the associated two (2) signatures to the Candidate, thereby reducing the total number of invalid signatures found by the Registrar to thirty (30) and the number of signature findings contested by the Candidate to twenty-five (25). As to the twenty-five (25) contested signatures, the Registrar had found that ten (10) were invalid because they were on a sheet where the circulator affidavit had been marked-up in such a way as to cast doubt on whether the signatures on the sheet were personally witnessed; four (4) were invalidated for the reason that they were on a sheet where the circulator affidavit was not filled out at all; three (3) were invalidated because the signature was

² Following the prehearing conference, the Candidate was instructed in an email from the OGC attorney assigned to the matter to identify the witnesses she planned to present at the Board hearing and which signature defects their testimony would address by 5:00 p.m. that same day. The Candidate did not comply with this instruction.

unsigned; five (5) were invalidated because the signature did not match the signature in the Board's files or was illegible (these included cases where signatures showed evidence of having been whited-out); and three (3) were invalidated because the address on the Petition did not match the address for the signer in the Board's files.

Meanwhile, as the parties were not able to resolve the matter, the case was set for a Board hearing on September 6, 2024. The parties were duly notified of the hearing.

September 6, 2024 Board Hearing

The Registrar appeared at the hearing and presented her finding that the Petition was twenty-four (24) signatures short of the number needed for ballot access. Candidate Muhammad began to address the remaining twenty-five (25) disputed signature findings made by the Registrar.

First, the Candidate noted that ten (10) of those findings were for the reason that the circulator affidavit at the bottom of one sheet showed evidence that circulator information had been whited-out and written over. The Candidate explained that she had jointly gathered the first several signatures on that sheet with a supporter of her campaign. When her campaign supporter had, however, to tend to other matters, the Candidate continued to collect signatures in the remaining fields on the sheet. For that reason, she felt it would be appropriate for her to white-out the name of her campaign supporter and enter her own name and signature in the circulator portion of the sheet. The Board Chair concurred that the Candidate could be the circulator with respect to all signatures on that sheet and that she could be credited those ten (10) signatures.

During the hearing, the Candidate also produced a witness who was the signer of one of the twenty-five (25) signatures at issue. This witness' signature had been discounted because it was not dated. The witness testified as to the date that she signed the Petition and that date was consistent with the dates of the signatures above and below her signature on the Petition sheet and

fell within the period for signature gathering. The discussion at the hearing confirmed that testimony along the lines provided by the witness could cure a signature that had been found invalid for the reason that it was undated.

The Candidate also stated that she had a witness who could address four (4) signatures gathered from signers at one address, 3760 Minnesota Avenue, Northeast. All of those signatures had been invalidated for the reason that the circulator affidavit that they were associated with was completely blank. She further advised that she had one or more witnesses to address four (4) signatures that were gathered at 5321 D Street, Southeast, and perhaps one (1) or more witnesses to address other signature invalidity findings.

In presenting her position with regard to the twenty-five (25) signatures at issue, the Candidate acknowledged that, while one signer whose signature had been invalidated for an address mismatch reason had submitted a change of address form, she did so a day late and therefore the Candidate was not contesting the signature invalidity finding with respect to that individual. As a result, there were twenty-four (24) signatures at issue.

At this juncture, the Board Chair noted that, while it is possible for the Board to waive as formal error certain defects that had resulted in a signature invalidity finding, others could not be waived. In response to his inquiry, an OGC representative and the Registrar concurred that the blank circulator affidavit associated with the four Minnesota Avenue signatures could not be waived as the defect included the omission of circulator information that was required by the statute. The Chair asked further if it was even possible through the receipt of additional evidence to cure twenty-four (24) signatures. The Registrar explained that, in addition to the ten (10) signatures that would be cured for the circulator reason discussed above and the one (1) signature that had been invalidated as undated, there were two (2) more signatures that were invalidated as

undated that could potentially be credited to the Candidate if the signers testified as to when they signed, and four (4) signatures that were invalidated for signature mismatch reasons or because entries on the Petition had been whited-out. These Registrar explained that these two categories of signatures might be credited to the Candidate depending on testimony from the signers. The Registrar advised, however, that no other signatures of the disputed twenty-four (24) could be cured.

The Board Chair observed that, at best, the Candidate could provide sufficient evidence to cause seventeen (17) signatures to be credited back to her, which would still result in a seven (7) signature shortfall in the Petition. As a result, the Board Chair made a motion that the challenge be upheld. The motion was seconded and the Board voted unanimously to deny the Candidate ballot access.

DISCUSSION

The minimum number of signatures of required to obtain ballot access for this office is two hundred (200) signatures of active District voters who are duly registered in the same ward as the Candidate. The record here shows that Mr. Harnett challenged seventy-one (71) of the Petition's two hundred six (206) signatures. After the Candidate pursued, in accordance with the statutory process for curing signatures that may have been invalidated for address mismatch reasons, obtaining address updates and provided information at the prehearing conference to the Registrar that assisted in clarifying information that related to a potentially invalid signature, the Registrar ultimately found thirty (30) of the challenges to be valid, meaning that the Petition was twenty-four (24) signatures short.

While the Candidate contested a specific number of the Registrar's findings, only seventeen (17) of these disputed signatures could have arguably been cured, assuming she offered

sufficient evidence to do so. Her remaining disagreements with the Registrar's findings concerned defects that we cannot waive as mere formal error as a matter of law.

First, the Candidate continued to contest four (4) signatures on a Petition sheet where the circulator affidavit was left completely blank. As the OGC attorney assigned to the matter advised her, the signatures on a petition sheet where the circulator affidavit is left completely blank cannot be accepted. *See In re: Calvin H. Gurley*, BOE Case No. 2022-016 (issued Aug. 22, 2022) (explaining that, while a circulator date issue may be cured, an unsigned circulator affidavit cannot be waived as to do so would be directly contrary to the statute).

Second, the Candidate continued to contest three (3) signatures that were invalidated because the address on the Petition did not match the address for the voter in the Board's files. In that regard, the statute provides:

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine if the address on the petition is the same as the address shown of the signer's voter registration record. If the address is different than the address which appears on the signer's registration record, the address shall be deemed valid if:

(A) The signer's current address is within the single member district for an Advisory Neighborhood Commission election, within the school district for a school board election, within the ward for a ward-wide election, or within the District of Columbia for an at-large election; *and*

(B) *The signer files a change of address form with the Board by no later than 5:00 p.m. on the 10th day after the day the candidate receives notice of the challenge.*

D.C. Official Code §1-1001.08(o)(3) (emphasis added). The Candidate had an opportunity to cure these three (3) signatures through the filing of address updates but, by law, those updates had to be filed with the Board no later than ten (10) days after she was notified of the Challenge. As the required updates were not timely filed, we must follow the statute and reject those signatures for

the reason that the address for the signer on the Petition does not match the address in the Board's files.

We uphold the Registrar's finding that the number of signatures on the Petition fell short of the number required for ballot access. While the Candidate did present a case for us to waive as formal error some of the signature invalidity findings, we are unable, as a matter of law, to credit back to her seven (7) signatures out of the Registrar's findings that she contested.

CONCLUSION

As a result of this challenge, the Board finds that the Petition is at least seven (7) signatures below the number required for ballot access. Accordingly, it is hereby:

ORDERED that Sherice Muhammad shall be **DENIED** ballot access in the contest for the office of State Board of Education for Ward 7 in the 2024 General Election.

The Board issues this written order today, which is consistent with our oral ruling rendered on September 6, 2024.

Date: September 7, 2024



Gary Thompson
Chairman
Board of Elections