

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

In re: )  
Harold Cunningham, ) Administrative  
Candidate. ) Order #24-023  
)  
)  
) Re: Review of Petition Submitted for  
) Advisory Neighborhood Commissioner  
) Single Member District 7F08

**MEMORANDUM OPINION AND ORDER**

This matter came before the District of Columbia Board of Elections (“the Board”) on September 6, 2024. It involves a review of findings by the Board’s Registrar of Voters (“the Registrar”) with respect to the nominating petition submitted by Harold Cunningham (“the Candidate”) in support of his bid for the office of Advisory Neighborhood Commissioner (“ANC”) for Single Member District (“SMD”) 7F08 in the November 5, 2024 General Election (“the General Election”). Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. The Candidate appeared *pro se*. The Registrar and General Counsel were also present.

**BACKGROUND**

**Prehearing Proceedings**

On August 6, 2024, a nominating petition in support of placing the Candidate’s name on the ballot in the 2024 General Election for the office of ANC in SMD 7F08 (“the Petition”) was filed with the Board. The minimum number of signatures required to obtain ballot access for this office is twenty-five (25) signatures of District of Columbia voters who are duly registered in the

same SMD as the candidate. The Petition contained thirty-three (33) signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1605.3, the Board's Registrar preliminarily accepted the Petition, subject to any valid challenge.

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

On August 19, 2024, the Petition was challenged by James Harnett ("the Challenger"), a registered voter in the District of Columbia. The Challenger filed challenges to a total of thirty-two (32) signatures ("the Challenge"). As the Candidate is in the custody of the Department of Corrections ("DOC"), the Board's Office of General Counsel ("OGC") sent notice of the Challenge to the DOC's Voter Registration Liaison ("the Liaison") via email on August 20, 2024. The notice attached to the email was addressed to the Candidate. The email advised the Liaison that he should provide the Candidate with the notice promptly. The notice also apprised the parties that a prehearing conference would be convened in the challenge 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 otherwise invalid for the reason that the address on the Petition was different than the address appearing on the signer's registration record. The deadline identified in the notice for filing any change of address forms was August 30, 2024.

On August 26, 2024, the Registrar sent a report of her findings with respect to the Challenge to the Liaison and requested that he share the report with the Candidate as soon as possible. The Registrar's report explained that she agreed that the thirty (30) signatures that the Challenger challenged were indeed invalid. Specifically, she found that twelve (12) of the challenged signatures were invalid because the signer's address on the Petition did not match the signer's address in the Board's records; ten (10) of the challenged signatures were invalid because the

signers were not registered voters; two (2) of the challenged signatures were invalid because the signer's voter registration was designated as inactive on the voter roll; five (5) challenged signatures were invalid because the signature was not dated; and one (1) challenged signature was invalid because the information entered on the Petition was too illegible to identify the signer. The Registrar's report concluded that the Candidate's Petition contained only three (3) valid signatures.

On September 4, 2024, the prehearing conference before OGC was convened.<sup>1</sup> The DOC was able to arrange for the Candidate to participate remotely and he appeared. The first order of business at the prehearing conference was the presentation of the Registrar's findings. She explained that the Petition fell twenty-two (22) signatures short of the required twenty-five (25). The OGC attorney assigned to the matter then asked the Candidate how he would address his Petition's twenty-two (22) signature shortfall. The Candidate expressed two concerns related to his Petition's sufficiency. First, he advised that on August, 26, 2024, he had provided fourteen (14) voter registration/address update forms to the Liaison. These forms, if associated with persons who signed the Petition and whose signatures were found invalid solely for address mismatch reasons, could have cured as many as twelve (12) signature invalidity findings. Second, the Candidate explained that he had recently run for the same ANC seat in a mid-term election to fill a vacancy, and that he had collected over seventy (70) signatures in that effort. He stated that he was advised by the Liaison that the signatures that he had gathered during that prior election cycle could be applied to the ballot access process for the 2024 General Election cycle. As a result, the Candidate stated that he believed that he did not need to collect more than the thirty-three (33) new signatures that he had gathered, because he understood that those new signatures would mean that he had over one hundred (100) signatures. The OGC attorney explained that the voter

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<sup>1</sup> 3 D.C.M.R. § 415.1 (General Counsel's conference authority).

registration/address up-date forms, assuming they all concerned signatures invalidated for address mismatch reasons that had no other defect, would not close the gap between the Petition's valid signatures and the number needed. The Candidate was also advised that he was misinformed regarding the application of the petition signatures that he had gathered in a prior election cycle.

Following the prehearing conference, the assigned OGC attorney notified the challenger and the Liaison that a hearing in the matter was scheduled for September 6, 2024 and requested that the Liaison assist the Candidate in appearing.

### **September 6, 2024 Board Hearing**

On the eve of the Board hearing, the Challenger withdrew his challenge. Because the Registrar had, by that point, reviewed the Petition and found it insufficient, the Registrar's findings could not be ignored. Accordingly, the matter was re-captioned and the Board entertained it on the basis of the Registrar's findings. The Registrar was present at the hearing and summarized her findings.

The Candidate was able to attend and present his concerns. He reiterated that he had understood that signatures gathered in a prior election cycle could be applied to the 2024 General Election cycle. He also noted that, once he was made aware of the challenge, he had gathered fourteen (14) voter registration/address update forms and timely submitted them to the Liaison.

After hearing from the Candidate and the Registrar, 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 twenty-five (25) signatures of active District voters who are duly registered in the same SMD as the Candidate. The record before us shows that the Challenger timely challenged thirty-two (32) of the Petition's thirty-three (33) signatures and, as a result of that challenge, the Registrar reviewed the Petition and found that it was indeed numerically insufficient. While the challenger ultimately withdrew his challenge, the Registrar had completed her review of the Petition by the time of the withdrawal. The Board cannot now turn a blind eye to the Registrar's findings that the Petition is numerically insufficient. *See LaGue v. Johnson*, BOE Case No. 14-001 at p. 4 (issued January 31, 2014). The Registrar found that the number of invalid signatures on the Petition left it with only three (3) valid signatures. Although some invalid signatures could have been cured by timely address updates, and the Candidate did attempt to submit such updates, such cures could have resulted in the crediting of no more than twelve (12) signatures to the Petition's count (assuming for the sake of argument that those forms would have been fully effective to cure all the signatures invalidated for address mismatch reasons). As a result, the Petition would still be short of the twenty-five (25) required valid signatures. Further, although the Candidate was unfortunately misinformed about the treatment of signatures that he had gathered for a prior election, we do not have the power to grant a waiver of the statutorily-required twenty-five (25) valid petition signature requirement for that reason.

### **CONCLUSION**

The Registrar correctly found that the Candidate's Petition contains three (3) valid signatures – twenty-two (22) signatures below the number required for ballot access. Accordingly, it is hereby:

**ORDERED** that Harold Cunningham shall be **DENIED** ballot access in the contest for the office of Advisory Neighborhood Commissioner for Single Member District 7F08 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



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Gary Thompson  
Chairman  
Board of Elections