

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Gretchen Wharton,	)	
Challenger	)	Administrative
	)	Order #24-026
	)	
v.	)	Re: Challenge to Nominating
	)	Petition Submitted for
	)	Ward 2 Councilmember
Rondell Magic Jordan,	)	
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 Rondell Magic Jordan (“Candidate”) in support of his bid for the office of Ward 2 Councilmember in the November 5, 2024 General Election (“the General Election”). The challenge was filed by Gretchen Wharton (“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 were also present.

**BACKGROUND**

**Proceedings prior to Board hearing**

On July 8, 2024, the Candidate picked up from the Board’s offices a ballot access package that included, among other things, nominating petition forms and a document entitled “Circulating And Filing Nominating Petitions” (“Guidelines”). That document sets forth, *inter alia*, the requirements for valid petition signatures. It explains that one of those requirements is that

petitions signers must be registered voters. Another noted signature validity requirement is that signers must live in the same electoral jurisdiction (e.g., ward, Advisory Neighborhood Commission Single Member District, etc.) from which the candidate seeks office. The Guidelines also instruct as follows:

It is [the candidate's] responsibility to ensure that your petition is complete and contains the minimum number of *valid* signatures for ballot access *before* you file it with the Board. You can do this by: verifying each signature you collect against the voter list provided for your electoral jurisdiction; checking for any other defects as you collect signatures; and getting more signatures than the minimum requirement to offset errors.

On August 7, 2024, the Candidate submitted a nominating petition to appear on the ballot in the 2024 General Election contest for the office of Ward 2 Councilmember (“the Petition”). The minimum number of signatures required to obtain ballot access for this office is five hundred (500) signatures of District of Columbia voters who are duly registered in the same ward as the candidate. The Registrar reviewed the Petition to determine the number of presumptively valid signatures. In determining whether the Petition contained on its face the minimum number of signatures and should be accepted, the Registrar was required by the Board’s regulations to discount the signatures on any sheet that did not include a completed circulator’s affidavit.<sup>1</sup> She found that the Petition had just twenty-two signatures (22) above the number needed.<sup>2</sup> Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, the Registrar accepted the petition, subject to any challenge.

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<sup>1</sup> 3 D.C.M.R. § 1605.4 (“In determining whether the minimum statutory number of signatures is contained in the nominating petition, the [Registrar] shall not count any signatures submitted on petition pages that fail to include a completed circulator’s affidavit[.]”).

<sup>2</sup> One Petition sheet (sheet 8) with ten (10) signatures was not included in the 522 signature count because the circulator affidavit for the sheet was undated.

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

On August 17, 2024, the Challenger filed challenges to a total of eighty-nine (89) 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, 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 did not complete all of the information required in the sheet’s circulator affidavit; the Petition does not include the name of the signer and the signature is not sufficiently legible to allow the signer to be identified; and the signer is not a registered voter in the ward from which the candidate seeks nomination at the time the Petition was signed.

The challenge was subjected to a preliminary review by the Registrar to determine whether it was properly filed. Pursuant to the Board’s regulations, that preliminary review included a check to determine if the Challenge: 1) identified the signatures challenged by Petition page and line; 2) was timely filed; 3) asserted enough invalid signatures to cause the Petition to be numerically insufficient; and 4) appeared on its face to be a good faith challenge.<sup>3</sup>

Once the Registrar had determined that the Challenge met these threshold requirements, 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

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<sup>3</sup> 3 D.C.M.R. § 1606.2.

the challenge matter on September 3, 2024.<sup>4</sup> It also warned that “**the only issues that [would] be considered by the Board [at any subsequent hearing] must be raised during the pre-hearing conference.**” (Emphasis in original.)

On August 26, 2024, the Registrar issued a report of her findings with respect to Ms. Wharton’s challenge and her determinations as to each signature challenge made. In her email forwarding her report, the Registrar stated that “[i]f the challenge goes forward, *these determinations will be the focus of the upcoming prehearing conference*[.]” (Emphasis added.) In accordance with the Board’s regulations at 3 D.C.M.R. §1606.4,<sup>5</sup> the Registrar’s findings were not only based on signature invalidity grounds that the Challenger had asserted, but also included signature defects that the Registrar noted when she looked at the Board’s records for the signer whose signature had been challenged or that otherwise became apparent to her in considering the signature in the course of researching whether a signature challenge was valid.

The Registrar agreed that sixty-six (66) of the eighty-nine (89) signatures challenged by Ms. Wharton were indeed invalid. Notably, the Registrar found that forty-six (46) signatures were invalid for one of a couple of reasons, namely, seventeen (17) signatures are invalid because the signer is not registered to vote and twenty-nine (29) are invalid because the signer is not a registered voter in the jurisdiction from which the candidate seeks nomination at the time the

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<sup>4</sup> 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. He did not, however, claim that any signers whose signatures were invalidated for address mismatch reasons had, within the ten-day period, updated their addresses to cure the address defect.

<sup>5</sup> That regulation states in relevant part that, “[i]n the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged[.]”

petition was signed. Another twenty (20) signatures were invalidated on four (4) other grounds.<sup>6</sup> As a result, the Registrar found that the Petition contained four hundred fifty-six (456) valid signatures - forty-four (44) signatures below the minimum number required.

On August 28, 2024, the Candidate sent an email inquiring as to the statutory provision that set the number of signatures needed on the petition. That same day, the OGC attorney assigned to the matter responded:

Candidate Jordan,

Here is the provision:

D.C. Code 1-1001.08(j)(1) A duly qualified candidate for the office of Delegate, Chairman of the Council, member of the Council, Mayor, or Attorney General, may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition: (A) Filed with the Board not less than 90 days before the date of such general election; and (B) In the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by 500 voters who are duly registered under § 1-1001.07 in the ward from which the candidate seeks election[.]

On September 3, 2024, the prehearing conference before OGC was convened.<sup>7</sup> At the outset, the OGC attorney assigned to the case advised the parties that the purpose of the proceeding was to clarify and, if possible, narrow the issues that would go to the Board.

The Registrar's findings were presented. Given that the petition was forty-four (44) signatures short, the OGC attorney conducting the prehearing conference asked the Candidate how

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<sup>6</sup> Specifically, five (5) signatures were found invalid because the signer is not registered to vote at the address listed on the petition at the time the petition was signed; three (3) signatures were found invalid because the signer was an inactive voter at the time that the Petition was signed; two (2) signatures were found invalid because the signature is not dated; three (3) signatures were found invalid because the signature does not include the address of the signer; and seven (7) signatures were found invalid because neither the name of the signer nor the signature are sufficiently legible for identification.

<sup>7</sup> 3 D.C.M.R. § 415.1 (General Counsel's conference authority).

he planned to address the gap in the signatures that he needed on his Petition. This inquiry revealed that the Candidate fundamentally misunderstood the task at hand, and failed to appreciate that he needed to address the *Registrar's invalidity findings* regarding the Challenge as opposed to the Challenge itself.<sup>8</sup> After providing the Candidate with ample time during the prehearing conference to reassess his position based on the Registrar's findings, the Candidate, at the end of the day, could cite only a few signature invalidity findings by the Registrar that he substantively challenged. In that regard, he complained that some of the Registrar's invalidity findings were based on grounds that had not been asserted by the Challenger. While the Candidate seemed unable to articulate which invalidity findings he was contesting, the OGC attorney observed, as each such finding was being reviewed during the prehearing conference, that there were eight (8) signatures on a sheet that were evidently not counted by the Registrar for the reason that the circulator affidavit on that sheet was not dated and that those signatures might be cured.<sup>9</sup>

Given the Candidate's misunderstanding, the OGC attorney gave the Candidate a deadline for later that day to provide "a list of the Registrar's invalidity findings that he contests and the reasons why [that is] organized by petition sheet and line as identified in the challenge." The OGC attorney provided a brief period of time to the Challenger to respond to the Candidate's position. She also responded to the candidate's concern that the Registrar upheld challenges on grounds other than those asserted by the challenger by stating that, "[w]hile I noted that that is entirely proper, I am providing here the regulation as 3 DCMR 1606.4 upon which that practice is based."

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<sup>8</sup> The Candidate's misunderstanding meant that he intended to argue over signature challenges that the Registrar had already rejected as part of her independent review. As indicated above, there were twenty-three (23) signature challenges that the Registrar had rejected.

<sup>9</sup> Assuming that the Candidate was able to cure all eight (8) of those signatures and perhaps the signatures associated with the few other invalidity findings that he had contested, the Petition would still be well over thirty (30) signatures short.

The OGC attorney's email went on to quote that regulation, including the language that provides that "the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged." Her email also asked the Registrar to clarify how the eight (8) signatures on the sheet containing an undated circulator affidavit were counted.

The Candidate did not provide a list of the signature findings by the Registrar that he contested by the given deadline. He did not contend that he should be able to cure the eight (8) signatures that were on the sheet that had an undated circulator's affidavit. He did not claim that he should be allowed to cure signatures that were undated. He did not allege that he did not have enough time to review the Registrar's findings. He did not claim that the 500-signature requirement that had been imposed on him was incorrect. He did not claim that he was unclear as to the number of signature cures he needed to make. Instead, he raised other collateral issues.<sup>10</sup> The OGC attorney assigned to the case then notified the Candidate that those collateral issues were the only issues that he had preserved for Board review.<sup>11</sup> The parties were duly notified of the time and date of the Board hearing and how to access the proceedings.

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<sup>10</sup> Specifically, the Candidate submitted an email setting forth the following arguments: (1) the Board should not invalidate signatures on grounds that were not asserted in the challenge (as indicated, the Candidate had just been specifically advised that this claim was directly contrary to the Board's regulations); (2) given that the Registrar rejected a number of Ms. Wharton's invalidity claims, the challenge was not made in good faith and (presumably) should have been rejected for that reason; and (3) his due process rights were denied as the Registrar's preliminary determination failed to consider one sheet of signatures associated with an undated circulator affidavit. In addition to advising the Candidate in response that these were his only preserved issues, the OGC attorney noted with respect to the Candidate's claim of a bad faith challenge that the Board cannot "unsee" the findings as to the validity of the challenge and he should be prepared to explain the basis upon which the Board could ignore the Registrar's findings. She also provided the Candidate with a link to the Board's regulations and advised that he should be prepared at the hearing to explain what procedure in those regulations was not provided to him.

<sup>11</sup> In light of the Candidate's collateral arguments, there was no reason to clarify the disposition of the eight (8) signatures on the sheet with an undated affidavit.

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

The Registrar appeared at the hearing and entered into the record her finding that the Petition fell forty-four (44) signatures short of the required number.

The Candidate also appeared and argued at length with respect to issues that he had not previously raised and had therefore forfeited. The Candidate suggested that, because signers made “honest mistakes” when they signed the Petition despite his efforts to ascertain from them that they were registered voters in his ward, he should not be held responsible for the fact that their signatures later proved to be invalid. The Candidate, apparently alluding to the eight (8) signatures on the sheet with an undated circulator affidavit, complained that he did not know if he had to cure thirty-six (36) or forty-four (44) signature invalidity findings. He argued for the first time that he did not address the Registrar’s invalidity findings because he was only afforded a few hours after the prehearing conference to do so and he did not have enough time to travel to the Board’s offices to conduct the research to address her findings.<sup>12</sup> He also made the new claim that the Board was imposing the wrong signature count requirement and that he was only required to collect the lesser of 250 signatures or one percent of the number of registered voters. In addition, he stated that, in accordance with Board precedent that allowed an invalidity finding that was based on the omission of a date for a signature to be cured by testimony from the circulator as to when a signature was collected, he was willing to swear as to the dates that signatures were gathered. He further suggested that because the Board has discretion to allow undated signatures to be cured, it has discretion to forgive any type of signature invalidity issue.

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<sup>12</sup> While the Candidate also suggested that his ability to make his case was undermined because he only had a few days after the Registrar’s report issued and the prehearing conference to address the Registrar’s position, that suggestion is meritless because his inability in that regard was a result of his ignoring the Registrar’s notice that her report would be the focus of the prehearing conference.



The Challenger was present and provided with an opportunity to comment. She urged that the Board accept the Registrar's findings and deny ballot access to the Candidate.

After hearing from the parties, 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 five hundred (500) valid signatures of active District voters who are duly registered in the same ward the Candidate. The record here shows that Ms. Wharton challenged eighty-nine (89) of the Petition's five hundred twenty-two (522) signatures. The Registrar agreed that sixty-six (66) of the signatures challenged by Ms. Wharton were indeed invalid. Her finding meant that the Petition contained forty-four (44) signatures less than required.

The Candidate's responses to this finding are meritless. He has not offered any legally cognizable argument or evidence that would close the forty-four (44) signature gap between the valid signatures on his Petition and the five hundred (500) signatures he needed. Indeed, the Candidate makes only a couple of allegations that even arguably address that gap.

First, the Candidate noted that where a signature has been invalidated by the Registrar because it was undated, the Board may, upon the presentation of adequate evidence, waive the defect as formal error. With respect to that point, as the Board's General Counsel observed at the hearing, the Registrar made only two such signature invalidity findings. Further, as the General Counsel explained, while the Board has authority to waive certain signature defects as formal error, it cannot waive all defects.

For example, and as noted above, D.C. Official Code § 1-1001.08(j)(1) requires that the Petition be signed by voters who are "duly registered ... in the ward from which the candidate

seeks election.” In other words, registered status is a statutory requirement. Therefore, the Board cannot not ignore it. In this case, the Registrar found that seventeen (17) signatures were from persons who were not registered. Thus, those invalidity findings cannot be cured. Likewise, because the statute provides that a signer must reside in the same ward from which the candidate seeks election, the Board cannot waive the “same jurisdiction” requirement. In this case, the Registrar found that twenty-nine (29) signatures were from persons who were not from Ward 2. These two findings are significant because the Candidate collected only twenty-two (22) more presumptively valid signatures than he needed; meaning that these non-curable signature defects alone are fatal to his ballot access.

Second, with respect to claims that arguably relate to specific signature findings by the Registrar, the Candidate alludes to the disposition of signatures on sheet 8 (i.e., the signatures associated with an undated circulator affidavit), insofar as he expressed confusion as to the number of cures he might need to make to salvage his Petition. His position is just dissembling; the Candidate never demonstrated that he would have had the necessary five (500) hundred valid signatures, even assuming the disposition of those signatures was made to his greatest benefit<sup>13</sup> In other words, since the Candidate’s petition would still be numerically insufficient under any scenario related to the eight (8) signatures, his confusion is of no moment.

Apart from the above couple of arguments that relate somewhat vaguely to addressing the Registrar’s specific signature invalidity findings, we note that the law does not allow us to disregard otherwise invalid signatures based on “honest mistakes” made by signers. The

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<sup>13</sup> In any event, had he preserved that claim in the prehearing conference proceeding, the Candidate would have no doubt received the clarification that those eight (8) signatures were not included in the Registrar’s finding of preliminarily valid signatures (that is, they were not part of the total count of five hundred and twenty-two (522) signatures) and therefore, if cured, would have reduced the Petition’s forty-four (44) signature shortfall to thirty-six (36).

Candidate's "honest mistake" theory would render signature validity requirements meaningless contrary to the plain meaning of the statute and the Board's regulations. Rather, as noted in the Guidelines, candidates are responsible for collecting valid signatures, and the best practice for candidates to do so is for them to be checking the signers and signatures they collect against the Board voter file as they are gathering signatures.

Likewise, the Candidate's claim that he should have been given more time to address the challenge is not well-taken. The Candidate collected signatures over a month-long period during which time he could have been checking the signatures that he had collected and preparing to cure any defects that he found. That signature collection period was followed by a nearly three-week period before the pre-hearing conference.<sup>14</sup>

Finally, the Candidate cited the Board's regulations at 3 D.C.M.R. § 1603.2 to claim that he only needed to collect the lesser of 250 signatures or one percent of the number of voters (as opposed to 500 signatures) to qualify for ballot access. However, as the Candidate himself noted, this signature requirement pertains to the "primary election," not the general election. As the Candidate is seeking general election ballot access, he is subject to the higher 500 signature requirement set forth in the statute that was quoted to him on August 28, 2024.

### CONCLUSION

As a result of the Challenge, the Board finds that the Petition contains four hundred fifty-six (456) valid signatures -- forty-four (44) signatures below the minimum number required to have the Candidate's name appear on the ballot. It is hereby:

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<sup>14</sup> That said, once the Petition was filed, it appears that being afforded extra time would not have benefitted the Candidate; he collected only twenty-two (22) signatures more than was needed for ballot access – giving himself virtually no room for error - and forty-six (46) signature challenges were upheld for reasons that could not be cured.

**ORDERED** that the challenge to the nominating petition of Rondell Magic Jordan for the office of Councilmember for Ward 2 in the 2024 General Election is hereby **UPHELD**, and that the Candidate's name shall not appear on the ballot.

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