

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Ernest Johnson,)	Administrative Hearing
Challenger)	Docket No. 18-005
)	
v.)	Challenge to the Nominating Petition
)	of James Butler, Candidate for
James Butler,)	Mayor of the District of Columbia
Candidate.)	
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (hereinafter referred to as “the Board”) on April 12, 2018. It involves a challenge to the nominating petition of James Butler (“Mr. Butler” or “the Candidate”) as a Democratic Party nominee for the office of Mayor of the District of Columbia. The challenge was filed by Ernest Johnson (“Mr. Johnson” or “the Challenger”). Mr. Johnson asserted that his challenges, if valid, would leave Mr. Butler’s nominating petition below the statutory minimum of 2,000 signatures of registered voters, thereby disqualifying Mr. Butler from ballot access in the June 19, 2018 Primary Election.

Board members Mike Gill and Dionna Lewis presided over the hearing. Both the Candidate and the Challenger appeared *pro se*.

This Memorandum Opinion constitutes the Board’s findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On March 22, 2018, James Butler submitted a nominating petition containing 2,693 signatures to appear on the ballot in the June 19, 2018 Democratic Party Primary Election as a nominee for the office of Mayor of the District of Columbia.

2. The minimum petition requirement for ballot access in a party's primary election for the office of Mayor of the District of Columbia is 2,000 signatures of qualified electors registered with the same political party as the nominee. D.C. Official Code § 1-1001.08 (i)(1)(B).
3. Mr. Butler's petition was posted for public inspection on Saturday, March 24, 2018 for 10 days as required by law. D.C. Official Code § 1-1001.08 (o)(1).
4. On April 2, 2018, Ernest Johnson, a registered voter in the District of Columbia, filed a challenge to Mr. Butler's nominating petition. Mr. Johnson challenged a total of 1,376 signatures. Each signature challenged was referenced by line and page number. A majority of the challenged signatures explained the specific ground or grounds for challenge. Among the grounds upon which the Challenger sought to disqualify signatures on the Candidate's petition were that: (1) the individual signers, according to the Board's records, are not registered to vote at the address listed on the petition at the time the petition was signed; (2) the signature is a duplicate of a valid signature; (3) the petition does not include the address of the signer; (4) the petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; (5) the circulator failed to complete all required information in the circulator's affidavit; (6) the signature is not made by the person whose signature it purports to be; and (7) the signer is not a registered voter. A smaller portion of challenged signatures only used the letters "E," "F," "I" and "O" to describe the basis for challenge.
5. On April 3, 2018, both the Candidate and the Challenger were sent notice by email confirming receipt of the Challenge, providing a copy of the Challenge and notice of the

time period to cure signature defects by change of address. The same email provided notice of the date and time of a scheduled prehearing conference concerning the Challenge.

6. A prehearing conference was held at 10:30 AM on Tuesday, April 10, 2018 at the Board's offices at 1015 Half Street SE Suite 750. Both the Candidate and the Challenger were in attendance.
7. At the prehearing conference, the Registrar of Voters ("the Registrar") gave her preliminary report concerning the Challenge. The Registrar's report concluded that 718 of the individual challenges were valid and 658 of the challenges were invalid. The Registrar further concluded that as a result of the 718 valid challenges, the Candidate's nominating petition contained 1,975 signatures, 25 signatures below the requirement for ballot access.
8. The discussion during the prehearing conference focused on the Candidate's ability to cure address defects identified in the Challenge as permitted under D.C. Official Code § 1-1001.08 (o)(3A)(A)-(B), as well as the Challenger's permissible access to any voter registration applications submitted by the Candidate related to the Challenge. At the time of the prehearing conference, the Candidate submitted 40 voter registration applications to attempt to cure a sufficient number of address defects upheld in the Challenge. The Registrar indicated that she would review these applications, and any additional application submitted prior to 5 PM on Thursday, April 12, and provide appropriate redacted copies to the Challenger.
9. At the conclusion of the prehearing conference, the matter was scheduled for a public hearing to be held on Thursday, April 12 at 1:30 PM.

10. On Wednesday, April 11, the Candidate filed an additional 10 voter registration applications in an attempt to cure address defects identified in the Challenge.
11. The hearing on this matter occurred as scheduled, on Thursday, April 12, 2018 at 1:30 PM. Both the Candidate and the Challenger appeared *pro se*.
12. At the hearing, the Registrar provided the Board with her preliminary report of the Challenge. The Registrar's report was identical to the report read at the prehearing conference, except that the Registrar explained that she had received a total of 50 voter registration applications from the Candidate which attempted to cure address defects identified in the Challenge. Of the 50 applications received at that time, the Registrar reported that she was able to give the Candidate credit for 13 signatures. Accordingly, the Registrar concluded that the Candidate was 12 signatures below the threshold for ballot access. The Registrar further explained that the Candidate had until 5 PM (on April 12th) to submit any other voter registration applications to cure address defects.
13. At the hearing, the Challenger did not express any disagreement with the factual findings and recommendation in the Registrar's report.
14. At the hearing, the Candidate expressed two concerns with the Challenge. The first was that some of the signatures challenged did not fully comply with Board rules by giving an explanation of the petition defect. The Candidate explained that there were several instances where just the letter "O" was used to describe the signature defect, but that the use of just the letter "O" did not comport to the Board requirements to provide a regulation section or describe the defect. The second concern addressed by the Candidate was that he disputed the factual findings of the Registrar with several of the upheld challenges.

15. At the conclusion of the hearing on April 12th, the Board voted on and approved a motion to allow the administrative record to remain open until 5 PM on Tuesday, April 17th for the Candidate to submit any written memoranda better explaining his two concerns from the hearing, namely the validity of the challenged signatures where only a letter was used to describe the defect and the factual disagreements with respect to the findings of the Registrar. In the same motion, the Board allowed the record to remain open until 5 PM on Thursday, April 19th to allow the Challenger to submit a reply to the Candidate's submission.
16. At 5 PM on Thursday, April 12, the Candidate submitted an additional 5 voter registration applications.
17. In total, the Candidate submitted 55 voter registration applications in an attempt to cure address defects identified in the Challenge as permitted under law. Of those 55 applications submitted, the Registrar gave the Candidate credit for the following 17 signatures that had been validly challenged:

PAGE #	LINE #	NAME OF SIGNATORY
18	16	TYRONE TAYLOR
23	18	SANDRA SMITH
27	19	ARJANEE D DAVIS
28	4	YOLANDA Y DAVIS
28	5	CLAUDE E THOMAS
28	6	AMBER ROBLES-GORDON
36	3	RACHEL SCHOTT
36	15	CARL JACKSON PREIST, JR
37	5	JARVIS McPHATTER
37	14	THERESA SHANKLIN
38	12	IESHA SAVOY
39	1	ASA GELBER
49	16	HOWLAND R McKISSICK
66	8	DOUGLAS MACARTHUR BROOKS, III

82	10	MICHAEL BRENNAN
109	2	MARKIETH RECTOR
114	4	FRANCIS BIEN

18. Of the 38 remaining voter registration applications received from the Candidate, the Registrar did not give the Candidate credit for these applications for one of three reasons: (1) the application could not properly cure the defect (8 applications); (2) the application was from a signatory not included in the Challenge (14 applications); or (3) the application was from a signatory included in the Challenge but that had been determined to be a valid signature (16 applications).

19. The 8 applications that the Registrar determined could not properly cure the defect include the following:

PAGE #	LINE #	NAME OF SIGNATORY	REASON FOR REJECTION
11	15	MERCEDES AVERYTT	ADDRESS DOES NOT MATCH ADDRESS ON PETITION
18	20	MARC COLEMAN	ADDRESS AND PARTY CHANGE
3	38	ANTOINE PARKER	INACTIVE
20	3	JAMES ROLLINS	NOT REGISTERED
20	10	DERRICK GREGORY	NOT REGISTERED
22	12	DONALD GILMORE	NOT REGISTERED
105	13	SARAH N PULLER	NOT REGISTERED/SIGNATURE OF APPLICANT DOES NOT MATCH
138	4	JOHN BAPTISTE CRUCTCHFIELD	NOT REGISTERED

20. The 14 applications that the Registrar determined were not from a signatory included in the Challenge include the following:

PAGE #	LINE #	NAME OF SIGNATORY
24	18	TYRONE HURT
35	7	RYAN SMITH
44	15	BARBARA LEE
79	5	JESSAMYN SPAIN

81	8	VERTER B SMITH
87	2	JULIAN CARTER
87	6	AUBREY GOODE
104	7	RONE D STANLEY
105	20	DESTINY R OATES
107	16	WAYMON WRIGHT
108	8	SHARMIN SPRIGGS
108	10	TREVOR DIAZ
109	18	FRANCES EWART
116	4	TINA M JENNINGS

21. The 16 applications that the Registrar determined were from a signatory included in the Challenge but that had been determined to be a valid signature include the following:

PAGE #	LINE #	NAME OF SIGNATORY
11	19	JASMINE J NORRIS
25	9	CHRISTOPHER BARNHART
28	2	KHIRI THOMAS
28	10	CYNTHIA Y TALLEY-DOUGAN
28	17	ANTONIO L WILLIAMS
28	20	JOYCE M DOYLE
35	3	ALBERT G CRISP
35	14	JUSTIN D MENDOZA
35	17	EDDIE A BRACK
49	17	KELECHI-MARIO N SUMES
77	3	STEVEN S BROWN
79	19	ADRIAN L HARRIS, JR
96	1	DOMINIQUE ANTHONY
96	4	JEFFREY M MARTIN
105	9	TIANE C BENSON
116	16	LAKISHA Y WOOTEN

22. On Tuesday, April 17, 2018, the Candidate timely filed a written brief further explaining his position that the Challenger had failed to follow Board regulations which require that the specific defect of each challenged signature be explained. Additionally, the

Candidate submitted a list of 44 signatories that he disputed either the Registrar’s determination upholding the challenge or not properly giving credit for a change of address submitted. The list of 44 signatories was classified into two groups: (1) signatures which the Registrar had upheld in the Challenge as either not registered or illegible (40 signatures); and (2) voter registration applications submitted that had not been given credit (4 signatures).

23. Of the list of 40 signatures that the Candidate believed were incorrectly determined to be not registered voters or illegible, the Registrar concluded that 36 were improperly upheld challenges. Accordingly, the Registrar amended her factual determinations on these 36 signatures, thereby reducing the number of validly challenged signatures from 718 to 682. Of the remaining 4 signatures in contention, the Registrar determined that these challenges would remain upheld for the following reasons:

PAGE #	LINE #	REGISTERED VOTER NAME	REASON FOR UPHELD CHALLENGE
13	5	LENWOOD BROWN	ADDRESS CHANGE
24	5	DEMETRIA (DE DE) HENDERSON	VOTER IS NOT THE SAME PERSON AS SIGNATORY
51	5	JUWAN WRIGHT	CANDIDATE ALREADY RECEIVED CREDIT FOR SIGNATURE
56	2	TIARA HARRIS	SIGNATURE MISMATCH

24. Of the list of 4 signatures that the Candidate believed he should have received credit through his previous submission of a voter registration application, the Registrar concluded that the Candidate should not received credit for any of these signatures for the following reasons:

PAGE #	LINE #	APPLICANT NAME	REASON TO DENY CREDIT TO CANDIDATE
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27	19	ARJANEE DAVIS	CANDIDATE ALREADY RECEIVED CREDIT AS AN ADDRESS CHANGE
28	6	AMBER ROBLES-GORDON	CANDIDATE ALREADY RECEIVED CREDIT AS AN ADDRESS CHANGE
11	15	MERCEDES AVERYTT	ADDRESS ON APPLICATION DOES NOT MATCH ADDRESS ON PETITION
20	10	DERRICK GREGORY	APPLICANT NOT REGISTERED AT THE TIME HE SIGNED THE PETITION

25. On Thursday, April 19, the Challenger timely filed a written memorandum which addressed issues outside of those discussed in the Candidate’s April 17th filing. In short, the two issues were: (1) that Mr. Butler’s supplemental petition sheets containing 50 signatures should not have been accepted and included in the Registrar’s total count of signatures on the Candidate’s petition because the supplemental petition sheets lacked a circulator signature; and (2) 114 challenged signatures that the Registrar had determined were invalid challenges should be upheld. Because these issues are either outside of the scope of the original Challenge as filed (Issue #1, with respect to the 50 signatures) or outside of what the Board permitted the Challenger to file pursuant to its motion at the hearing on April 12 (Issue #2, with respect to the 114 signatures), the Board will not consider these issues in its deliberation of this matter.

II. CONCLUSIONS OF LAW

26. The District of Columbia Election Code provides, in relevant part, that nominating petition challenges shall occur in the following manner:

Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition. A copy of the challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition... The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of

the challenged nominating petition not more than 20 days after the challenge has been filed. D.C. Official Code § 1-1001.08 (o)(1)-(2).

27. Under the Board's general pleading rules, a pleading which constitutes a challenge to a nominating petition requires "[t]he name(s), if legible, sheet and line number(s) of any challenged signature(s) and the basis for the challenge(s)." 3 DCMR § 410.3 (c). Also under the Board's general hearing rules contained in Title 3, Chapter 4, "[t]he Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." 3 DCMR § 400.5.

28. Under the Board's rules concerning nominating petition challenges specifically, the Board defines a properly filed challenge as one which, *inter alia*, "[c]ites the alleged signature or circulator requirement defect, as set forth in the signature validity rules of [Chapter 16], by line and page." 3 DCMR § 1606.2 (a).

29. The Board's signature validity rules, codified at 3 DCMR § 1607.1, state the following:

Once a nominating petition has been challenged pursuant to this chapter, a signature shall not be counted as valid in any of the following circumstances:

- (a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;
- (b) 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; provided that an address on a petition which is different than the address which appears on the Board's records shall be deemed valid if the signer's current address is within boundary from which the candidate seeks nomination, and the signer files a change of address form with the Board during the first 10 days following the date on which a challenge to the nominating petition is filed.
- (c) The signature is a duplicate of a valid signature;
- (d) The signature is not dated;
- (e) The petition does not include the address of the signer;

- (f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;
- (g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;
- (h) The circulator of the petition failed to complete all required information in the circulator's affidavit;
- (i) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;
- (j) Reserved;
- (k) Reserved;
- (l) Reserved;
- (m) 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;
- (n) On a petition to nominate a candidate in a primary election, the signer is not registered to vote in the same party as the candidate at the time the petition was signed.

30. The Candidate has raised the issue that in several instances, the individually challenged signatures neither cite a Board regulation nor provide an explanation of the signature defect, and that the use of the letter "O" (and in some instances, the letters "E," "F," and "I") without any other detail does not comport to Board rule to adequately describe the basis for the challenge. The Candidate has accurately described the requirements for a valid challenge pursuant to Board rules codified at 3 DCMR §§ 410.3 (c) and 1606.2 (a). The purpose behind these rules is to "provide notice of the issues involved to enable parties to prepare their cases so that they might participate effectively in the hearings." *McQueen v. Patterson* (Admin. Order 11-002) at 4-5.

31. Despite the Challenger's failure to adhere to the Board's pleading rules, the Board is permitted under rule to waive pleading requirements when it determines that the waiver does not unfairly prejudice a party in an administrative proceeding. 3 DCMR § 400.5. In this particular case, the Board is not persuaded that the Challenger's failure in some instances to explain the basis for challenge necessarily caused the Candidate unfair prejudice thereby invalidating the challenge to those signatures. In most instances throughout the Challenge, when the letters "E," "F," "I," and "O" appear, there is subsequent language which briefly describes the basis for the challenge. Additionally, with the exception of the letter "O," the remaining letters comport to the same letters used in the paragraphs of the Board's signature validity rule regulations. Although "O" does not relate to a signature validity rule, throughout the challenge, the letter "O" includes the brief explanation that the "voter [is] not registered." Further, the Registrar, in her responsibility of reviewing the individually challenged signatures, had no difficulty discerning the basis for each challenge. She was able to perform the review and determination in the ordinary course. Taking this particular Challenge as a whole, the Board concludes the Candidate was not unfairly prejudiced by the Challenger's failure to describe the basis for challenge in those limited instances where just the letter "E," "F," "I," or "O" appear next to the line and page number of the challenged signature. Accordingly, the Board waives its pleading requirements that an explanation be included for the challenged signatures where only the letters "E," "F," "I," or "O" appear.

32. In light of the evidence submitted into the record, the Board accepts the Registrar's report and review of the challenged signatures and the voter registration applications that Mr. Butler timely submitted. The Board also accepts the Registrar's conclusion that after the


valid challenges of 682 signatures, but thereafter properly giving credit for 17 signatures through change of address permissible under law, Ms. Butler's nominating petition contains 2,028 signatures, 28 signatures above the statutory requirement for ballot access.

33. Because Mr. Butler's nominating petition contains the valid signatures of at least 2,000 qualified electors registered with the same political party as the nominee, the Board concludes that Mr. Butler qualifies for ballot access in the June 19, 2018 Primary Election.

ORDER

Based on the findings of fact and conclusions of law contained in the Board's Memorandum Opinion, it is hereby **ORDERED** that the Challenge filed by Mr. Johnson is rejected. It is further **ORDERED** that Mr. Butler, the Candidate, be granted ballot access in the June 19, 2018 Primary Election.

April 23, 2018



Mike Gill
Acting Chairman, Board of Elections