DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Ronald Boykins Sr.

    Challenger

    v.

Donald Folden Sr.

    Candidate

Administrative Hearing
No. 00-020

Re: Resolution of Adverse
        Determination of Eligibility

MEMORANDUM OPINION AND ORDER

I.   BACKGROUND.

Donald Folden submitted a nominating petition to appear on the ballot as a candidate in the September 12, 2000 Democratic Primary for the At-Large Member of the D.C. Council. The nominating petition was posted for inspection, as required by law, and challenged on July 17, 2000 by Ronald Boykins, a registered voter in the District of Columbia. The minimum signature requirement for this office is two thousand signatures, and Mr. Folden submitted a total of two thousand, three hundred twenty-one (2,321) signatures. The Registrar's preliminary determination of Mr Boykins' challenge indicated a total of five hundred fifty-three (553) challenges were valid; thereby leaving Mr. Folden with one thousand seven hundred sixty-eight (1,768) valid signatures. Mr. Folden has raised the validity of Mr. Boykins' registered voter status claiming that he is not in fact legally residing at his current address.[1]

During the hearing, Mr. Boykins informed the Board, that he resides with his girlfriend in subsidized housing and admitted that his name is not on the lease. However, he does claim to have lived at the address for the better part of three years, and Mr. Folden presented no evidence to refute that claim. Additionally, it should be noted that Mr. Folden has formally filed a charge of voting fraud against Mr. Boykins. Finally, Mr. Folden presented no evidence refuting the fact that he has fewer signatures than the requisite amount of two thousand for ballot access.

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[1] Mr. Folden claims that Mr. Boykins' presence at his stated address is in contravention to Section 8 housing stipulations forbidding any non-lease holder from living at the property. However, Mr. Folden presented no evidence of the property's status as Section 8 housing, nor did he provide a lease stipulating no person could reside at the property without being on the lease.

II.   DISCUSSION

Pursuant to D.C. CODE §1-1312(i)(1)(B), each prospective candidate in a Primary Election for the office of At-Large member of the Council shall be nominated by a petition signed by at least 2,000 registered qualified electors of the same political party as the nominee. The Board is further authorized to accept any nominating petition as bona fide with respect to the qualification of signatures provided. D.C. CODE § 1-1312(o)(1). The statute further provides that the prospective candidate's nominating petition shall be posted for inspection in a public place, and registered qualified voters are given a ten day period in which to challenge the qualifications of signatures. Mr. Boykins pursued his statutory right to challenge Mr. Folden's nominating petition, and the Registrar determined that five hundred and fifty-three signatures were invalid. Mr. Folden did not controvert this finding; rather, he relied upon his assertion of the invalidity of the challenge due to Mr. Boykins' illegitimate residency as grounds to render the challenge null and void. The Board however does not and ethically can not dispose of a challenge found to have merit because of alleged defects in the challenger's status. To hold otherwise would fly in the face of the statutory minimum requirements for office.

Notwithstanding the illegitimacy of Mr. Boykins' residency raised during the hearing, Mr. Folden does not refute that Mr. Boykins physically lives at 4333 4th Street SE apartment #7. The fact that Mr. Boykins' name is not on the lease is of no moment in the instant proceeding, but his physical presence plus a present intent to reside there is the crux of this analysis. To be a duly registered voter, D.C. CODE. § 1-1302 provides:

> "qualified elector" means a citizen of the United States: (A) Who resides or is domiciled in the District, has maintained his or her residence in the District for at least 30 days preceding the next election, and who does not claim voting residence or right to vote in any state or territory; (B) Who is, or will be on the day of the next election, 18 years old; and (C) Who is not mentally incompetent as adjudged by a court of competent jurisdiction.

Mr. Boykins asserts that he in fact lives at the address at which he is registered to vote, and does not claim voting residence or the right to vote in any other state or territory. Furthermore, Mr. Folden presented no evidence to counter Mr. Boykins' assertion. To overcome the presumption of validity gleaned from a sworn statement of residency, Mr. Folden would necessarily have to present evidence tending to show that Mr. Boykins does not live at the address that he claims as his residence.

There are three basic principles to establish residency: (1) legal capacity; (2) physical presence at a place; and (3) the intention of making such place one's home for the time at least. Mr. Boykins exhibits all three principles and the Board sees no defect in his voting registration. The legitimacy of his physical presence at his stated residence is not within the Broad's province to condone or condemn. The Board has not been presented with evidence to overcome the presumption of validity with respect to Mr. Boykins' voting registration.

III.   CONCLUSION

Accordingly, the Board, having upheld Mr. Boykins's challenge to Mr. Folden's candidacy pursuant to D.C. CODE §1-1312(i)(1)(B) on the ground that Mr. Folden lacked the requisite number of signatures for ballot-access, it is hereby

ORDERED, that Mr. Folden be denied ballot access to the September 12, 2000 Democratic Primary for the At-Large Member of the D.C. Council.

August 4, 2000
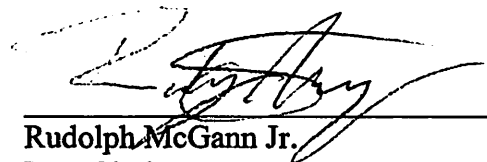

                                        Benjamin F. Wilson, Chairman
                                        D.C. Board of Elections & Ethics

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order mailed via first class mail this 4 day of August, 2000 to: Donald Folden, 1872 Savannah Block, Washington D.C. 20020; Ronald Boykins, 4333 4th Street SE #7 Washington D.C. 20032.

                                        Rudolph McGann Jr.
                                        Law Clerk
                                        D.C. Board of Elections & Ethics.