

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

<u>Thomas M. Smith,</u>)	
Challenger)	Administrative
)	Order #16-006
)	
v.)	Re: Nominating Petition
)	Challenge for the Office
)	Advisory Neighborhood
Troy Kravitz,)	Commissioner Single Member
<u>Candidate.</u>)	District 3D02

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter came before the District of Columbia Board of Elections (“the Board”) on September 1, 2016. It is a challenge to the nominating petition of Troy Kravitz (“Mr. Kravitz”) for the office of Advisory Neighborhood Commissioner, Single Member District 3D02 filed by Thomas Smith (“Mr. Smith”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). The Challenger was represented by Mr. David Leahy, Esq., and the Candidate appeared *pro se* accompanied by his circulator Mr. William Clarkson. Chairman Michael Bennett and Board members Dionna Lewis and Michael Gill presided over the hearing.

BACKGROUND

Mr. Kravitz submitted a nominating petition for the office of Advisory Neighborhood Commissioner, Single Member District 3D02 on August 5, 2016. The nominating petition was posted for a 10-day challenge period on August 13, 2016, pursuant to D.C. CODE § 1-1001.08(o)(1); 3 D.C.M.R. § 1606.1. Mr. Smith, a duly registered voter in the District of Columbia, challenged Mr. Kravitz’s nominating petition on August 21, 2016. Mr. Kravitz

submitted a total of 28 signatures. The minimum signature requirement is 25 registered qualified electors who are residents of the single-member district from which she seeks election pursuant to D.C. CODE § 1-309.05(b)(1)(B). Mr. Smith filed challenges to a total of 24 signatures enumerated by line and page number on individual challenge sheets for each nominating petition page.

Petition signatures were challenged pursuant to 3 D.C.M.R. §1607.1 of the Board's regulations on the following grounds: 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; the signature is not dated; the petition does not include the name of the signer where the signature is not sufficiently legible for identification; 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 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; and 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.

Pursuant to Title 3 District of Columbia Municipal Regulation §415.1, the Office of the General Counsel conducted a Pre-Hearing conference in this matter on Wednesday, August 24, 2016. Both the Challenger and the Candidate appeared pro se. Both parties received the

Registrar's preliminary determination with respect to the challenge. On Page 1, Lines 3-18, the signatures were challenged on the basis that the petition circulator had dated his affidavit prior to the dates affixed on the signatures. Mr. Kravitz provided a notarized statement from the petition circulator, William Clarkson, attesting to having collected all the stated signatures on the stated dates. The Registrar accepted this affidavit, and the parties were informed that the board would treat this particular defect as a formal error if this issue were presented to the Board for final resolution.

One signature challenge remained as a valid challenge— Andrew Johnson who signed on Page 2, Line 2, was not registered as a voter at the time of the signing of the petition, and thus his signature was not accepted.

Mr. Smith further challenged the petition signatures on the basis that the signature does not match the one that is on file (Carroll Vacenaugh, Page 1, Line 3; Sarah Campbell, Page 1, Line 10; Paige Fromer Page 1, Line 13; Summer Herliny, Page 1, Line 16; Christopher Razyński, Page 1, Line 17; and Rober A. Harris IV, Page 1, Line 18.) The Registrar found that the signatures on the petition pages do match those that the Board of Elections has on file, and found that all the signatures are valid. Mr. Smith further challenged signatures saying that the date affixed to the petition was not affixed by the signatory but by the petition circulator (Andrew Campbell, Page 1, Line 9). The Registrar did not accept this challenge as valid, based on 3 D.C.M.R § 1607.1, which does not require the date on a petition signature to be affixed by the signatory. This left Mr. Kravitz with a total of 27 signatures, 2 over the required limit of 25. The parties were informed pursuant to 3 D.C.M.R. § 415.2 that the agreements made by the parties as to any of the matters considered which limit the issues for hearing to those issues not disposed of by admissions or agreements of counsel or parties.

CHALLENGER'S ISSUES FOR REVIEW

Challenger accepted the Registrar's finding regarding the valid challenge to Mr. Andrew Johnson's signature, but did not accept any other findings. Mr. Smith was informed that the Board of Elections accepts the notarized statement of Mr. Clarkson swearing that he did collect the enumerated signatures on the dates stated. Mr. Clarkson also confirmed in person that he did collect the enumerated signatures on the dates stated, and said he would be available to appear before a Board to testify to the same. Mr. Smith stated that although he did not anticipate the Board to rule in his favor, he still wished to have a hearing on this issue.

Finally, Mr. Smith wished to contest the Board of Elections' interpretation of 3 D.C.M.R § 1607.1, which allows a petition circulator to fill in a date for a petition signatory.

CANDIDATE'S ISSUES FOR REVIEW

Mr. Kravitz provided evidence in the person and the notarized statement of Mr. Clarkson that he collected the signatures enumerated on the petition pages on the dates stated. Subsequent to the close of the pre-hearing conference, Mr. Kravitz also provided three notarized affidavits from Robert A. Harris IV, Sarah Campbell, and Andrew Campbell that they did sign the petition pages in the presence of Mr. Clarkson on the dates stated.

DISCUSSION

The United States Supreme Court has long recognized that states and localities have a responsibility to protect the integrity and reliability of the election process, and has generally accorded them latitude in establishing rules and procedures toward that end. "[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order is to accompany the democratic process." *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 187 (1999). Accordingly, the District of Columbia has established a nominating

petition process that require prospective candidates to demonstrate a modicum of support from a specific number of qualified electors as a condition precedent for ballot access.

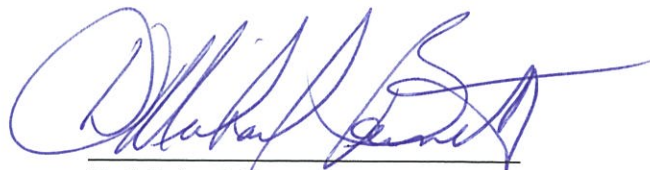
Mr. Kravitz secured 27 valid signatures, which is 2 more than the required minimum for ballot access to this office. Mr. Smith's main concerns surround dating of petition sheets: specifically, Mr. Clarkson pre-dated his affidavit on sheet 1, and he filled in the date for a number of signatories. The Board's date requirement is specifically utilized to ensure that candidates circulate their petitions during the allotted time to do so. If a candidate were to circulate nominating petitions for a longer period than stipulated, that candidate would have an unfair advantage over candidates who followed the regulations and adhered to the prescribed time limit. Mr. Clarkson did not circulate petitions on behalf of Mr. Kravitz outside of the circulation period, because Mr. Kravitz picked up his petitions and resubmitted them during the circulation period. Mr. Clarkson testified under oath that he did not properly read the circulator's affidavit and pre-signed it prior to circulating petitions. With respect to the dates filled in for signatories that omitted dates, Mr. Clarkson testified that during his circulator training provided by the Board, he was instructed that he could fill in all information except for the registered voters' signatures. When he noticed some signatories omitted the date, he filled the dates in for them. With respect to the date challenges, Mr. Smith presented no additional evidence to contradict Mr. Clarkson's explanations of the perceived irregularities with the dates appended to the petition of signatories' behalf nor the pre-dated affidavit.

CONCLUSION

Mr. Kravitz secured 27 valid signatures, which is 2 signatures above the 25 signatures required for ballot access. It is hereby:

ORDERED that candidate Troy Kravitz is granted ballot access for the office of Advisory Neighborhood Commissioner, Single Member District 3D02.

September 6, 2016
Date



D. Michael Bennett
Chairman,
Board of Elections