

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In re:)	Administrative
Wendy Hamilton,)	Order #24-021
Candidate.)	
)	Re: Petition Submitted for
)	Advisory Neighborhood Commissioner
)	Single Member District 8D06

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 (“Registrar”) with respect to the nominating petition submitted by Wendy Hamilton (“the Candidate”) in support of her bid for the office of Advisory Neighborhood Commissioner (“ANC”) for Single Member District (“SMD”) 8D06 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. Ms. Hamilton appeared *pro se*. The Board’s Registrar and General Counsel was also present.

BACKGROUND

Prehearing Proceedings

On August 7, 2024, the Candidate submitted a nominating petition to appear on the ballot in the 2024 General Election for the office of ANC in SMD 8D06 (“the Petition”). 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-five (35) signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, the Registrar accepted the Petition.

On August 10, 2024, the Petition was posted for public inspection for ten (10) days, as required by law. It was challenged on August 19, 2024, by James Harnett (“the Challenger”), a registered voter in the District of Columbia (“the Challenge”). The Challenge was accepted in accordance with Board regulations. This triggered challenge proceedings including a review by the Registrar of the challenges asserted by the Challenger and the scheduling of a pre-hearing conference in the matter. In the course of the communications with respect to the challenge matter, the Candidate sent an email to the Challenger and Board staff on August 21, 2024. In her email, the Candidate noted that fifteen (15) of twenty-three (23) challenges made by the Challenger “are solely on the ground that the signature is dated before the date in the circulator affidavit.” The Candidate stated that she was the circulator of the Petition and that she “mistakenly pre-signed [her] circulator affidavits, as is evidenced by the date of the first signature on each sheet matching the date in the affidavit.” Citing a prior Board administrative order, she noted that, in the past, the Board has waived the requirement that the circulator affidavit be dated upon witnessing the signing of the petition and she requested that the Board do the same in her case.

On August 26, 2024, the Registrar issued a report of her findings with respect to the Challenge. The Registrar agreed that twenty-three (23) signatures challenged by the Challenger were indeed invalid. Those invalid signatures included fifteen (15) that were defective for the reason that they appeared on Petition sheets that had pre-dated circulator affidavits. The Registrar’s report did note that, if the signatures associated with pre-dated circulator defect were credited back, the Petition would have two (2) signatures above the number of valid signatures needed for ballot access.

On the eve of the prehearing conference, the Challenger withdrew the Challenge. Accordingly, that conference was cancelled and the challenge matter was closed. Nevertheless, the Petition remained numerically insufficient, as determined by the Registrar, and would continue to remain thus unless the fifteen (15) invalid signatures related to the defective circulator affidavit were cured. Accordingly, the Candidate was advised that a Board hearing on her Petition would be convened on September 6, 2024, to address her Petition's insufficiency.

September 6, 2024 Board Hearing

The Registrar appeared at the hearing and presented her findings. She explained that fifteen (15) signatures on sheets circulated by the Candidate could be cured if the Board accepted the Candidate's explanation of the pre-dated circulator affidavits.

The Candidate also appeared. In response to questioning by the Board Chair as to whether, as circulator of the sheets at issue, she had mistakenly pre-dated the circulator affidavit and had in fact circulated the sheets at the time they were signed, the Candidate responded in the affirmative.

After hearing from the Candidate and the Registrar, the Board Chair made a motion that the Board waive as formal error the pre-dated circulator affidavits at issue and find the Petition to be numerically sufficient. The motion was seconded and the Board voted unanimously to grant the Candidate ballot access.

DISCUSSION

At the outset, we note that, although the Challenge was withdrawn, the withdrawal did not occur until after the Registrar had found the Petition to be numerically insufficient. 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).

Here, the Registrar applied our regulatory signature validity requirements for the acceptance of petition signatures including the requirement that the circulator include all information required in the circulator affidavit that appears on the bottom of the petition sheet containing the signature and, consistent with practice, concluded that a date in that affidavit that pre-dated the date the signatures were gathered could not be accepted, thereby rendering the affidavit incomplete.¹ That said, we have waived as formal error, under 3 D.C.M.R. §1606.4,² such defect where there is sufficient evidence showing that the circulator personally witnessed the signing of the Petition. *See e.g. Woodland v. Murray*, BOE Administrative order 2022-025 at p. 7 (issued September 9, 2022) and cases cited therein.

Here, the Candidate was the circulator of the sheets at issue. She has appeared and affirmed on the record both that she in fact personally witnessed the signing of the Petition sheets at issue and well as the dates upon which she gathered the signatures on those sheets.

In light of the record before us, we waive as formal error the circulator defect at issue and find that fifteen (15) signatures discredited by the Registrar on the grounds of such defect are valid. Our ruling means that the Petition contains twenty-seven (27) valid signatures - two (2) signatures above the number required for ballot access.

CONCLUSION

Accordingly, it is hereby:

¹ 3 D.C.M.R. §1607.1(h).

² Because the statutory requirement that each petition sheet contain a circulator's affidavit does not specifically state that an affidavit be dated (*see* D.C. Official Code 1-1001.08(b)(3)), incomplete or erroneous date fields are not fatally defective. Where, however, the statute is reasonably interpreted to require information in the affidavit, erroneous or missing information cannot be waived.

ORDERED that Wendy Hamilton shall be **GRANTED** ballot access in the contest for the office of Advisory Neighborhood Commissioner for Single Member District 8D06 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



Gary Thompson
Chairman
Board of Elections