

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Gayle Carley, Challenger)	Administrative Hearing
)	Docket No. 18-003
)	
v.)	Challenge to the Nominating Petition
)	of Kathy Henderson, Candidate for
Kathy Henderson, Candidate.)	Ward 5 Member of the Council
)	of the District of Columbia
)	

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 Kathy Henderson (“Ms. Henderson” or “the Candidate”) as a Democratic Party nominee for the office of Ward 5 Member of the Council of the District of Columbia. The challenge was filed by Gayle E. Carley (“Ms. Carley” or “the Challenger”). Ms. Carley asserted that her challenges, if valid, would leave Ms. Henderson’s nominating petition below the statutory minimum of 250 signatures of registered voters, thereby disqualifying Ms. Henderson 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, Kathy Henderson submitted a nominating petition containing 302 signatures to appear on the ballot in the June 19, 2018 Democratic Party Primary Election as a nominee for the office of Ward 5 Member of the Council of the District of Columbia.

2. The minimum petition requirement for ballot access in a party's primary election for the office of Ward Member of the Council of the District of Columbia is 250 signatures of qualified electors registered with the same political party and ward as the nominee. D.C. Official Code § 1-1001.08 (i)(1)(B).
3. Ms. Henderson'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, Gayle Carley, a registered voter in the District of Columbia, filed a challenge to Ms. Henderson's nominating petition. Ms. Carley challenged a total of 103 signatures. Each signature challenged was referenced by line and page number, citing the specific ground or grounds as required by 3 DCMR § 1606.2 (a). Among the grounds upon which the Challenger sought to disqualify signatures on the Candidate's petition were that: (1) the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; (2) 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; (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 signer is not a registered voter in the ward from which the candidate seeks nomination at the time the petition was signed; (6) the individual is not registered as affiliated with the same political party as the nominee; and (7) the signer is not a registered voter.
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 Friday, April 6, 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 94 of the individual challenges were valid and 9 of the challenges were invalid. The Registrar further concluded that as a result of the 94 valid challenges, the Candidate's nominating petition contained 208 signatures, 42 signatures below the requirement for ballot access.
8. The discussion during the prehearing conference focused on the Candidate's understanding of the Registrar's determinations of each of the 94 valid challenges, specifically the codes that were used to explain the determinations. The Candidate also expressed her disagreement with the factual findings of the Registrar with respect to one signature in particular. The Registrar had sustained the challenge to the signature located on Page 2, Line 11 on the basis that the address, 1720 Benning St NE, was located in Ward 7 rather than in Ward 5. Ms. Henderson argued that this challenge should be invalid because it is an address in Ward 5. Following the prehearing, the Registrar later confirmed that the address 1720 Benning St NE was located in Ward 5 as Ms. Henderson indicated; however, the Registrar determined that it was still a valid challenge because the signatory, Ronnie Durham, was not a registered voter in the District of Columbia at the time the petition was signed.

9. Both the Candidate and the Challenger were notified by email on Tuesday, April 10 that the matter was scheduled for a public hearing to be held on Thursday, April 12 at 12:30 PM.
10. The hearing on this matter occurred as scheduled, on Thursday, April 12, 2018 at 12:30 PM. Both the Candidate and the Challenger appeared *pro se*.
11. At the hearing, the Registrar provided the Board with her preliminary report of the challenge. The preliminary report was identical to the report read at the pre-hearing conference.
12. At the hearing, the Challenger did not express any disagreement with the factual findings and recommendation in the Registrar's report.
13. At the hearing, the Candidate explained that she disagreed with the factual findings of the Registrar on the basis that several individuals who signed her nominating petition were District residents and registered voters. Ms. Henderson specifically identified the following individuals whom she had reason to believe were registered qualified electors in the District of Columbia: Kendrick Muldrow (Page 10, Line 12); Olivia Williams (Page 10, Line 16); and Adia C. Jordan (Page 11, Line 11).
14. 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 Thursday, April 19th to allow Ms. Henderson time to submit additional evidence concerning the voter registration of the various individuals at issue in the Challenge that she identified at the hearing.
15. Ms. Henderson availed herself of the opportunity to cure address defects identified in the Challenge by filing a total of 9 voter registration applications on April 12, 2018 as

permitted under District law. D.C. Official Code § 1-1001.08 (o)(3)(A)-(B). Of those voter registration applications received, the Registrar validated 4 changes of address, thereby giving credit to Ms. Henderson for 4 signatures that had been determined as valid challenges (John Miles, Page 8, Line 7; Eloise Mccray, Page 8, Line 19; Richard Dyson, Page 4, Line 9; Tajuan Allen, Page 2, Line 19). Of the remaining 5 voter registration applications received, the Registrar determined that she was unable to give credit for these signatures for the following reasons: (1) the applicant was not a registered voter at the time the petition was signed (Kenneth Coleman, Page 4, Line 6); (2) the application was incomplete, specifically missing date of birth (Ronnie Durham, Page 2, Line 11; Theresa Jackson, Page 7, Line 14); (3) the applicant was inactive at the time the petition was signed (Cecilia Thomas, Page 11, Line 16); and (4) the Registrar was unable to determine that the applicant was the same individual as the signatory on the petition due to a spelling variation of the last name and different date of birth (Brittney McNett, Page 9, Line 10).

16. The administrative record closed on Thursday, April 19, at 5 PM. Ms. Henderson did not submit any additional evidence into the record.

II. CONCLUSIONS OF LAW

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

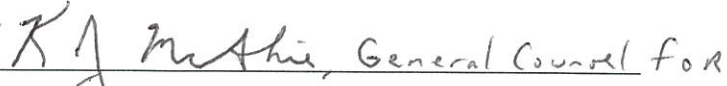
Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition. A copy of the challenge shall be sent by the Board promptly to the 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).

18. 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 Ms. Henderson timely submitted. The Board also accepts the Registrar's conclusion that after the valid challenges of 94 signatures, but thereafter properly giving credit for 4 signatures through change of address permissible under law, Ms. Henderson's nominating petition contains 212 signatures, 38 signatures below the statutory requirement for ballot access.
19. Because Ms. Henderson's nominating petition does not contain the valid signatures of at least 250 qualified electors registered with the same political party and ward as the nominee, the Board concludes that Ms. Henderson does not qualify 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 Ms. Carley is upheld. It is further **ORDERED** that Ms. Henderson, the Candidate, be denied ballot access in the June 19, 2018 Primary Election.

April 23, 2018



Mike Gill
Acting Chairman, Board of Elections