

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Luz Martinez-Munoz,)	
Challenger)	Administrative
)	Order #22-013
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Mayor of the
Trayon White)	District of Columbia
Candidate.)	

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on April 22, 2022. It is a challenge to the nominating petition submitted by Trayon White (“Mr. White”) in support of his candidacy for the Office of Mayor of the District of Columbia in the June 21, 2022 Democratic Primary Election (“the Primary Election”). The challenge was filed by Luz Martinez-Munoz (“Ms. Martinez-Munoz”) pursuant to D.C. Official Code § 1-1001.08 (o)(1) (2001 Ed.). Chairman Gary Thompson and Board members Michael Gill and Karyn Greenfield presided over the hearing. Attorney Aristotle Theresa (“Mr. Theresa”) represented Trayon White, and Attorney Christy J. White (“Mrs. White”) represented Ms. Martinez-Munoz.

Background

On March 23, 2022, Mr. White submitted a nominating petition to appear on the ballot as a candidate in the Primary Election contest for the nomination for the office of Mayor of the District of Columbia (“the Petition”). The minimum number of signatures required to obtain ballot access for this office is 2,000 signatures of District voters who are duly registered voters in the

same party as the candidate. The Petition contained a total of 4,391 signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, Karen F. Brooks, the Board of Elections' Registrar of Voters ("the Registrar"), accepted all 4,391 signatures for review.

On March 26, 2022, the Petition was posted for public inspection for 10 days, as required by law. On April 4, 2022, the Petition was challenged by Ms. Martinez-Munoz, a registered voter in the District of Columbia.

Ms. Martinez-Munoz filed challenges to a total of 2,768 signatures individually and on the grounds that the signer was not registered; the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; the signer was not registered to vote at the address listed on the petition at the time the petition was signed; the signature was a duplicate of a valid signature; the signature was not dated; the petition did not include the address of the signer; the petition did not include the name of the signer where the signature was not sufficiently legible for identification; the circulator of the petition failed to complete all required information in the circulator's affidavit; the signature was not made by the person whose signature it purports to be; and the signer was not registered to vote in the same party as the candidate at the time the petition is signed, pursuant to Title 3 D.C.M.R. § 1607.1 of the Board's regulations.

Registrar's Preliminary Determination

The Registrar's initial review of the challenge indicated that 2,192 of the 2,768 challenges were valid. 860 were valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed; 498 were valid because the signer was not registered; 74 were valid because the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed; 19 were valid because the signature was a duplicate of a valid signature; 46 were valid because the signature was not dated; 83 were valid because the

petition did not include the address of the signer; 204 were valid because the petition did not include the name of the signer where the signature was not sufficiently legible for identification; 53 were valid because the circulator of the petition failed to complete all required information in the circulator's affidavit; nine were valid because the signature was not made by the person whose signature it purports to be; and 346 were valid because the signer was not registered to vote in the same party as the candidate at the time the petition was signed. This left the candidate's nominating petition with 2,199 valid signatures, 199 signatures above the number required for ballot access.

April 19, 2022 Pre-Hearing Conference

Pursuant to Title 3 D.C.M.R. § 415.1, the Office of the General Counsel ("the OGC") convened a pre-hearing conference with both parties on Tuesday, April 19, 2022. In her findings report issued prior to the pre-hearing conference, the Registrar noted that the number of valid challenges filed to the Petition left Mr. White with the requisite number of signatures to qualify for ballot access. The Registrar also provided a Nominating Petition Challenge Information Sheet outlining her determinations with respect to the validity of each signature challenged, as well as a key code explaining the notations she used to indicate the basis for upholding or denying each challenge.

During the pre-hearing conference, Mr. Theresa argued that any signatures deemed invalid by the Board should be accepted in all scenarios except where there is no signature at all. This leniency should apply, he argued, because the Covid-19 pandemic conditions were so significant during the petition circulation period that it negatively impacted his client's ability to obtain good signatures. In support of this argument, Mr. Theresa cited Stanislaus v Pixley, Administrative

Order #20-017 (issued September 4, 2020) as precedent that the Board should be governed by in this matter.

Mrs. White stated her belief that Stanislaus was not relevant precedent for several reasons. First, Mrs. White regarded the candidate in that matter to have taken reasonable means to provide valid signatures to the Board, while Mr. White's effort did not appear, in her estimation, to be marked by such reasonableness. Second, Mrs. White took the position that, while the Stanislaus decision was rendered during the Covid-19 public health emergency, no such public health emergency existed during Mr. White's attempt at ballot access.

Mrs. White raised several points in support of her position that the Petition was insufficient for ballot access. First, she asked for an additional review of the Registrar's preliminary findings. The Registrar complied with this request and, as a result of this review, the Registrar determined that 61 challenges that were initially found to be invalid were, in fact, valid, leaving Mr. White's Petition with 2,138 valid signatures, 138 signatures above the minimum number required for ballot access. Despite this revised determination, Mrs. White requested that Board staff review its findings with respect to 405 challenges deemed invalid by the Registrar.

Next, Mrs. White asked Mr. Theresa and Mr. White if they would consent to a request that the Board issue subpoenas of the individual(s) who supervised the signature collection process for Mr. White's campaign. Citing concerns over what she deemed "unreliable circulator [affidavits]," she requested that the Board void all signatures collected by five individuals.¹ Mrs. White explained that, despite a thorough search, she was unable to verify whether these five circulators were, in fact, District residents. With respect to these circulators, Mrs. White stated that she either could not find them on the voter roll, or that, where she could find individuals with the same names

¹ The circulators identified by Mrs. White were Brian Boyd, Vincent Brown, Ervin Harris, Danielle Simmons, and Burnell Smith.

on the voter registry, the registry addresses for these individuals did not match the addresses provided by the circulators on their affidavits. Mrs. White asked the Registrar if she had confirmed the residency status of the circulators. In response, the Registrar informed Mrs. White that the onus was not on the Board to confirm the residency of circulators, but rather on her, as the challenger, to demonstrate that the circulators are not DC residents or are otherwise unqualified.

Mr. Theresa and Mr. White vehemently objected to Mrs. White's request that the Board issue subpoenas in this matter, claiming that Mrs. White was on a "witch hunt" and that all of the circulator affidavits provided on the Petition sheets were valid. Despite discussing the issuance of subpoenas, Mrs. White did not submit a written request that the Board issue subpoenas in this matter.

Post-Hearing Memorandum

After the pre-hearing conference but prior to the Board hearing, Mrs. White submitted to the Board a document titled "Post-Hearing Memorandum Regarding the Challenge to Petition Signatures Submitted by Trayon White, Candidate for the Office of the Mayor of the District of Columbia" ("Post-Hearing Memorandum"). In the Post-Hearing Memorandum, Mrs. White reiterated the arguments she made during the pre-hearing conference, and addressed the arguments made by Mr. White in support of his efforts to achieve ballot access. Specifically, Mrs. White stated that the Robert White campaign's review of the Petition raised "numerous issues" including "forgeries, invalid signatures due to missing information, illegible petition entries, incorrect addresses, and circulators that could not be verified as DC residents." (Post-Hearing Memorandum at 1.). Mrs. White also argued that the Registrar should undertake yet another review of the

Petition, and reconsider her findings with respect to 405 challenges that were deemed invalid during both the initial and second review.²

April 22, 2022 Board Hearing

During the Board hearing, and in response to the Registrar's findings, both parties essentially repeated the assertions they made at the pre-hearing conference. In addition, Mrs. White raised the concerns about the Petition that she expressed in the Post-Hearing Memorandum. She further alleged that the Board had disregarded her request to review the 405 challenges deemed invalid, and that it had not taken into account her claims regarding the five circulators.

In response to the claim about the 405 challenges, the Registrar stated that she had updated the Excel spreadsheet submitted by Mrs. White to include her responses to the 405 challenges, and that, as a result of the additional review of the challenges, the Petition still contained 138 signatures over the minimum number required for ballot access. With respect to Mrs. White's assertions about the five circulators, she did not provide any proof that they were not DC residents, but instead indicated that she had not been able to determine their residency status.

Discussion

The minimum number of signatures required to obtain ballot access for the office of Mayor in the Primary Election is 2,000 signatures of District voters who are duly registered in the same party as the candidate. In this case, the Registrar conducted three separate reviews of the challenge. The Registrar's review of the challenge resulted in the finding that 2,253 of the challenges filed were valid, leaving the Petition with 2,138 signatures, 138 signatures over the minimum number required for ballot access.

² Mrs. White submitted an Excel spreadsheet identifying the 405 challenges that she wanted the Board to review.

3 D.C.M.R. § 1607.1 provides in full that, once a nominating petition has been challenged, 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;
- ...
- (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; or
- (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 is signed.

Mr. Theresa requests that the Board follow its ruling in Stanislaus and accept all of the signatures contained in Mr. White's petition despite them failing to meet standards clearly outlined in the agency's regulations. Mrs. White contends that Stanislaus is not applicable because of Mr. White's failure to provide the kind of corroborating evidence that the candidate in Stanislaus provided, and because, unlike in Stanislaus, the petition circulation period here did not occur during a public health emergency.

The Board agrees with Mrs. White. Stanislaus is not relevant in the instant matter. First, as noted, the District is no longer in a public health emergency, as was the case in Stanislaus. Second, the Board saw fit to waive formal error with respect to certain undated signatures on the candidate's petition in Stanislaus because the Board could determine the date on which those signatures were obtained through the dates that appeared elsewhere on the pages at issue, and because the candidate testified under oath regarding the circumstances under which she had collected the signatures in question. No such mitigating context is present with respect to the signatures invalidated on the Petition. Accordingly, Stanislaus is inapposite. The Board therefore declines to waive formal error with respect to the signatures on the Petition that are clearly invalid under the election statute and the Board's regulations.

As it pertains to the issue of the circulators, Mrs. White is incorrect in her assertion that the Registrar has the obligation to confirm the residency of petition circulators. The onus is on the challenger to prove that a circulator is unqualified. Mrs. White asserts that she was not able to locate the circulators in the voter registry, but this assertion cannot serve as a basis upon which to invalidate all of the signatures collected by these individuals, because they are not required to be registered voters. And while Mrs. White discussed the issuance of subpoenas in this matter, she never submitted a written, detailed request for the Board to do so as 3 D.C.M.R. § 430.3 requires.

Accordingly, there is no basis upon which to grant the challenges made with respect to unqualified petition circulators.

Finally, contrary to Mrs. White's assertion that Board staff did not consider her request to again review the 405 signatures that were deemed valid, the Registrar did review the 405 signatures, and the result of this review was accounted for in her findings that the Petition contained 138 signatures over the amount necessary for ballot access.

The Board has considered the extensive work conducted on this petition challenge and, after considering the record in its entirety, finds that the challenger has not demonstrated that the Petition does not contain enough valid signatures to achieve ballot access.

Conclusion

For the reasons indicated above, it is hereby

ORDERED that the challenge to the nominating petition of Trayon White for the office of Mayor in the Primary Election is hereby **DENIED**, and that Mr. White is therefore **GRANTED** ballot access.

The Board issues this written order today, which is consistent with its oral ruling rendered on April 22, 2022.



Date: April 25, 2022

Gary Thompson
Chairman
Board of Elections