

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

In Re:)	
)	Administrative Order
Earle Douglass,)	No. 2022-017
Candidate.)	Re: Appeal of Registrar Preliminary
)	Determination of Ineligibility
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (“the Board”) on Friday, August 19, 2022, and involved an appeal from an adverse determination of eligibility regarding Earle Douglass, candidate for the office of Advisory Neighborhood Commissioner for Single Member District (“SMD”) 3E04. Board Chair Gary Thompson and Members Mike Gill and Karyn Greenfield presided over the hearing on this matter. The candidate appeared at that hearing *pro se*.

BACKGROUND

On July 20, 2022, Mr. Douglass picked up ballot access documents to run as a candidate for Advisory Neighborhood Commissioner for SMD 3E04 in the General Election (“the ANC contest”). These documents included, among other items, a document titled “Circulating and Filing Nominating Petitions.” The Circulating and Filing Nominating Petitions documents informed candidates that “it is [their] responsibility to ensure that [their] petition is complete and contains the minimum number of signatures for ballot access before [they] file it with the Board.” In addition, the document instructs that candidates should arrive at the Board “ready to file” and that petition sheets should be “complete, in numerical order, and correctly assembled.” It further states: “Make sure that the Circulator’s Affidavit on each petition sheet is completed correctly and

signed.” Before leaving the Board’s offices with his ballot access documents, Mr. Douglass certified that he had received the aforementioned items by signing a “Receipt of Ballot Access Documents” form.

It is the policy and practice of Board staff to notify candidates at pickup of the precise number of signatures they must collect and submit for the office sought in order to achieve ballot access. Accordingly, Mr. Douglass was advised when he picked up his ballot access documents that, in order to gain ballot access in the ANC contest, he was required to submit a nominating petition that contained twenty-five (25) signatures.

On August 9, 2022, Mr. Douglass submitted a nominating petition in support of his ballot access effort (“Petition”). That Petition contained three signature sheets and a total of thirty (30) signatures.

By letter dated August 15, 2022, the Board’s Executive Director, Monica Holman Evans, informed Mr. Douglass of her preliminary determination that he did not meet the requirements to have his name appear on the ballot in the ANC contest. The letter stated that Mr. Douglass failed to file the number of signatures required pursuant to D.C. Municipal Regulations, Title 3, §§ 1605.3(a) and 1605.4.

On August 18, 2022, Mr. Douglass timely filed a written appeal of the Executive Director’s adverse determination of his eligibility (“Appeal”).

During the hearing on August 19, 2022, the Board’s Registrar of Voters (“Registrar”) presented a report of the Petition review findings upon which the Board’s Executive Director relied in rejecting the Petition. The Registrar explained that each of the Petition’s three pages had ten signatures. She further noted, however, that the circulator affidavit on the third page was not dated.

As a result, the Registrar advised that she discounted all the signatures on that page. Discounting the signatures on the third page left the Petition with twenty (20) signatures, or five signatures below the number needed for a numerically sufficient petition.

Mr. Douglass appeared and was placed under oath. He testified that he was the circulator for all three Petition sheets. He explained that he gathered the signatures on page three of the Petition on August 9, 2022 and that he neglected to date that page and he apologized to the Board for the oversight. In his written submission, Mr. Douglass noted that he was not a professional politician and requested that the Board exercise leniency. Both at the hearing and in his written submission, Mr. Douglass sought a waiver the circulator date error and acceptance the ten signatures on page three of his Petition.

ANALYSIS

As indicated above, the elections laws require that a nominating petition for a candidate seeking ballot access to the office of Advisory Neighborhood Commissioner for the General Election must be signed twenty-five (25) of District's registered voters in the respective SMD. D.C. Official Code § 1-309.0(b). Further, the Board's regulations at title 3 of the D.C.M.R. provide:

- 1605.3 Within three (3) business days following the petition-filing deadline, the Executive Director or his or her designee shall issue a preliminary determination of petition sufficiency. In order to be determined sufficient, a petition nominating a candidate shall:
 - (a) Contain the minimum statutory number of signatures required to obtain ballot access for the office sought;
- 1605.4 In determining whether the minimum statutory number of signatures is contained in the nominating petition, the Executive Director or his or her designee shall not count any signatures submitted on petition pages that fail to include a completed circulator's affidavit ...

Requirements for circulator affidavit content are set forth in D.C. Official Code § 1-1001.08(b)(3). That provision mandates that each nominating petition “shall contain an affidavit, made under penalty of perjury ... and signed by the circulator of the petition[.]” In addition, the statute requires that the affidavit attest to the circulator’s personal circulation of the petition, personal witnessing of each signing, and inquiring into each signer’s status as a registered voter. *Id.* “As the Board [has] recognized, the circulator’s role in gathering signatures for a nominating petition is critical to ensuring the integrity of the collection process.” *Williams v. District of Columbia Bd. of Elections and Ethics*, 804 A.2d 316, 318-19 (D.C. 2002). Along these lines, the D.C. Court of Appeals in *Williams* instructed: “A genuine and complete affidavit, then, undergirds the presumptive validity of voter signatures on a petition. ... The upshot is that the presumption of validity of petition signatures depends heavily on the role of the circulator and on the truthfulness and completeness of the representations made in the circulator's affidavit.”

Despite the importance of the circulator affidavit to the validity of a petition, the Board has, where the integrity of the signature is bolstered by extrinsic evidence, excused minor defects in the date of the circulator affidavit. *See Gant v. Douglas*, Administrative Order #22-005 (issued April 22, 2022) (excusing marked-up/written over circulator affidavit dates and citing *Moore v. Butler*, Administrative Order #20-024 (issued Sept. 4, 2020) (waiving as formal error pre-signed circulator affidavit); *compare Brousseau v. Fitzgerald*, 675 P.2d 713, 715 (Ariz. 1984).¹ In considering defects in the date of the circulator’s affidavits in *Gant* and *Moore*, we found that there was no substantial evidence that the circulator acted in a manner inconsistent with the circulator’s oath. An important consideration in our decision to waive a circulator date defects in those cases

¹ In *Brousseau*, the court distinguished between petition defects that are matters of form and procedure and serious matters involving more than a technicality.

was the petitioner's offering testimony from the circulator to verify the date upon which the signatures were made. In addition, we note that, while an affidavit is ordinarily understood to be a dated attestation, the elections laws do not identify among the material components of the circulator's affidavit, the date that the circulator made the attestation. *Compare, In re Gurley*, Administrative Order 22-016 (issued Aug. 22, 2022) (declining to waive defect of missing circulator signature given, *inter alia*, that the statute requires circulator affidavits to be signed).

In light of the testimony of Mr. Douglass that he did witness the signatures on page three of his Petition and as to the time he signed as a circulator the attestation form on that page, we find that there was no substantial evidence that Mr. Douglass, as circulator of his Petition, acted in a manner inconsistent with the circulator's oath. For these reasons, we will waive as formal error the omission on the circulator affidavit of the date upon which Mr. Douglass signed that affidavit.

CONCLUSION

For the reasons set forth in this opinion, we conclude that the signatures on page three of the Petition should be counted toward the Petition's numerical sufficiency and that the Petition will be found preliminarily to have thirty (30) signatures.²

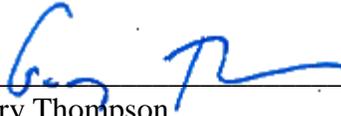
Accordingly, it is therefore

ORDERED that the Petition submitted by Earle Douglass for the Office of Advisory Neighborhood Commissioner, SMD 3E04, be found preliminarily sufficient.

² Our determination here does not assure Mr. Douglass ballot access as his Petition is still subject to a challenge period during which other defects in the Petition signatures may be brought to the attention of the Board and reviewed for validity. *See* D.C. Official Code § 1-1001.08(o).

The Board issues this written order today, which is consistent with our oral ruling which was announced at the hearing on August 19, 2022.

Dated: August 22, 2022



Gary Thompson
Chair, Board of Elections