

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

In Re:)
Frank Wu, Candidate for Ward 3)
Committee Member, Democratic State)
Committee)

Administrative Hearing
No. 08-004

Re: Appeal of Preliminary
Determination of Ineligibility

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics (hereinafter “the Board”) on Thursday, July 17, 2008, and involved an appeal of the Acting Registrar of Voters’ preliminary determination that, while Frank Wu, candidate for Ward 3 Committee Member for the Democratic State Committee (“the Candidate”) met the requirements for ballot access as an individual candidate, he did not meet the requirements to be recognized as a member of the “Obama4UnitybeatsMcCain” slate. Chairman Errol R. Arthur and Board Member Dr. Lenora Cole presided over the matter. The appeal was brought by the Candidate, who was represented by Jordan Usdan, Esq. of Howrey L.L.P.

According to the evidence presented, the Candidate timely filed an individual nominating petition, along with the required supporting documents, for the office sought on July 1, 2008. He faxed a Statement of Slate Registration to the Board on July 7, 2008, the date upon which the form was due. On July 9, 2008, the Board received the original copy of the Statement of Slate Registration, which the Candidate had air-mailed from China on July 7, 2008.

On July 9, 2008, the Acting Registrar of Voters, Karen Brooks, issued a letter to the Candidate informing him of her preliminary determination that, notwithstanding the

fact that he qualified for ballot access as an individual candidate, he would be unable to appear on the ballot as a member of the “Obama4UnitybeatsMcCain” slate, because he did not timely file an original Statement of Slate Registration with the Board. On July 16, 2008, the Candidate appealed this adverse determination, asserting that a proper and complete Statement of Slate Registration had been timely filed with the Board.

A slate of candidates may be formed: “(a) Where two (2) or more individual candidates have qualified by filing separate nominating petitions; (b) Where a group of candidates have qualified by filing a single nominating petition; or (c) Where a combination of individual candidates or groups of candidates have qualified by filing separate nominating petitions.” D.C. Mun. Regs. tit. 3 § 1702.1 (2008). The act that, in fact, creates a slate is the submission of the Statement of Slate Registration.¹ This form must be submitted to the Board no later than the third (3rd) day after the nominating petition filing deadline.² The Candidate sought to align himself with the “Obama4UnityBeatsMcCain” slate by circulating an individual nominating petition and signing, along with other prospective members of that slate, a Statement of Slate Registration, thereby indicating his desire to be identified on the ballot as a member of

¹ In order to be deemed proper and complete, the Statement of Slate Registration must contain:

- (a) The name, address, telephone number and signature of the individual who is authorized to represent the slated candidates in matters before the Board;
- (b) A complete listing of the candidates who are members of the slate and the office to which each seeks election;
- (c) A statement that each candidate gives his or her permission to be identified as a member of the slate;
- (d) The slate name, which shall be sufficiently concise to permit the Board to print the name on the ballot on the same line with each candidate’s name; and
- (e) The signatures and printed name of each of the candidates who are members of the slate; Provided, that where candidates have qualified as a group, using a single nominating petition, all candidates listed on the petition must be signatories.

D.C. Mun. Regs. tit. 3 § 1702.3 (2008).

² See D.C. Mun. Regs. tit. 3 § 1702.2 (2008).

the slate.

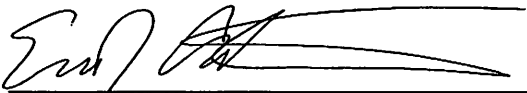
As noted above, upon being notified by an official of the slate that he would not be listed as a slate member as a result of not having signed the requisite Statement of Slate Registration, the Candidate immediately faxed a copy of the form to the Board on July 7, 2008, and air-mailed the original copy of the same to the Board from China on the same date. It is clear that the Candidate, in addition to satisfying all other requirements necessary for ballot access, undertook extraordinary efforts to comply with the Board's regulations concerning slate formation.

Pursuant to D.C. Mun. Regs. tit. 3 § 1705.6(c), the Board may waive formal errors committed by candidates in connection with the submission of the documentation necessary to achieve ballot access. Notwithstanding that the Board did not receive an original signed copy of the Statement of Slate Registration from the Candidate by the July 7, 2008 deadline, the circumstances present, as outlined herein, strongly merit the exercise of the Board's discretion to waive its filing deadline in the instant matter.

Accordingly, it is hereby

ORDERED that Frank Wu, candidate for the office of Ward 3 Committee Member, Democratic State Committee, be granted access to the ballot in the September 9, 2008 Congressional and Council primary election as a member of the "Obama4UnityBeatsMcCain" slate.

July 18, 2008
Date


Errol R. Arthur, Esq.
Chairman, D.C. Board of Elections & Ethics