

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Israel Rodriguez,
Complainant,

v.

Bessie Newell
Respondent.

Administrative Hearing
No. 12-04

Re: Challenge to Nominating
Bessie Newell,
Ward 5 Member of the Council

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections on March 12, 2012. It is a challenge to the Nominating Petition of Bessie Newell ("Ms. Newell") as a candidate for the office of Ward 5 Member of the Council filed by Israel Rodriguez ("Mr. Rodriguez") pursuant to D.C. CODE § 1-1001.08(o)(1) (2011). Chairman Deborah K. Nichols and Board member Stephen I. Danzansky presided over the hearing. Both parties appeared for the hearing *pro se* pursuant to 3 D.C. Mun. Regs. § 403.1.

Background

On February 15, 2012, Ms. Newell submitted a Nominating Petition for the office of Ward 5 Member of the Council containing a total of five hundred and fourteen (514) signatures.

On February 18, 2012, the petition was posted for inspection, pursuant to D.C. CODE § 1-1001.08(o)(1) (2011), for a 10-day challenge period.¹

¹ D.C. CODE § 1-1001.08(o)(1) (2011) states in relevant part:

On February 21, 2012, Mr. Rodriguez filed a challenge to the petition in which he challenged fifty-three (53) signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Specifically, Mr. Rodriguez challenged signatures on the following basis: the signer is not a duly registered voter; the signer, according to the Board's records, is not registered to vote at the address listed on the petition page, and has failed to file a change of address with the Board within ten days of the challenge; the signer is not registered to vote in the same ward as the candidate at the time the petition is signed; the petition does not include the printed or typed address of the signer; and the petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification.

The Registrar of Voters ("Registrar") reviewed the challenges and concluded that thirty-six (36) of the challenges to Ms. Newell's nominating petition were valid—leaving the Respondent with four hundred, seventy-eight (478) signatures. The minimum number of signatures required for a candidate pursuing the Ward 5 seat is five hundred (500) pursuant to D.C. CODE § 1-1001.08(j)(1)(B) (2011). Additionally, as a result of another review by the Registrar of Voters, Ms. Newell was credited with two (2) additional signatures that had initially been determined to be invalid. This left Ms. Newell with twenty (20) signatures below the number required for ballot access. Also, the Board received eighteen (18) applications from Ms. Newell. Fourteen (14) of the

The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. 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.

applications were changes of addresses corresponding with signatures that were invalidated because the signers were not registered to vote at the address listed on the petition at the time it was signed. Ms. Newell was credited with those fourteen (14) signatures that had initially been determined to be invalid. This left Ms. Newell with four hundred and ninety-four (494) signatures. Accordingly, the Registrar concluded the Respondent had not secured enough signatures on her nominating petition for ballot access.

Analysis

The Complainant Bears the Burden of Proof.

Pursuant to title 3 D.C.M.R. §424.1, “The party who asserts the claim bears the affirmative duty of establishing the truth of the assertion.” In the instant matter, Ms. Newell presented no evidence that refuted the Registrar’s findings with respect to not securing enough signatures for ballot access. Ms. Newell took exception to her notice served by electronic mail. However, Ms. Newell did not dispute that she consented to electronic service when she initially filed her candidacy. Moreover, Ms. Newell did not dispute that the initial correspondence sent from the Board’s Office of the General Counsel informing her of the challenge to her candidacy was delivered to her mailbox on February 22, 2012 but rather, she contended that her server redirected it to her spam/junk mailbox. By consenting to electronic service, it is Ms. Newell’s responsibility to check her electronic mail folders to ensure proper receipt of notices regarding her candidacy.

In conclusion, Ms. Newell has failed to establish that she procured five hundred (500) signatures of duly registered voters in the ward from which she seeks election pursuant to D.C. CODE § 1-1001.08 (j)(1)(B). The Board lacks the discretion to waive the

statutory requirements for ballot access. While the Board recognizes and appreciates the rigors of the process, the Board would be remiss in its duties if it overlooked the deficiencies on Ms. Newell's nominating petition.

Based on the Board's findings and conclusions, it is hereby:

ORDERED that Bessie Newell be **DENIED**

Ballot Access in the **May 15, 2012 Vacancy Special Election** for the office of **Ward 5 member of the District of Columbia Council.**

March 12, 2012



Deborah K. Nichols
Chairman, Board of Elections

Stephen I. Danzansky
Member, Board of Elections