

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Morgan Finkelstein,	)	
Challenger	)	Administrative
	)	Order #20-007
	)	
v.	)	Re: Challenge to Nominating
	)	Petition Submitted for the
	)	Office of Ward 2 Council
Daniel Hernandez,	)	Member
Candidate.	)	

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on April 1, 2020. It is a challenge to the nominating petition of Daniel Hernandez (“Mr. Hernandez”) for the office of Ward 2 Member of the Council filed by Morgan Finkelstein (“Ms. Finkelstein”) pursuant to D.C. Code § 1-1001.08 (o)(1) (2001 Ed.). Ms. Finkelstein and Mr. Hernandez appeared *pro se*. Chairman D. Michael Bennett and Board members Michael Gill and Karyn Greenfield presided over the hearing.

**Background**

On March 4, 2020, Mr. Hernandez submitted a nominating petition to appear on the ballot as a candidate in the June 2, 2020 Primary Election for the office of Ward 2 Member of the Council (“the Petition”). The minimum requirement to obtain ballot access for this office is 250 signatures of District voters who are duly registered Democrats in Ward 2. The Petition contained a total of 303 signatures. Pursuant to Title 3, District of Columbia Municipal

Regulations (D.C.M.R.) § 1603.1, Karen F. Brooks, the Registrar of Voters (“the Registrar”), accepted all 303 signatures for review.<sup>1</sup>

On March 7, 2020, the Petition was posted for public inspection for 10 days, as required by law. However, the Registrar of Voters’ office inadvertently failed to include in the posting a single supplemental petition sheet containing 20 signatures. Accordingly, only 283 of Mr. Hernandez’s signatures were subjected to the 10-day challenge period. On March 16, 2020, Ms. Finkelstein, a registered voter in the District of Columbia, filed a challenge to the Petition as posted.

Ms. Finkelstein filed challenges to a total of 62 signatures pursuant to Title 3 D.C.M.R. § 1607.1 of the Board’s regulations on the following grounds: 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 at the time the petition was signed; the signature is not dated; the petition does not include the name of the signer where the signature is not sufficiently legible for identification; 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; and the signer is not registered to vote in the same party as the candidate at the time the petition is signed.

### **Registrar’s Preliminary Determination**

The Registrar reviewed the challenge to determine the sufficiency of the challenged signatures. The Registrar’s initial review indicated that a total of 52 of the 62 challenges were valid. Specifically, the Registrar found that four signatures belong to signers who were not registered to vote at the address listed on the petition at the time the petition was signed; two

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<sup>1</sup> The Registrar’s office initially miscalculated the number of signatures submitted by omitting 10 signatures on one of the petition pages and inadvertently determined the challenge on the assumption the candidate only submitted two hundred and ninety-three (293) signatures.

signatures are duplicates; four signatures are illegible; 11 signatures belong to individuals who are not registered; 20 signatures belong to individuals who are not registered Democrats; three signatures are not dated; and 8 signatures belong to individuals who are not registered in Ward 2. Accordingly, the Registrar preliminarily determined the Petition contained 231 presumptively valid signatures, which is 19 signatures below the number required for ballot access.

### **March 26, 2020 Pre-Hearing Conference**

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel (“OGC”) convened a prehearing conference with both parties on Thursday, March 26, 2020. As a threshold matter, Mr. Hernandez took issue with the Registrar’s tally of total signatures submitted on his nominating petition. Mr. Hernandez asserted he submitted 303 signatures as opposed to the 293 reported by the Registrar in her preliminary determination. He then requested that the Registrar review the number of signatures that he submitted to the Board.

With respect to the three undated signatures, Mr. Hernandez asserted the signatures were all collected at the same event, and he agreed to present the circulators of the respective sheets to provide testimony to the Board explaining the circumstances under which the signatures were collected. Ms. Finkelstein countered that, because the Board’s rules were not adhered to, the undated signatures should be disallowed.

Ms. Finkelstein requested that she be permitted the opportunity to review and, if necessary, challenge the 20 signatures on the supplemental petition sheet that was not posted during the 10-day challenge period. At the suggestion of OGC staff attorney Rudolph McGann, the Registrar sent Ms. Finkelstein the supplemental page and also conducted her own review of the same.

### **Registrar's Examination of the Supplemental Petition Sheet**

As a result of her review of the supplemental petition sheet, the Registrar concurred that a total of 303 signatures were submitted. She further determined that the supplemental sheet contained 17 valid signatures and three invalid signatures. Of the three invalid signatures, one signature is illegible, one signature belongs to an individual who is not a registered Democrat, and one signature belongs to a signer who was not registered to vote at the address listed on the petition at the time the petition was signed. This review resulted in the Registrar's determination that the Petition contained a total of 248 valid signatures, two under the number required for ballot access.

### **Review of Signatures Preliminarily Determined to be Illegible**

At the conclusion of the prehearing conference, the Registrar revisited the four signatures she had preliminarily determined to be illegible. Consequently, she determined that she could identify two of the four signatures as belonging to duly registered voters Nadine Cohodas (pg. 4 ln. 8) and Erica Oakley (pg. 4 ln. 9). The Registrar credited Mr. Hernandez with these two signatures, which brought his total of valid signatures to 250, the number required for ballot access.

### **April 1, 2020 Board Hearing**

During the Board hearing, the Registrar presented her revised findings report, which included the results of her review of the supplemental petition sheet and the four illegible signatures, as well as her conclusion that the Petition contained 250 valid signatures.

Ms. Finkelstein took issue with the Registrar's new findings, primarily because of the errors that occurred with respect to the processing of the challenge, namely the failure to post the supplemental petition sheet and the miscount of the number of signatures submitted. While Mr.

Hernandez did not take issue with the Registrar's ultimate findings, he did attempt to explain the circumstances regarding the undated signatures on his nominating petition. He testified that the undated signatures were all gathered at a campaign event that he attended, and that he observed them being collected by other Petition circulators. Ms. Finkelstein countered that the undated signatures should be rejected pursuant to the Board's regulation that requires a date for each signature.

### **Discussion**

The minimum requirement to obtain ballot access for the office of Ward 2 Member of the Council is 250 signatures of District voters who are duly registered Democrats in Ward 2. The Petition contained a total of 303 signatures. Ms. Finkelstein challenged 283 of those signatures, and was successful with respect to 50 of those challenges. Due to the aforementioned missteps in the processing of the challenge, the Registrar examined the unchallenged petition sheet and found that 17 of the 20 signatures on the sheet were valid. The Board upholds the Registrar's findings with respect to the challenged signatures as well as her review of the signatures on the supplemental petition sheet, and therefore concludes that the Petition contains 250 valid signatures.

The Board declines to credit Mr. Hernandez' testimony regarding the circumstances under which the three undated signatures on the petition were collected, because Mr. Hernandez did not present testimony from the circulators who procured the signatures despite being advised to do so during the prehearing conference. Accordingly, the challenges to the three undated signatures are upheld, and the number of valid Petition signatures stands at 250.

**Conclusion**

The Petition contains 250 valid signatures, which is the number required for ballot access. It is hereby:

**ORDERED** that candidate Daniel Hernandez is granted ballot access in the contest for the office of Ward 2 Member of the Council in the June 2, 2020 Primary Election.

Date: 4/6/2020

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", written over a horizontal line.

D. Michael Bennett  
Chairman