

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Henry LaGue,  
Complainant,

v.

Slate One DC,  
Respondent.

Administrative Hearing  
No. 14-001

Re: Challenge to the Nominating  
Petition of Slate One DC,  
Candidate Slate for At-Large Member of the  
District of Columbia Democratic  
State Committee

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on January 27, 2014 pursuant to a challenge filed by Henry LaGue (“Mr. LaGue”) to the nominating petition of Slate One DC, candidates for the offices of At-Large Members of the District of Columbia Democratic State Committee pursuant to D.C. CODE § 1-1001.08 (o)(1) (2012 repl.). Mr. LaGue appeared *pro se*, and Slate One DC was represented by one of its members, Mr. Lenwood Johnson (“Mr. Johnson”). Chairman Deborah K. Nichols presided over the hearing as a one-member panel pursuant to D.C. CODE § 1-1001.05(g).<sup>1</sup>

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<sup>1</sup> D.C. CODE § 1-1001.05(g) (2012 repl.) states in relevant part:

[T]he Board may hear any case brought before it under this subchapter [ ] by 1 member panels. An appeal from a decision of any such 1 member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party.

## Background

On January 2, 2014, Slate One DC submitted a nominating petition with a total of 528 signatures to appear on the ballot as candidates in the April 1, 2014 Primary Election for the offices of At-Large Members of the DC Democratic State Committee. On January 4, 2014 the petition was posted for inspection, pursuant to D.C. CODE §1-1001.08(o)(1) (2012 repl.), for a 10-day challenge period.<sup>2</sup>

On January 13, 2014, Mr. LaGue filed a challenge to the petition in which he challenged 153 signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations.

A pre-hearing conference concerning this matter was scheduled for Friday, January 17, 2014 at the Board's offices. At the pre-hearing conference, the Registrar of Voters ("the Registrar") gave her preliminary report concerning the challenge. The Registrar's review of the challenges, which referenced pertinent sections of the D.C. Municipal Regulations, concluded that 143 of the challenges to Slate One DC's nominating petition were valid, which left the slate with 385 signatures. As the minimum number of signatures required for the offices sought is 500, pursuant to D.C. CODE §1-1001.08 (a)(1)(A) (2012 repl.), the Registrar concluded that Slate One DC failed to secure enough signatures on its nominating petition to achieve ballot access.

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<sup>2</sup> D.C. CODE § 1-1001.08(o)(1) (2012 repl.) states in relevant part:

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.

## Analysis

Pursuant to 3 D.C.M.R. §424.1, “[t]he party who asserts the claim bears the affirmative duty of establishing the truth of the assertion.” Therefore, Mr. Johnson had to successfully challenge the Registrar’s preliminary determination with respect to at least 115 signatures in order to prevail against the challenge to his slate. Mr. Johnson raised two issues before the Board: 1) he asserted that a petition sheet that was challenged on the basis of an altered circulator affidavit was in fact circulated by him, and 2) he took issue with Mr. LaGue lodging challenges based upon signatories not being registered in a particular ward when the offices sought were at-large. The Board considered each of Mr. Johnson’s claims and, for the reasons discussed below, decided to uphold the Registrar’s preliminary determination and deny ballot access to Slate One DC.

Mr. Johnson took issue with the Registrar’s preliminary determination to disallow the twenty signatures on page three of Slate One DC’s nominating petition. The circulator affidavit on that page was clearly altered; the name in the space allotted for the circulator’s name had been crossed out, and Mr. Johnson’s name was written in its place. Mr. Johnson asserted that the alteration was proper because he, in fact, actually circulated the petition page. Regarding the circumstances surrounding the alteration, Mr. Johnson testified that the initial circulator signatory mistakenly began to complete the circulator affidavit on the petition sheet, but Mr. Johnson caught the error and corrected the mistake by making the alteration at issue. The Board credited Mr. Johnson’s testimony, and gave him credit for the six signatures on the page for which challenges had not been filed and upheld. This increased Slate One DC’s valid signature total to 391 signatures.

Mr. Johnson also took issue with the Registrar's determination to accept challenges that were made to signatures on the nominating petition by citing 3 D.C.M.R. § 1607.1(m),<sup>3</sup> which provides that signatures on a nominating petition will be rejected if "[t]he 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." Mr. Johnson reasoned that, because the offices sought were at-large, any District voter could sign the petition; thus, a challenge based on a signatory not being registered in a particular ward should not be accepted.

It is indisputable that petition signatories must be registered voters. *See* 3 D.C.M.R. § 1703.2 (providing that in order "[t]o obtain ballot access, a candidate's petition for the office of member or officer of a local party committee elected at-large shall contain a total of at least one percent (1%) or five hundred (500) signatures of persons who are *duly registered* in the same political party as the candidate, whichever is less.")(emphasis added)]. It is also indisputable that 103 out of the 106 signatures challenged on the basis of 3 D.C.M.R. § 1607.1(m) were also challenged on the basis of not being registered District voters generally without citation to a specific regulation. Notwithstanding the fact that Mr. LaGue did not reference the proper provision when levying his challenge, he did draw the Board's attention to defects in the signatures in question. Having been made aware of these defects, the Board may not turn a blind eye. Pursuant to 3 D.C.M.R. § 1706.4:

[i]n the event Board staff discovers a fatal defect either on the face of a petition or pursuant to a record search concerning a specific allegation or

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<sup>3</sup> Although the chapter provision that pertains to officials of local committees of political parties and national committee persons is chapter 17, Mr. LaGue cited the concordant provision in chapter 16 that pertains to other elected offices.

challenge, the Board may, on its own motion, declare any signature(s) invalid, notwithstanding the defect was not alleged or challenged[.]

Accordingly, the Board is justified in rejecting signatures that Mr. LaGue challenged pursuant to 3 D.C.M.R § 1703.2. Mr. LaGue's formal error is waived because Slate One DC was on notice that particular signatories were either registered at a different address, or not registered at all. Mr. Johnson presented no evidence that refuted the Registrar's findings with respect to not securing enough signatures for ballot access.

In conclusion, the Board finds that the Slate One DC nominating petition contains 391 actual or presumptively valid signatures. Thus, it does not contain the requisite 500 signatures of qualified electors who are in the same political party as the candidates pursuant to D.C. CODE § 1-1001.08 (a)(1)(A).

Accordingly, it is hereby

**ORDERED** that Slate One DC be **DENIED ballot access** in the April 1, 2014 Primary Election for the offices of At-Large Members of the District of Columbia Democratic State Committee.

January 31, 2014



Deborah K. Nichols, Esq.  
Chairman  
Board of Elections

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing order was sent electronically to  
Messrs. Henry LaGue and Lenwood Johnson on this 31 day of January 2014.



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**RUDOLPH McGANN**