

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:)	
)	Administrative Order
Philip Newland,)	No. 2023-006
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”) at a special meeting on Wednesday, February 8, 2023, and involved an appeal from an adverse determination of eligibility regarding Philip Newland, candidate for the office of Advisory Neighborhood Commissioner for Single Member District (“SMD”) 1E05. Board Chair Gary Thompson and Member Karyn Greenfield presided over the hearing on this matter. The candidate appeared at that hearing *pro se*.

BACKGROUND

In the 2022 General Election, no D.C. voter sought to have their name placed on the ballot in the contest for the office of Advisory Neighborhood Commissioner SMD 1E05. Although forty-four (44) write-in votes were cast in the SMD 1E05 contest,¹ no person who received a write-in vote perfected their eligibility for office by filing an affirmation of write-in candidacy on or before the applicable November 14, 2022 deadline.² Accordingly, when the Board certified the results of

¹ See https://electionresults.dcboe.org/election_results/2022-General-Election.

² See D.C. Code § 1-1001.08(r)(3) and 3 DCMR § 602.

the 2022 General Election on November 30, 2022, it declared “No Winner” in the SMD 1E05 contest, which resulted in a vacancy in the corresponding office.³

On January 6, 2023, the Board posted notice in the D.C. Register of the vacancy in the office of Advisory Neighborhood Commissioner for SMD 1E05.⁴ The notice advised prospective candidates on how to obtain nominating petitions and the period for circulating (*i.e.*, January 9 to 30, 2023) and for challenging nominating petitions for the vacant seat.

On January 18, 2023, Mr. Newland picked up nominating petition forms for the SMD 1E05 Advisory Neighborhood Commissioner position and related materials. These materials included a document titled “Circulating and Filing Nominating Petitions” that advised 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 that circulators should “[m]ake sure that the Circulator’s Affidavit on each petition sheet is completed correctly and signed.” Before leaving the Board’s offices, Mr. Newland certified in writing that he had received these instructions.

Mr. Newland timely filed a nominating petition (“Petition”) in support of his candidacy. The Petition contained three (3) sheets and, on its face, twenty-six (26) signatures; one signature above the twenty-five (25) required for Advisory Neighborhood Commissioner seats.⁵ The circulator affidavit (by which an attestation is made as to the genuine character of the signatures)

³ D.C. Code § 1-1001.10(b)(1).

⁴ D.C. Code § 1-309.06(d)(2). See 70 D.C. Reg. 112 (issued January 6, 2023) for notice of this and several other vacancies.

⁵ D.C. Code § 1-309.05(b)(1)(B).

on each Petition sheet was, however, incomplete in that it omitted the date of circulator's attestation.

By letter dated February 2, 2023, the Board's Registrar of Voters ("Registrar") notified Mr. Newland in writing of her preliminary determination that he did not meet the qualification requirements for the SMD 1E05 vacancy. The letter set forth the authority for the Registrar's adverse determination, including a Board regulation that provides that no signature on a sheet bearing an incomplete circulator affidavit shall be counted toward the signature requirement of a petition.⁶

On February 3, 2023, Mr. Newland filed a written appeal of the Registrar's preliminary adverse determination.

On February 6, 2023, Mr. Newland was notified in writing that the Board would hear his appeal at a special meeting convened on February 8, 2023. At that hearing, the Board's Registrar of Voters was present and she explained that, because the circulator affidavit on each of Mr. Newland's three (3) Petition sheets contained no date and was therefore incomplete, she could not count any of his signatures toward the twenty-five (25) signature requirement.

Mr. Newland appeared by remote video conferencing and was placed under oath. He testified that he was the circulator for all three Petition sheets. He explained that he gathered the signatures during the relevant time and that he personally witnessed each signature. Mr. Newland acknowledged that he neglected to date the circulator affidavits at the bottom of each sheet and he apologized to the Board for the oversight. As in his written submission, Mr. Newland noted that he was a first-time candidate and indicated that he desired a waiver of the circulator date error and preliminary acceptance of the twenty-six (26) signatures on his Petition.

⁶ 3 DCMR § 1605.4.

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 must be signed by at least twenty-five (25) registered District voters who reside in the respective SMD. D.C. Official Code § 1-309.0(b). Pertinent Board regulations at 3 DCMR, however, provide as follows:

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). We have previously stressed the importance of the statute's circulator requirement to the integrity of the process and the validity of petitions. *See e.g., In Re: Earle Douglass, Candidate*, Administrative Order #22-017, p. 4 (issued Aug. 19, 2022) (citing *Williams v. District of Columbia Bd. of Elections and Ethics*, 804 A.2d 316, 318-19 (D.C. 2002)). Nevertheless, where the integrity of a signature is bolstered by extrinsic evidence, we have excused minor defects in the date of the circulator affidavit. *Id.* and cases cited therein. In that regard, we have noted that the statute does not specify that the circulator's signature must be dated. *Id.*

Here, Mr. Newland has testified under oath to witnessing, in person and within the period for petition circulation, the Petition's signatures. Based on the record before us, we find that there is no substantial evidence that Mr. Newland, as circulator of his Petition, acted in a manner inconsistent with the circulator's oath and that the evidence presented at the hearing on this matter

sufficed to cure the defect of the omitted date for the circulator's signature. We therefore waive as formal error the omission of the dates upon which Mr. Newland signed each circulator affidavit.

CONCLUSION

For the reasons set forth in this opinion, we conclude that the signatures on each Petition sheet qualify to be counted toward the Petition's numerical sufficiency in accordance with 3 D.C.M.R. § 1605.3 and that the Petition will be found preliminarily to have twenty-six (26) signatures.⁷

Accordingly, it is therefore hereby

ORDERED that the Petition submitted by Philip Newland for the Office of Advisory Neighborhood Commissioner, SMD 1E05, be found preliminarily sufficient.

The Board issues this written order today, which is consistent with our oral ruling which was announced at the hearing on February 8, 2023.

Dated: February 9, 2023



Gary Thompson
Chair, Board of Elections

⁷ At the time of the Board's determination, the period within which voters could file challenges to Mr. Newland's Petition had not yet closed (such challenges were due by 4:45 p.m. that day). *See* D.C. Official Code § 1-1001.08(o). Accordingly, our order requiring preliminary Petition acceptance was announced without prejudice to any timely and otherwise valid challenge.