

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Joe Bishop-Henchman,)	
Challenger)	Administrative
)	Order #24-025
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for
)	At-large Member of the
Kevin Rapp,)	Council of the District of
Candidate.)	Columbia

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on September 6, 2024. It is a challenge to the nominating petition submitted by Kevin Rapp (“the Candidate”) in support of his candidacy for the office of At-large Member of the Council in the November 5, 2024 General Election (“the General Election”). The challenge was filed by Joe Bishop-Henchman (“the Challenger”), a registered voter in the District of Columbia, pursuant to D.C. Official Code § 1-1001.08(o)(1). Chairman Gary Thompson and Board members Karyn Greenfield and J.C. Boggs presided over the hearing. Both parties appeared *pro se*.

Background

On June 14, 2024, the Candidate picked up a ballot access package from the Board’s offices that included, among other things, nominating petition forms to be used to collect the signatures of at least 3,000 active, duly registered voters in the District of Columbia. Also included in the ballot access package was a document entitled “Circulating and Filing Nominating Petitions” (“the Guidelines”). The Guidelines set forth, among other things, the criteria each petition signature

must meet in order to be deemed valid in accordance with pertinent rules and regulations. Specifically, the Guidelines instruct that, in order for a signature on a nominating petition to be valid:

- The signer must be a duly registered voter in the District of Columbia; (However, if an address on a petition is different than the address which appears in the Board's records, it shall be deemed valid if the signer's current address is within the electoral jurisdiction from which the candidate seeks nomination and the signer files a change of address form with the Board within ten (10) days after the date the candidate receives notice that a challenge has been filed to the nominating petition.)
- The signer must be designated as “active” in the voter roll at the time the petition is signed;
- The signature must not be a duplicate of a valid signature appearing elsewhere on the petition;
- The signature must be dated;
- The signature must be accompanied by the signer’s address; (a P.O. Box number is not acceptable.)
- The signature must include the printed name of the signer if the signature is not sufficiently legible for identification;
- The circulator of the petition sheet must have been a qualified petition circulator at the time the petition was signed;
- The circulator of the petition must complete all required information in the circulator’s affidavit;
- The signature must not be a forgery; (Note: A voter who is unable to sign their name may make their mark in the space for the signature. Such mark will be counted as a valid signature if a completed Signature Attestation Form is inserted directly behind the page in the petition that bears the mark. (The Signature Attestation Form is an affidavit indicating that the witness explained the content of the petition to the signer and witnessed their mark.)
- The signer must have been a registered voter in the ward or single-member district from which the candidate seeks nomination at the time the petition was signed; or
- (For primary elections) The signer must have been registered to vote in the same party as the candidate at the time the petition was signed.
- For the offices of President, Delegate to the US House of Representatives, US Representative, and US Senator, the signature is valid if the signer is a US citizen. It explains that one of those requirements is that petitions signers must be registered voters.

The Guidelines also provide tips to candidates that are designed to ensure that they have

the best opportunity to achieve ballot access. The following are several tips outlined in the Guidelines:

- It is your responsibility to ensure that your petition is complete and contains the minimum number of valid signatures for ballot access before you file it with the Board. You can do this by: verifying each signature you collect against the voter list provided for your electoral jurisdiction; checking for any other defects as you collect signatures; and getting more signatures than the minimum requirement to offset errors.
- While not required, filing the minimum number of signatures prior to the filing deadline can be very helpful. This will give you time to correct any errors before the deadline. You can always file supplemental petition sheets until the deadline once you have made the initial filing with the minimum signature requirement.
- Before filing, make sure that each signer's address matches the address listed for that voter in the Board's records. If a signer's address on the petition is not the same as their address in the Board's records, but the voter still resides in the same electoral jurisdiction in which you are seeking office, the voter can complete and submit a change of address up until the 10th day after the candidate has received notice that a challenge has been filed to the nominating petition, if any.
- Make sure the Circulator's Affidavit on each petition sheet is completed correctly and signed. All the required fields should be filled out, only one circulator signature should be affixed to a single petition sheet, and the circulator's signature and date should not pre-date those of the registered voters who sign the petition sheets.

On August 7, 2024, the Candidate submitted a nominating petition to appear on the ballot as a candidate in the contest for the office of At-large Member of the Council of the District of Columbia in the General Election ("the Petition"). The minimum number of signatures required to obtain ballot access for this office is 3,000 signatures of duly registered District of Columbia voters.¹ The Petition contained 3,397 signatures. Pursuant to Title 3, District of Columbia Municipal Regulations (D.C.M.R.) § 1603.1, Marissa Corrente, the Board of Elections' Registrar of Voters ("the Registrar"), accepted 3,397 signatures for review.

¹ See D.C. Official Code § 1-1001.08(j)(1).

On August 10, 2024, the Petition was posted for public inspection for 10 days as required by law. On August 17, 2024, the Challenger, who is a registered voter in the District of Columbia, filed challenges to a total of 1,686 Petition signatures (“the Challenge”). Specifically, the signatures were challenged pursuant to Title 3 D.C.M.R. §§ 1603 and 1607.1 of the Board’s regulations on the following grounds:

- the signer is not a registered voter in DC (1603)
- 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 (1607.1(b))
- the signature is a duplicate of a valid signature (1607.1(c))
- the signature is not dated (1607.1(d))
- the petition does not include the address of the signer (1607.1(e))
- the petition does not include the name of the signer and the signature is not sufficiently legible for identification (1607.1(f))
- the circulator of the petition failed to complete all required information in the circulator’s affidavit (1607.1(h));
- the signature is not made by the person whose signature it purports to be (1607.1(i)); and
- the circulator did not or could not have personally witnessed the person sign the petition. (DC Official Code § 1-1001.08(b)(3)(B))

In a cover sheet accompanying the itemized petition challenge, the Challenger also identified alleged forgeries on sheets circulated by two specific circulators, Terrance Mitchell and Tommy Herbert. He noted that Mr. Mitchell circulated one sheet (I-159) containing suspected forgeries and Mr. Herbert circulated sixteen sheets (I-231, I-233 – 240, S2-50 – 56) containing alleged forgeries across four sheets (I-235, S2-52 – 54). He requested that all the signatures on every sheet circulated by Mr. Herbert be stricken entirely, referencing the Board’s decision in *Ragas v. Jain*, (Admin. Op. 24-008, April 5, 2024). He also requested further investigation into Circulator Herbert.

After receiving the Challenge, the Board’s Office of General Counsel (“OGC”) served notice of the Challenge on the Candidate on August 19, 2024. In that notice, OGC notified the

parties that a prehearing conference regarding the matter would be held on September 3, 2024 pursuant to title 3 D.C.M.R. § 415.1.

On August 21, 2024, ahead of the prehearing conference and prior to receiving the Registrar's report on her review of the Challenge, the Candidate emailed to Board staff lists of specific line-by-line challenge disputes, as well as a narrative of disputes with the Challenge and the challenge process. On August 29, 2024, the Candidate emailed another more expansive list and narrative along with a list of petition signers who stated that he called/followed-up with, after receiving notice of the Challenge, to complete change of address forms.

Registrar's Initial Preliminary Determination

On August 31, 2024, the Registrar provided her initial review of the Challenge to the parties. This review indicated that a total of 1,433 of the 1,686 signature challenges were valid and that the Petition therefore contained 1,964 presumptively valid signatures. Specifically, the Registrar found that 553 challenges were valid because the signer is not registered to vote; 173 were valid because the signer's voter registration was designated as inactive on the voter roll at the time the petition was signed inactive; 458 were valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed; four were valid because the signature was a duplicate of one already appearing on the petition; six were valid because the signature was not dated; 70 were valid because of an incomplete address; 141 were valid because neither the name of the signer nor the signature are sufficiently legible for identification; 26 were valid because the signature was not made by the person whose signature it purports to be; and two were valid because the circulator did not or could not have personally witnessed the person sign the petition.

On September 3, 2024, prior to the prehearing conference scheduled for that day, the Registrar provided an updated version of her review of the Challenge. This updated version reflected her research into the list of voters who the Candidate had indicated on August 29, 2024 may have submitted address updates. Through her research, the Registrar confirmed that one change of address form was timely submitted online. Accordingly, she amended her initial findings to reflect that the number of valid challenges now stood at 1,432, which meant that the Petition contained 1,965 presumptively valid signatures.²

September 3, 2024 Pre-Hearing Conference

At the prehearing conference, the parties were given the opportunity to respond to the Registrar's findings concerning the Challenge. The Candidate acknowledged that he did not collect a significant number of signatures in excess of the minimum amount required for ballot access and that he had made no effort to validate the signatures collected on the Petition to ensure that he was collecting a sufficient number of valid signatures while the Petition was being circulated. Regarding the alleged forgeries committed by Circulators Herbert and Mitchell, the Candidate indicated that Mr. Herbert had informed him that he did not forge any signatures on the petition, and that he was unable to reach Mr. Mitchell to ascertain whether he forged signatures on the Petition as he did not have contact information for him. Finally, the Candidate indicated that he would be submitting some questions after the prehearing conference that he wanted to put before the Board during the hearing that would be held in the matter.

For his part, the Challenger indicated that he accepted the Registrar's overall finding that the Petition was numerically insufficient, but that he had some disputes regarding specific findings

² Specifically, the number of challenges that were deemed valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed was lowered to 457 from 458.

that he would share after the prehearing conference. He also raised his concerns, outlined in the Challenge, about the alleged forgeries on the Petition.

On September 3, 2024, after the prehearing conference, the Candidate emailed the questions he had indicated he would submit to the Board. These questions generally concerned the Board's processes and procedures for reviewing petition challenges and the Challenger's motivation for filing the Challenge. The Challenger emailed: 1) a response to the Candidate's line-by-line disputes to the Challenge that the Candidate submitted on August 29, 2024, prior to the Registrar providing her findings report to the parties; and 2) a list of his disputes with respect to the Registrar's findings. Concerning the latter, the Challenger outlined eight specific disputes. The Registrar determined that three of the eight disputes amounted essentially to new challenges in that they had not been previously articulated in the Challenge, and were thus impermissible attempts to expand the scope of the challenge after the expiration of the challenge period. As a result, she did not review these three disputes. She did review the remaining five disputes which resulted in one finding being adjusted. As a result, on September 5, 2024, she issued an updated report that reflected that the number of valid challenges now stood at 1,433, which meant that the Petition contained 1,964 presumptively valid signatures.³

As the parties were not able to resolve the matter, the case was set for a Board hearing on September 6, 2024. The parties were duly notified of the hearing.

Prior to the hearing, and in response to the questions submitted by the Candidate on September 3, 2024, the General Counsel informed the Candidate that, notwithstanding his submission of general questions regarding the Board's processes, "the burden is on [the Candidate] to demonstrate ... that the Registrar's findings are invalid and that [the Petition] does, in fact,

³ Specifically, the number of challenges that were deemed valid because the signer was not registered to vote at the address listed on the petition at the time the petition was signed was raised to 458 from 457.

contain the requisite number of signatures.” He was further informed that he should be prepared at the hearing to “identify by page and line number the specific findings issued by the Registrar that [he was] disputing and the basis for the dispute.” The Candidate responded by saying that he “fully underst[ood] the responsibility that now falls on [him].”

September 6, 2024 Board Hearing

At the Board hearing, the Registrar presented her updated findings. The Candidate: 1) discussed his efforts to ensure that the Petition contained a sufficient number of valid signatures; 2) indicated that he disagreed with some of the Registrar’s findings; 3) stated that he had concerns regarding the Board’s – and the Challenger’s - processes for verifying whether petition signatures were valid; 4) questioned the level of “due diligence” used by both entities with respect to these processes; and 5) alleged that he had inadequate access to the resources available to the Board – and the Challenger - to verify petition signatures. He stated that, in light of his review of the Challenge, he was “certain” that there were “extensive errors” present in the petition challenge review process, and requested additional time to respond to review and respond to the Challenge to identify these alleged errors.

The Challenger expressed his agreement with the Registrar’s findings, stating that they were “thorough and correct.” He indicated that the Candidate had every opportunity during the petition circulation process to verify the signatures on the Petition and ascertain on a running basis the number of valid signatures being collected, seek curative change of address updates where necessary, and submit such changes of address prior to the statutory deadline for doing so. He further stated that the Candidate had far more time than he did as a Circulator to ascertain whether the signatures on the Petition were valid, that there were no resources available to him for purposes of assessing the validity of the Petition signatures that were not available to the Candidate, and

that he had no more access to resources to use for that purpose than did the Candidate. Finally, the Challenger reiterated his request that the Board strike all petition signatures collected by Circulator Herbert consistent with its decision in *Ragas v. Jain*, and requested that the Board take action appropriate to prosecute forgery-related violations of the election laws consistent with that taken against the errant circulator identified in *Ragas v. Jain*.

The Registrar stated that she had, on multiple occasions, requested that the Candidate inform her as to which of her specific findings he took issue with, but that the Candidate never did so.

After hearing from the Registrar and the parties, the Board Chair made a motion that the Candidate be denied ballot access on the grounds that the Petition was numerically insufficient. The motion was duly seconded and passed unanimously.

Discussion

The minimum number of signatures of required to obtain ballot access for this office is 3,000 signatures of duly registered District voters. The record here shows that the Challenger challenged 1,686 of the Petition's 3,397 signatures, and that the Registrar ultimately agreed with the Challenger with respect to 1,433 of the challenges. This meant that the Registrar determined that the Petition contained 1,964 presumptively valid signatures – 1,036 less than the minimum number required for ballot access.

Despite the showing of a significant shortfall, the Candidate nonetheless argues, not that the Petition *actually* contains enough valid signatures to merit ballot access, but that he should be granted more time to *ascertain* whether the Petition contains enough valid signatures to merit ballot access. The Board cannot grant this request. Moreover, the Candidate has not provided a

scintilla of evidence to demonstrate that the Registrar’s specific findings with respect to the Challenge should be discarded.

As the General Counsel indicated, because the Challenge was filed on August 17, 2024, the Board is statutorily obligated, pursuant to D.C. Official Code § 1-1001.08(o)(2)⁴, to determine the validity of the Petition by no later than September 6, 2024, the 20th day after the Challenge was filed and the date on which the hearing was held. In light of this mandate, we are simply unable to extend the timeframe for resolving this matter.

Nor are we inclined to do so in light of the evidence presented to justify such extraordinary action, or rather, the lack thereof. In response to the Registrar’s findings, the Candidate merely lodges generalized claims regarding the voter registry and the Board’s processes for verifying the validity of nominating petitions that have been challenged, but does not come close to demonstrating that either of these have resulted in erroneous findings by the Registrar with respect to the Petition.

The evidence suggests that the reason that the Petition lacks the requisite number of valid signatures is due not to a lack of “due diligence” on the part of the Board, but rather on the part of the Candidate himself. The Candidate admittedly did not undertake to validate the signatures he was collecting as they were being collected, despite the instruction provided in the Guidelines. The Candidate evidently did not ensure, during the circulation process, that each Petition signer’s address matched the address listed for that voter in the Board’s records prior to filing the Petition, despite the instruction provided in the Guidelines; doing so would have ensured that he had sufficient time to have voters for whom there was an address mismatch complete and timely submit

⁴ D.C. Official Code § 1-1001.08(o)(2) provides that, “[t]he Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than 20 days after the challenge has been filed.”

changes of address forms. The Candidate collected only 397 signatures above the minimum number required for ballot access, despite the instructions provided in the Guidelines.

The Candidate laments having a short timeframe within which to verify the validity of the signatures on the Petition. However, as the Challenger pointed out, the Candidate had more time than both the Board and the Challenger to complete this task. Once nominating petitions are posted, challengers have ten days to file challenges to petitions. Once challenges are filed, the Board has twenty days to determine the validity of the challenged petition. By contrast, primary and general election candidates have 54 days to circulate petitions, and can validate their petitions throughout that process. They also have an additional ten days after they receive notice of a challenge to file change of address forms that can be used to establish signers as duly registered voters and thereby cure their signatures, assuming the signatures are otherwise valid. The record before us indicates that the Candidate picked up his petitions on the first day that they were made available, and that he turned them in at the deadline for doing so. Therefore, he had the entire time available for circulation to validate the signatures on the Petition. However, as he acknowledged both at the prehearing conference and the Board hearing, he did not do so.

Given that the Board's duty with respect to the Challenge is to resolve the very specific question of whether the Petition contained the requisite number of signatures required for ballot access, *i.e.*, 3,000 valid signatures of active registered voters in the District of Columbia, the Candidate was instructed by the General Counsel that he should arrive at the hearing having "identif[ied] by page and line number the specific findings issued by the Registrar that [he was] disputing and the basis for the dispute" in order to demonstrate that the Petition had the requisite number of signatures for ballot access. When asked during the hearing whether he was prepared, at that time, to dispute with specificity any of the Registrar's findings as outlined in her report,

wherein she determined that the Petition was 1,036 signatures short of the minimum number required for ballot access, the Candidate did not indicate that he was prepared to so dispute, and he did not do so. As the Candidate did not identify any errors in the Registrar’s findings that would merit the Petition being credited with the additional 1,036 signatures that would be necessary for the Candidate to achieve ballot access, the Board sees no basis upon which to disregard the Registrar’s findings and determine that the Petition has enough valid signatures for ballot access.

Conclusion

Given that the Candidate did not produce evidence to rebut the Registrar’s findings with respect to at least 1,036 of the 1,433 challenges determined to be valid, which would have resulted in there being 3,000 presumptively valid signatures on the Petition, we cannot find that there are sufficient signatures for ballot access. It is therefore hereby:

ORDERED that the challenge to the nominating petition submitted by Mr. Rapp in support of his candidacy for the office of At-large Member of the Council in the 2024 General Election is hereby **UPHELD** and that Mr. Rapp is denied ballot access in the contest for that office.⁵ Accordingly, his name will not appear on the ballot.

The Board issues this written order today, which is consistent with our oral ruling rendered on September 6, 2024.

Date: September 8, 2024



Gary Thompson
Chairman
Board of Elections

⁵ In arriving at this decision, the Board did not take the step of rejecting all of the signatures on Petition sheets circulated by Circulator Herbert. However, the Board accepts the Registrar’s findings with respect to the signatures collected by Circulator Herbert and Circulator Mitchell, and reserves its right to take action with respect to any violation of the District’s election laws in connection with the Petition.