

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Sandra Seegars,
Complainant,

v.

Joshua Johnson,
Respondent.

Administrative Hearing
No. 13-007

Re: Challenge to the Nominating
Petition of Joshua Johnson,
Candidate for Advisory Neighborhood
Commissioner Single Member District 8E03

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter came before the District of Columbia Board of Elections (“the Board”) on April 22, 2013. It is a challenge to the nominating petition of Joshua Johnson (“Mr. Johnson”) for the office of Advisory Neighborhood Commissioner, Single Member District 8E03, (ANC 8E03) filed by Sandra Seegars (“Ms. Seegars”) pursuant to D.C. CODE § 1-1001.08 (o)(1) (2011). The Complainant appeared *pro se*; however, the Respondent did not appear—notwithstanding notice sent via electronic mail on Thursday April 18, 2013. Accordingly, the Board proceeded *ex parte* pursuant to 3 D.C.M.R. § 403.4.¹ Chairman Deborah K. Nichols presided over the hearing as a one member panel pursuant to D.C. CODE § 1-1001.05 (g).²

¹ If any person or party waives the right to be present at the hearing or fails to appear at the hearing, the Board may proceed *ex parte*, unless the Board extends the time of the hearing or unless their appearance is required by statute. 3 D.C.M.R. § 403.4.

² D.C. CODE § 1-1001.05(g) (2011) 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

BACKGROUND

Mr. Johnson submitted a Nominating Petition for the office of ANC 8E03 with fifty-three (53) signatures on March 25, 2013. The petition was posted for inspection on March 28, 2013 pursuant to D.C. CODE §1-1001.08(o)(1) (2011) for a full 10-day challenge period.³

Ms. Seegars filed a challenge to the petition on April 1, 2013, in which she challenged fifty-two (52) of the fifty-three (53) signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Specifically, Ms. Seegars challenged signatures on the following grounds: 1) pursuant to 3 D.C.M.R. §1307.2, Ms. Seegars alleged that the majority of the signatures on the petition were not made by the person whose signature it purports to be; 2) pursuant to 3 D.C.M.R. §1307.4(f), she alleged the petition did not include the printed or typed address of the signer; 3) pursuant to 3 D.C.M.R. §1307.4(g), she further alleged the petition did not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; and 4), she alleged two (2) sets of duplicate signatures.

A pre-hearing on this matter was scheduled for Monday, April 8, 2013, at 10:00 a.m. at the Board's offices. Mr. Johnson was not in attendance and failed to send a representative—notwithstanding receiving notice sent by electronic mail on April 2, 2013

the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party.

³ D.C. CODE § 1-1001.08(o)(1) (2011) 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.

pursuant to an executed electronic service consent form. At the pre-hearing, the Registrar of Voters (“Registrar”) gave her preliminary report concerning the challenge. The Registrar’s review of the challenges referencing the Municipal Regulations concluded that fifty (50) of the challenges to Mr. Johnson’s nominating petition were valid—leaving the candidate with three (3) valid signatures. Pursuant to D.C. CODE §1-309.05(b)(1)(B) (2011), the minimum required signatures for the office of ANC 8E03 is twenty-five (25). Accordingly, the Registrar concluded that the Candidate did not secure enough signatures on his nominating petition for ballot access.

All parties were notified by electronic mail that a hearing before the Board was scheduled for Monday, April 22, 2013 at 10:30 a.m. Again, Mr. Johnson was not in attendance and failed to send a representative—notwithstanding receiving notice sent by electronic mail. Having concluded that Mr. Johnson received adequate notice of the proceedings, the Board proceeded ex parte pursuant to 3 DCMR §403.4.

DISCUSSION

The United States Supreme Court has long recognized that states and localities have a responsibility to protect the integrity and reliability of the election process, and has generally accorded them latitude in establishing rules and procedures toward that end. “[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order is to accompany the democratic processes.” *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 187 (1999). Accordingly, the District of Columbia has established a nominating petition process that requires prospective candidates to demonstrate a modicum of support from a specific number of qualified electors as a condition precedent to ballot access. In the instant case, the

minimum requirement of signatures for the office of Advisory Neighborhood Commissioner is twenty-five (25), pursuant to D.C. CODE §1-309.05(b)(1)(B) (2011). Of the 53 signatures submitted by prospective candidate Joshua Johnson—who also served as the sole circulator of the petition—only 3 survived the challenge process. What’s worse, of the 50 purportedly valid signatures, a substantial number appear to be forgeries, written in the same hand, and clearly not correspondent with the voter signatures of the same name and address on the Voting Registry. Such gross irregularities have not been accounted for by prospective candidate Joshua Johnson who, as petition circulator under D.C. law, has sworn under oath (under penalty of perjury) that he or she has:

- (A) Personally circulated the petition;
- (B) Personally witnessed each person sign the petition, and
- (C) Inquired from each signer whether he or she is a registered voter ... and, where applicable, whether the signer is registered in and a resident of the ward from which the candidate seeks election. (D.C. Mun. Regs. tit. 3 § 1607.5 (2007).5)

However, since Mr. Johnson chose not to appear at either the preliminary or Board hearing, and submitted no rebuttal testimony that would contradict the Registrar’s preliminary review of the challenged signatures, the Board accepts the Registrar’s review of the challenges and upon that basis finds that Mr. Johnson does not have the requisite number of signatures for ballot access.

In *Williams v. District of Columbia Board of Elections and Ethics* 804 A.2d 316 (D.C. App. 2002) (“*Williams*”), the District of Columbia Court of Appeals addressed the importance of petition circulator affidavits. The Court noted that:

Defects either in circulation or signatures deal with matters of form and procedure, but the filing of a false affidavit by a circulator is a much more serious matter involving more than a technicality. The legislature has sought to protect the process by providing for some safeguards in the way nomination signatures are obtained and verified. Fraud in the certification destroys the safeguards unless there are strong sanctions for such conduct such as voiding of petitions with false certifications.

Williams at 319.


The significance of the circulator affidavit is heightened in the context of nominating petitions. When parties file petitions in support of initiative, referendum, or recall measures, the Board examines each petition sheet line by line to ascertain if the signer is a registered voter, and performs a random statistical sampling of the signatures to determine if the signatures are valid. Dissimilarly, the Board accepts signatures on nominating petitions as bona fide pursuant to D.C. CODE § 1-1001.08(o)(1) and presumes them to be valid because the circulator has attested that he or she has "inquired from each signer whether he or she is a registered voter" and "personally witnessed each person sign." The nominating petition circulator, then, "performs functionally the same role the Board itself fills in verifying signatures on an initiative or referendum petition." *Williams* at 319. In essence, the circulator becomes a citizen-officer in the nominating process.

In view of the evidence presented, the Board finds that the challenge is sufficient to remove the candidate's name from consideration to fill the vacant ANC seat. Therefore, the Board upholds the challenge as specified herein.

Furthermore, the Board reserves the right to take any further actions it deems necessary and proper in light of the apparently egregious and unrebutted actions of Joshua Johnson to gain ballot access.


ORDERED that candidate Joshua Johnson is denied ballot access for the office
of ANC-SMD 8E03.

May 7, 2013
Date


Ms. Deborah K. Nichols
Chairman,
Board of Elections

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was sent electronically to
Sandra Seegars and Joshua Johnson on this day, May 7, 2013.



RUDOLPH MCGANN