

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DC PUBLIC TRUST
2630 Adams Mill Road, NW #208
Washington DC 20009

BRYAN WEAVER
1812 Calvert St., NW, Unit D
Washington, DC 20009

Plaintiffs,

v.

DISTRICT OF COLUMBIA BOARD OF
ELECTIONS
441 4th Street, NW, Suite 250 North
Washington, DC 20001

Defendant.

Case No. _____

**EMERGENCY APPLICATION FOR WRIT IN THE NATURE OF MANDAMUS AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
(Expedited Review Requested Pursuant to D.C. Code. § 1-1001.16(l))

Plaintiffs DC Public Trust and Bryan Weaver, by and through their attorneys, file this Emergency Application for Writ in the nature of Mandamus and Complaint for Declaratory and Injunctive Relief against the District of Columbia Board of Elections (the “Board”). In support thereof, Plaintiffs allege the following:

I. NATURE OF THE ACTION

1. This is an action for a writ in the nature of Mandamus to require the District of Columbia Board of Elections (the “Board”) to accept a Petition to place Initiative Measure #70, the Prohibition on Corporate Contributions Initiative of 2012, on the November 2012 general election ballot (hereinafter the “Petition”), and for declaratory and injunctive relief to reverse

and set aside the Board's determination that the Petition was numerically insufficient and to remand the Petition to the Board. The Board refused to accept the Petition on the ground that it failed to meet the requirements as to number and ward distribution of the signatures required to qualify an initiative measure for the ballot.

2. As set forth below, Board erred in rejecting the Petition for failure to submit the required number of signatures to place Initiative Measure #70 on the November 6, 2012 general election ballot. *First*, the Board miscounted the number of valid and verified signatures on the Petition—by the Board's own codes and notations used to track the verification, there are enough valid and verified signatures for the Petition to meet the requirements of the law. The Board determined that the Plaintiffs submitted 21,572 valid signatures, which is 1,726 signatures short of the 23,298 signatures required. Upon a review of the Petition by the Plaintiffs, using the Board's own notations, a total of 24,645 signatures were actually verified and validated by the Board, more than enough to satisfy the requirements of the law to secure ballot access. *Second*, the Board mistakenly rejected 1,036 valid signatures of registered qualified electors. Among those, the Board invalidated 81 signatures on the grounds that the signer could not be located in the Board's voter registration records or the address provided on the Petition did not match the address listed in the records, even though Plaintiffs were able to match those signers to the Board's records. *Third*, the Board invalidated signatures that had been collected at polling locations on Election Day moments after the individual had voted. *Fourth*, the Board rejected signatures for a host of other reasons, including 59 signatures on the grounds that the name printed by the signer was not an exact match to the voter registration records, a requirement that is not contained in the applicable statute or regulations. The Board also invalidated numerous signatures for no discernible reason—an

X was marked next to many of these signatures without any indication of the reason for rejection. *Finally*, the Board invalidated 1,590 signatures as duplicates, without providing a list of those signers to ensure that only one, but not both, of the signatures were rejected. The actual number of valid signatures meets the requirements of the law and surpasses the threshold number of signatures required to place Initiative Measure #70 on the November ballot.

3. Initiative Measure #70 will prohibit corporations, limited liability companies and partnerships from making contributions to candidates for political office in the District of Columbia, as well as exploratory committees, legal defense committees, transition committees, inaugural committees, or constituent-service programs.
4. If Initiative Measure #70 qualifies for the November 2012 general election ballot, there is a strong public interest in allowing the voters of the District of Columbia to express their opinion on an issue of importance.
5. By law, the Plaintiffs were permitted 180 days during which to collect the requisite number of signatures. In order to put Initiative Measure #70 before the District of Columbia voters during the November 2012 general election, the Plaintiffs were required to turn the Petition in to the Board by July 9, 2012. On information and belief, if the Petition is rejected, the Plaintiffs would be required to collect the requisite number of signatures on a new petition prior to September 9, 2012 (the expiration of the original 180-day deadline) in order to qualify Initiative Measure #70 for the November 2012 general election ballot.
6. Plaintiffs bring this action in accordance with D.C. CODE § 1-1001.16(l) seeking: (1) a judgment declaring that the Petition meets the requirement for signatures, both as to number

and as to ward distribution, and (2) an order requiring the Board to accept the Petition as of the date of submission for filing.

II. JURISDICTION AND VENUE

7. Jurisdiction of this Court is founded on D.C. CODE § 11-921(a)(6).
8. The Court has subject matter jurisdiction in this matter pursuant to D.C. CODE §§ 11-921(a)(6) and 1-1001.16(l).
9. The Court has personal jurisdiction over Defendants because the Defendant is an agency of the District of Columbia government with its principal office located in the District of Columbia.
10. Venue is proper in the District of Columbia because action relates to Defendants' activities within the District of Columbia.

III. PARTIES

11. DC Public Trust is a District of Columbia political committee organized for the purpose of promoting an initiative, as defined in D.C. CODE § 1-1161.01(44)(C).
12. Plaintiff Bryan Weaver is a registered qualified elector who serves as the proposer of the initiative measure pursuant to D.C. CODE § 1-1001.16(a)(1).
13. Defendant District of Columbia Board of Elections is the agency mandated by District of Columbia law to administer the city election laws. The Board is required by D.C. CODE §§ 1-1001.05 and 1-1001.16 to determine the sufficiency of a petition, to verify and count the validated signatures contained in a petition, to determine whether the petition has satisfied all requirements established by law and, upon such determination, certify that a petition has qualified a law to be placed on the ballot.

IV. FACTS GIVING RISE TO CAUSE OF ACTION

14. District of Columbia law provides that, in order for a citizen to place an initiative before the electors of the District, the citizen (called a “proposer”) must circulate a petition, conforming to statutory requirements, and must collect the requisite number of signatures from qualified registered electors in order to place the initiative on an election ballot.

15. The specific requirements for such petitions are as follows:

In order for any initiative or referendum measure to qualify for the ballot for consideration by the electors of the District of Columbia, the proposer of such an initiative or referendum measure shall secure the valid signatures of registered qualified electors upon the initiative or referendum measure equal in number to 5 percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include 5 percent of the registered electors in each of 5 or more of the 8 wards. The number of registered electors which is used for computing these requirements shall be consistent with the latest official count of registered electors made by the Board 30 days prior to the initial submission to the Board of the initiative or referendum measure, pursuant to subsection (a) of this section.

D.C. CODE § 1-1001.16(i).

16. Based on the voter registration statistics as of May 31, 2012, the most recent statistics available at the time the Board reviewed the Petition, the number of valid signatures required on a petition submitted to the Board to propose a law to the voters of the District is **23,298** signatures from qualified registered electors, in a form and meeting the requirements of D.C. CODE § 1-1001.16(i) and of the regulations issued by the Board.

17. Of that required number, signatures of 5% of the registered qualified electors of five out of the eight city Wards must be submitted, based on the total number of registered qualified electors in each Ward. Based on the voter registration statistics as of May 31, 2012, the threshold for the 5% in each Ward varied from approximately 2,800 and 3,700 signatures per Ward.

18. On May 31, 2011, the Plaintiffs submitted to the Board a total of 30,359 signatures on a petition to place Initiative Measure #70 on the November 2012 general election ballot. Out of that number, the Board certified a total of 21,572 signatures as valid, which is 1,726 signatures short of the minimum number required. The Board also determined that the Petition did not meet the 5% requirement in four Wards, thus failing to contain signatures from 5% of the city's qualified electors in a minimum of five Wards.
19. On August 8, 2012, the Board convened for a meeting and decided to reject the Petition as numerically insufficient.

Deficiencies in the Board's Review

20. Plaintiffs requested copies of the petition pages submitted following the Board's August 8th meeting and a copy was made available immediately.
21. Plaintiffs have reviewed the petition pages twice and compared the signature lines against the Board's voter registration records. Plaintiffs have identified numerous deficiencies in the Board's review process, as well as deficiencies as to the number of signatures and the reasons for rejection.
22. The Board used several codes to track the validation process, which were provided to the Plaintiffs during their review. The codes and their meanings included the following:
- i. ✓ (check mark) – valid and verified signer
 - ii. OK – valid and verified signer
 - iii. NR – not registered
 - iv. A – the signer's address did not match the address in the Board's voter registration records.
 - v. I – illegible

vi. Dup – duplicate

vii. X – not a valid registered voter (no specific reason provided)

23. Many signature lines have two codes printed next to them, such as NR and OK, or A and √.

The OK and the √ symbol generally appear directly beneath the NR or A codes. The Plaintiffs understand this particular coding to mean that a deficiency was found with a particular signature the first time the signature was reviewed, but that on the second review, the Board was able to validate the signature and either noted OK or placed a √ symbol by the name.

24. Plaintiffs confirmed via email with Karen F. Brooks, Registrar of Voters, that the OK notation and the √ symbol both indicate a valid and verified signer. She also confirmed that the presence of two codes indicates the result during two separate rounds of the Board's review.

25. The Board's codes are also confusing and do not provide any clarity for the reason why a particular signature was rejected. The Board's official Petition Verification Report listed separate categories for "Address/Mismatch Inactive" and "Voter Status Inactive." Another set of categories includes "Not Registered" and "Not Eligible." It is not clear why a voter would be placed in the Not Registered category, as opposed to the Not Eligible category--presumably, if a person is not registered, then that person is also not eligible to sign the Petition. Based on these codes, it is impossible to determine from the Verification Report whether the Board had any standardized review process, demonstrating that the entire petition review process is materially flawed.

Incorrect Determination of Number of Signatures

26. Based on the Plaintiffs' review, to a reasonable certainty, the Board committed an egregious error in counting the number of valid and verified signatures on the Petition, undercounting thousands of valid signatures.
27. A straightforward count of the OK codes and the ✓ symbols add up to 24,645 valid signatures, although the Board reported that it counted only 21,572 valid signatures. 24,645 valid signatures exceeds the minimum threshold of signatures required for ballot access.
28. The Petition also meets the 5% signature requirement in six out of the eight city Wards, contrary to the Board's determination—following the Board's own coding, the Plaintiffs counted 2,362 validated signatures in Ward 2 (1 more than the 5% threshold), and 3,268 validated signatures in Ward 5 (174 more than the 5% threshold). The Board previously determined that the Petition satisfied the 5% signature requirement in Wards 1, 3, 4 and 6.
29. The Board also rejected 59 signatures for no discernible reason. The Board's official Petition Verification Report stated that the Plaintiffs submitted 30,359 signatures and, of that total, 21,572 signatures were valid. Thus, simple arithmetic shows that 8,787 signatures were rejected by the Board. The Petition Verification Report set forth the reasons for rejection of the signatures and the number of signatures rejected in each category—yet, when these totals are added together, only 8,728 signatures appear to have been rejected for a stated reason, a difference of 59 signatures.

Individuals Who Signed the Petition At Polling Locations on Election Day

30. The Board mistakenly rejected numerous signatures that were gathered at polling locations on April 3, 2012 and May 15, 2012, which dates were Election Day in the District—the city-wide Presidential primary was held on April 3, and a special election for the Ward 5 Member

of the City Council was held on May 15. The Plaintiffs did not collect signatures from anyplace *other* than polling locations on those dates. Thus, the rejected signatures of individuals who signed the Petition on those dates belonged to individuals who had likely registered to vote or who had updated their address on record with the Board only moments before signing the Petition.

31. 3 D.C.M.R. § 516.3 provides that:

“On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her address in-person at the Board's office, a VRA, an early voting center, or on Election Day at the polling place serving the current residence pursuant to D.C. Official Code § 1-1001.07(i)(4)(A) (2011 Repl.). **Requests for change of address *other than those made in-person during the thirty (30) days that immediately precede and include the date of the election* shall be held and processed after the election.**

(Emphasis added)

32. D.C. regulations further provide that “The effective date of the change of address shall be the date that the change is considered to be received by the Board, unless the notice of change of address is held and processed after the election, as described in this section.” 3. D.C.M.R. § 516.4.

33. Individuals who go to a polling location on Election Day and register to vote or update their address are considered to be qualified registered electors *as of Election Day*, which is the date that the changes are considered received by the Board, and thus are also qualified signers of the Petition as of that date.

34. The Board rejected 64 valid signatures that were gathered on dates that elections were held (April 3 and May 15) from individuals who were exiting polling locations, having just voted, and possibly who had just registered to vote or who had updated their address information at the polling location.

35. The voter registration records for these signers indicate that the Board entered the initial voter registration or change of address information into its records several days to weeks *after* Election Day. Pursuant to D.C. regulations, however, the date that the individual provided that information to the Board, assuming it was on or before Election Day, is the operative date for that person to qualify as a qualified registered elector, not the date that Board enters that information into its system. Thus, the Plaintiffs have identified at least 64 signatures of individuals who were qualified registered electors as of Election Day, and thus qualified to sign the Petition, that were rejected by the Board in error.
36. The Board also rejected numerous additional signatures of individuals who signed the Petition at polling locations but have not yet entered their information into the voter registration records. Despite the Board's delay in doing so, these individuals were qualified registered electors as of Election Day.

Elector Names Varied from the Voter File

37. 3 D.C.M.R. § 1009.3 provides that: "The petition shall also contain the signer's printed or typed name, residence address at which the signer is registered to vote as shown on the Board's records, ward number, and the date signed."
38. 3 D.C.M.R. § 1009.10 further provides that: "A signature shall not be counted as valid in any of the following circumstances:
- a) The signer's voter registration was designated "inactive" on the voter roll pursuant to D.C. Official Code § 1-1001.07 (j)(2) (2011 Repl.) at the time the petition was signed;
 - b) The signer, according to the Board's records, was not registered to vote at the address listed on the petition at the time the petition was signed;
 - c) The signer is not a "duly registered voter;"
 - d) The signature is not dated;
 - e) The petition does not include the printed or typed address of the signer;

- f) The petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification;
 - g) The signer was also the circulator of the same petition sheet where the signature appears; or
 - h) The circulator of the petition sheet was not a resident of the District of Columbia and at least eighteen (18) years of age at the time the petition was signed.”
39. There is no requirement in the applicable regulations that a signer print her name exactly as it appears in the voter registration records, requiring, for example, that she print her name as “Deborah” instead of “Debbie” or “Deb.” There is also no requirement that a person may not sign her middle name instead of her first name, where both names are contained within the voter registration records. Pursuant to 3 D.C.M.R. § 1009.10, a variation in a name that is otherwise identifiable does not constitute grounds for invalidating that person’s signature.
40. The Board rejected numerous signatures of qualified electors who printed a commonly-used nickname or shortened version of their first name, and for which the remaining information provided by the signer was sufficient to validate that person’s registration.
41. The Board also invalidated signatures because the signer printed only one last name on the Petition but the last name contains two names or appears as hyphenated in the voter registration records. Some individuals, for example, have more than one surname or family names, which all appear in the Board’s voter registration records and some of which may be hyphenated. The individual, however, may use only one surname in everyday transactions, including how that person signs his or her signature.
42. The Board rejected a number signatures of qualified electors who failed to include all surnames and family names, where the remaining information provided by the signer was sufficient to validate that person’s registration.
43. The Board also rejected a number signatures of qualified electors who signed the Petition using married names, where they had not updated that information with the Board but the

remaining information provided by the signer was sufficient to validate that person's registration.

Registered Electors Mistakenly Rejected

44. The Board invalidated at least 869 signatures of qualified registered electors for various reasons, including: (1) that the address on the Petition did not match the address in the voter registration records, but the Plaintiff was able to identify the address as being consistent; and (2) that the signer's name was illegible, but for which the Plaintiffs were able to identify the signer.
45. Plaintiffs also identified numerous errors in the Board's own voter registration records, such as where a signer's first name is Brian, but the Board's records list "Brain," and the voter was rejected. Additional address errors were discovered as well, such as where a person lives at number 2448 on a particular street, but the Board's records contain number 2442.

Duplicate Names

46. 3 D.C.M.R. § 1009.5 requires that "If a person has signed an initiative or referendum petition more than once, only one (1) signature shall be counted for that person."
47. The Board invalidated 1,590 signatures that were apparently duplicate signatures. The Board coded the duplicate signers with the code "Dup."
48. The Board did not, however, provide the Petition sponsors with a list of which signers appeared twice on the Petition. There is no meaningful way to discern from the Board's review process whether 1,590 people actually signed the petition twice, or if 795 people (half that amount) signed twice and the Board threw out *both* signatures, contrary to 3 D.C.M.R. § 1009.5. Plaintiffs believe that numerous signatures were rejected in error for this reason.

V. CAUSES OF ACTION

COUNT I—WRIT IN THE NATURE OF MANDAMUS

49. Plaintiffs re-allege paragraphs 1 through 48 as if fully set forth herein.
50. Of the 30,359 signatures submitted to the Board, the Board undercounted thousands of signatures that had been verified by the Board itself.
51. The Petition submitted to the Board to place Initiative Measure #70 on the ballot contained 24,645 valid signatures, 1,347 more signatures than the 23,298 minimum number required to be submitted.
52. In the alternative, of the 30,359 signatures submitted to the Board, numerous signatures were rejected in error, as a matter of law and/or based on the clear evidence, for the reasons set forth in paragraphs 30 through 48, inclusive. If added to the 21,572 signatures that the Board certified in the Petition Verification Report, the number of additional valid signatures that were mistakenly rejected are in excess of the 23,298 minimum number required to be submitted.
53. For the reasons set forth in paragraphs 26 through 48, the Board's determination under D.C. CODE § 1-1001.16 and 3 D.C.M.R. § 1007 that the validated signatures contained in the petition are insufficient to satisfy the requirements established by law is not supported by substantial evidence and/or is premised upon erroneous conclusions of law.
54. Accordingly, the Board's determination under D.C. CODE § 1-1001.16 and 3 D.C.M.R. § 1007 that the validated signatures contained in the petition are insufficient to satisfy the requirements established by law should be reversed.

COUNT TWO—DECLARATORY JUDGMENT

55. Plaintiffs re-allege paragraphs 1 through 48 as if fully set forth herein.

56. Pursuant to D.C. Superior Court Rule 57 and 28 U.S.C. § 2201, this Court may issue a declaratory judgment.
57. Plaintiffs maintain that Petition submitted to the Board of Elections satisfies the requirements of the law regarding the minimum number of valid signatures required to place Initiative Measure #70 on the November 2012 general election ballot.
58. Defendant Board of Elections maintains that the Petition does not meet the statutory numerical requirements necessary to certify the measure to the ballot.
59. There exists an actual controversy of a justiciable nature between Plaintiffs and Defendant Board of Elections that is within the jurisdiction of this Court, involving the rights and liabilities of the parties.
60. A declaratory judgment by this Court will terminate this controversy.
61. Plaintiffs seek a declaratory judgment that the Petition contains the required number of valid signatures necessary to place Initiative Measure #70 on the November 2012 general election ballot.

COUNT THREE—INJUNCTION

62. Plaintiffs re-allege paragraphs 1 through 48 as though fully set forth herein.
63. Plaintiffs are entitled and have the right to have the Petition carefully and meticulously reviewed and each registered qualified elector's name verified.
64. The benefits to these Plaintiffs in obtaining an injunction requiring the Board to accept the Petition significantly outweigh any harm that the Defendant would incur were such an injunction granted. Defendants would not incur any harm of any kind if the Petition were accepted and then placed on the November 2012 general election ballot.

65. The Plaintiffs will, for the reasons set forth in paragraph 5, suffer irreparable injury unless injunctive relief is granted.
66. There is a substantial public interest in allowing Initiative Measure #70 to be placed on the November 2012 general election ballot, thereby enabling qualified electors of the District of Columbia to vote on a matter of extreme importance.

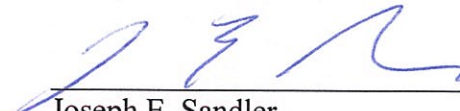
VI. PRAYER FOR RELIEF

WHEREFORE, as relief for the causes of action set forth in Counts I and II herein, Plaintiffs respectfully request that this Court:

- A. Pursuant to D.C. CODE § 1-1001.16(l), enter a judgment declaring that the Petition meets the requirement for signatures, both as to number and as to ward distribution;
- B. Enter an order requiring the Board to accept the Petition as of the date of submission for filing;
- C. Award attorneys' fees and costs of this action pursuant to D.C. CODE § 1-1001.16(l).
- D. Award such additional relief as this Court determines to be just and equitable.

Respectfully submitted,

Dated: August 20, 2012


Joseph E. Sandler
(D.C. Bar #255919)


Elizabeth F. Getman
(D.C. Bar # 984738)
SANDLER, REIFF, YOUNG & LAMB, P.C.
1025 Vermont Ave, NW
Suite 300
Washington, D.C. 20005
Tel: (202) 479-1111
Fax: (202) 479-1115
sandler@sandlerreiff.com
getman@sandlerreiff.com