

JEFFERSON COUNTY AUDITOR
JEFFERSON COUNTY, WASHINGTON

In Re Challenge to the Voter Registration of)
Timothy N. Thomas, Jr.) AUDITOR'S DECISION
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I. INTRODUCTION

THIS MATTER came before Donna M. Eldridge, the elected Auditor for Jefferson County, pursuant to RCW 29A.08.810 through RCW 29A.08.850 on May 21, 2012, upon the challenge to the voter registration of Timothy N. Thomas, Jr. (the "Challenged Voter"). The challenge was filed by Dan G. Youra (the "Challenger") and alleges that the Challenged Voter does not maintain a legal voting residence at the address shown on his voter registration records.

II. FINDINGS OF FACT

1. The voter registration challenge is made pursuant to RCW 29A.08.810 which authorize the initiation of a voter registration challenge by a registered voter. That statute states: *"Any registered voter may request that the registration of another voter be cancelled if he or she believes that the voter does not meet the requirements of Article VI, section 1 of the state Constitution...The challenger shall file with the county auditor a signed affidavit subject to the penalties of perjury, to the effect that to his or her personal knowledge and belief another registered voter...is otherwise not a qualified voter and the voter in question is not protected by the provisions of Article VI, section 4 of the Constitution of the state of Washington. The person filing the challenge must furnish the address at which the voter actually resides."*
2. The voter registration challenge must be based on the personal knowledge of the Challenger in accordance with RCW 29A.08.810(1).
3. The voter registration challenge at issue was initiated in writing and was filed on May 21, 2012. It was received by Chief Deputy Auditor Karen Cartmel.
4. The voter registration challenge consisted of three (3) pages, the first page of which is entitled "Challenge to Voter Registration" and is the form provided for such challenges by the WA Secretary of State, said form being mandated by RCW 29A.08.850.

5. In short, the voter registration challenge alleges the Challenged Voter does not reside at the location where he is registered to vote. While the Challenged Voter is registered to vote from 140 West Swaney, Port Hadlock, WA (Precinct 305), it is alleged he, in fact, resides at 2281 Hastings Avenue West, Port Townsend, WA (Precinct 706).
6. Also made part of the voter registration package provided to the Auditor by the Challenger was a picture of a mobile home with handwriting on it as follows "140 Swaney (sic) Irondale." The reasonable conclusion to draw from this handwriting is that the mobile home shown in the photograph is at 140 (West) Swaney in Irondale.
7. Also made part of the voter registration package provided to the Auditor by the Challenger was a "screen shot" capture of the Assessor's web page for the parcel known as 140 Swaney Street in Port Hadlock. The parcel number is 961-806-821.
8. This web page capture indicates that the owner of the parcel (and also the mobile home, presumably) at 140 Swaney is NOT the challenged voter.
9. The web page "screen shot" provided to the Auditor also contains a handwritten phone number, which turns out, upon investigation, to be the listed phone number of the title owner of the parcel.
10. At all times relevant to this Voter Registration Challenge, the burden of proof was on the Challenger to show the voter registration of the Challenged Voter is improper.
11. On May 24, 2012 I sent a letter via the U.S. Postal Service (Certified Mail/Return Receipt Requested) to the Challenged Voter with a carbon copy to the Challenger. That letter set up a hearing date of Monday, June 11, 2012 at 10 AM at the Court House.
12. The hearing before the Auditor took place at 10:00 AM at the Jefferson County Court House in Port Townsend WA.
13. I was present, as well as Karen Cartmel, Chief Deputy Auditor/Elections Coordinator, from my office. Also present was Chief Civil DPA David Alvarez.
14. The Challenger was present as was Ron Gregory, who provided a written Declaration on behalf of the Challenger.

15. The Challenged Voter was there with his spouse. Bob Sokol was also present on behalf of the Challenged Voter.
16. Reporters from the Daily News and THE LEADER were present as were other members of the public.
17. The hearing lasted approximately 90 minutes (including two recesses) and was digitally recorded.
18. All testimony provided during the hearing was given under oath.
19. The Challenger read into the record a seven (7) page Declaration, made under penalty of perjury, explaining and asserting why the Challenged Voter is not, according to him, not lawfully registered to vote at 140 W. Swaney in Irondale.
20. The Challenger's Declaration included interpretation of the applicable laws regarding elections and qualified voters and in that sense was as much a legal memorandum as it was a Declaration. Regardless of its mixed status, it is accepted by me as a memorialization of the Challenger's assertions and conclusions.
21. The Challenger's Declaration started with the applicable laws, found in Title 29A of the Revised Code of Washington or "RCW."
22. The Challenger's Declaration interpreted the portions of Title 29A that relate to registering to vote.
23. It went on to interpret the state laws regarding residency.
24. It described facts purportedly similar to these that lead to the disqualification in 2011 of a candidate for Port Townsend City Council.
25. The Declaration went on to discuss published Washington cases that discuss the intention of a voter.
26. The Declaration went on to state that the Challenged Voter was not a resident at a location with Jefferson County Commissioner District #2 on May 18, 2012 the date the Challenged Voter filed his Declaration of Candidacy.
27. The Declaration then went on to describe alleged "Infractions."

28. The first Infraction was an incomplete "change of address" form for the Challenged Voter.
29. The "change of address" form for the Challenged Voter was submitted by the Challenger as Exhibit 3 to me. It was completed by Chief Deputy Auditor Karen Cartmel for use by another Auditor employee (Betty Johnson) to change the voter registration form for the Challenged Voter.
30. The second alleged infraction was found on the Declaration of Candidacy for the Challenged Voter. The Challenger alleges that because the Challenged Voter put his prior address on Hastings Avenue West (a location not located in Commissioner District #2) on the Declaration of Candidacy as his "mailing address," this serves as proof that the Challenged Voter is asserting he has two residences, an impossibility under Washington state law.
31. The Declaration of Candidacy was offered to me as Exhibit 2 by the Challenger.
32. The Declaration of Candidacy for the Challenged Voter does list the Hastings Avenue West address as his "campaign address," which has to be listed if a "campaign address" is or will be different from his residential address.
33. Nowhere on the "Declaration of Candidacy" is the phrase "mailing address" used.
34. The Challenged Voter testified during the June 11, 2012 hearing that he runs his business (excavating) from the address on Hastings Avenue West and chooses to get his mail there.
35. The Challenger also claims as an infraction that no such address exists as 140 W. Swaney Avenue.
36. The Challenger did write on the second page of his three page Voter Registration Challenge submittal (a photo of a mobile home at 140 Swaney) the following "140 Swaney, Irondale."
37. The third page of that same Voter Registration Challenge submittal is a copy of the Assessor's web page for parcel number 961-806-821, said parcel having a site address of 140 Swaney Street.
38. It is undisputed that there is a mobile home on parcel 961-806-821, as the Challenger photographed it on May 18, 2012, visited the site on May 18 and May 19, 2012 and submitted a friend's Declaration stating they visited it on May 19th. This testimony was provided by the Challenger.

39. Bob Sokol pointed out that the Challenger was able to find the address in question and take at least one photograph of it.
40. Another alleged infraction is that the Challenged Voter did not physically reside at the 140 W Swaney Avenue address on the date of filing.
41. The Challenger bases his assertion that the Challenged Voter does not reside at the 140 W Swaney Avenue location because he went by there at 5 PM on Friday May 18, 2012 (the last day of filing week) and saw no one there. At that time he observed a Christmas tree in the front yard, the grass had not been disturbed and there was a hot water heater on the back porch. He observed an absence of any vehicles parked at that location. All the curtains were closed.
42. Similar conditions existed at the 140 W Swaney Avenue mobile home when the Challenger and a friend, one Lyle E. Newlin, went there at 3 PM on Saturday May 19, 2012.
43. A sworn Declaration from Mr. Newlin was offered to me as Page 1 of Exhibit 1.
44. Ron Gregory submitted a Declaration on behalf of the Challenger. It is Exhibit #5.
45. That Declaration, in part, described a conversation Mr. Gregory had with the Challenged Voter on May 10, 2012 concerning the Challenged Voter's parcel on Hope Lane as a potential base for the Challenged Voter to run from District #2.
46. The Declaration of Mr. Gregory includes information that he knew of the Challenged Voter's intent as of May 10, 2012 to reside in Commissioner District #2.
47. Page 2 of Exhibit 1 was a color photocopy of the outside of the mobile home taken on May 18, 2012, the same photograph having been made part of the Voter Registration Challenge submittal that was submitted to me.
48. The Challenged Voter testified that he was not present at the 140 W Swaney Avenue residence on either Friday the 18th or Saturday the 19th because he and his wife were involved in Rhody Festival events, including the Rhody Parade on Saturday the 19th.
49. The Challenged Voter testified he intended to use a structure at Hope Lane (off Cape George Road) as his residence, thinking his Hope Lane parcel was within Commissioner District #2.

50. The Challenged Voter testified he discovered that because of revised County Commissioner District boundaries the Hope Lane property line was the boundary between Districts #1 and #2, with the Hope Lane parcel being in District #1.
51. With the Hope Lane parcel in District #1, the Challenged Voter realized he could not use Hope Lane to have a residence in Commissioner District #2.
52. The Challenged Voter testified he spoke with Oliver Morgan, the title owner of 140 W Swaney, some two weeks before May 18th (the date when the Challenged Voter would be able to file a Declaration of Candidacy) to see if Oliver's "place" at 140 W Swaney was available for rental.
53. Any person registered to vote from 140 W Swaney is registered to vote in Precinct 305.
54. Precinct 305 is within Jefferson County Commissioner District #2.
55. There are numerous rental properties in this County and ownership of the parcel known as 140 W Swaney by someone other than the Challenged Voter is not proof that the Challenged Voter does not reside there.
56. The Challenged Voter has signed a Residential Lease for a tenancy at the location known as 140 W Swaney. The Lease calls for him to pay \$500 each month.
57. The Residential Lease was signed by the Landlord (Oliver Morgan) and the Challenged Voter on May 18, 2012 and was made effective as of May 15, 2012.
58. The Lease was offered to me as Exhibit 13.
59. The Challenged Voter presented seven photographs (Exhibits 6 through 12) to me during the hearing.
60. The Challenged Voter testified that after signing the Residential Lease he immediately moved his bed into the mobile home at 140 W Swaney Avenue.
61. The Challenged Voter testified he has slept continuously at 140 W Swaney Avenue since signing the Lease except for a few nights when the Hastings Avenue West address was more convenient for him.
62. The Challenged Voter has testified he intends to have one of his children join him in sleeping at and residing at the 140 W Swaney Avenue address.

63. At the request of the Challenged Voter, the Landlord has been making repairs and improvements to the mobile home at 140 W Swaney Avenue. One such improvement is new flooring, as shown in the photos marked #6 and #11.
64. The other photographs offered to me by the Challenged Voter indicate furniture has been moved in by the Challenged Voter, said furniture constituting evidence of a home. See the photos offered to me and marked as #6, #7, #8 and #11.
65. The Challenged Voter purchased deck wood for an exterior deck at 140 W Swaney Avenue because the deck was an accident hazard, something that he informed the Landlord of.
66. The Challenged Voter now shows 140 W Swaney as his address on his Washington State Driver's License.
67. See Exhibit #14 offered to me, a photocopy of his Driver's License and his current voter registration card provided to him by my office.
68. The Challenged Voter testified he will use 140 W Swaney as his home address when filing his 2012 tax return sometime during 2013.
69. The Challenger has presented evidence that the mobile home at 140 W Swaney Avenue appeared to be deserted and not inhabited on May 18, 2012, the last day of the filing period.
70. While the apparent uninhabited status of the residence at 140 W Swaney on May 18th is perhaps an understandable inference to be drawn from what was observed there by the Challenger, such an inference differs materially from personal knowledge that the mobile home at 140 W Swaney is not inhabited by the Challenged Voter.
71. The only direct evidence before me indicates the Challenged Voter does reside at 140 W Swaney Avenue.
72. The evidence presented to me indicates the Challenged Voter has taken affirmative steps showing his intention to make 140 W Swaney Avenue his physical residence and permanent abode.
73. To the extent that any of these Findings of Fact are later deemed to be Conclusions of Law or that any Conclusion of Law is later deemed to be a Finding of Fact, then this document shall be automatically amended and altered to reflect that new status of a particular statement found in this document without any effect on the lawfulness or effectiveness of this Auditor's Decision.

III. CONCLUSIONS OF LAW

1. Because the voter registration challenge was filed more than forty-five days before the next election to be held in Jefferson County, RCW 29A.08.820(3) directs that the voter registration challenge be resolved by the Auditor rather than by the County Canvassing Board.
2. State election law, specifically RCW 29A.08.810, entitled “Basis for challenging a voter’s registration—who may bring a challenge—challenger duties,” mandates what the Challenger must do to successfully challenge the voter registration of the Challenged Voter.
3. RCW 29A.08.810(1) states “[r]egistration of a person as a voter is presumptive evidence of his or her right to vote.”
4. Based on his compliance with RCW 29A.08.810, the Challenger was entitled to and did receive a hearing before the Auditor with respect to his Voter Registration Challenge.
5. The phrase “lived in” is synonymous with “residence,” “domicile” and “place of abode” according to the courts of the State of Washington, particularly *Freund v. Hastie*, 13 Wn. App. 713 (1975).
6. Residence is defined in the state law at RCW 29A.04.151. That statute states, in part, “Residence” for the purpose of registering and voting means a person’s permanent address where he or she physically resides and maintains his or her residence or abode.”
7. Analogous case law provides that residence is established only when a person physically resides at a place with the intent to presently make that place a permanent home. *In re Lassin’s Estate*, 33 Wn.2d 163, 204 P.2d 1071 (1949); *Fiske v. Fiske*, 48 Wn.2d 69, 290 P.2d 725 (1955); *Freund v. Hastie*, 13 Wn. App. 731, 537 P.2d 804 (1975); *Marriage of Strohmaier*, 34 Wn. App. 14, 659 P.2d 534 (1983).
8. While there is a requirement that one must register to vote in Washington 30 days before the election (primary or general) in which one intends to vote, there is no such time requirement that one must satisfy before one is authorized to file a Declaration of Candidacy.
9. The statutory qualifications for filing a valid Declaration of Candidacy are listed in RCW 29A.20.021 and do, when a candidate must be nominated from a

particular geographic area, require the candidate to be a registered voter in that geographic area.

10. RCW 29A.20.021(3) reads in relevant part: [I]f a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time of the candidate's declaration of candidacy is filed, properly registered to vote in that district or division."
11. The question before me is: Did the Challenged Voter establish his residence/domicile/abode at 140 W Swaney Avenue in Precinct 305 on or before May 18, 2012 so that he could be a lawful candidate for Jefferson County Commissioner Position #2?"
12. Because of the presumption of validity of the voter registration of any voter, including the Challenged Voter, the Challenger, in accordance with RCW 29A.08.840(4) "has the burden to prove by clear and convincing evidence that the challenged voter's registration is improper."
13. The voter registration challenge has to be based on the personal knowledge of the Challenger in accordance with RCW 29A.08.810(3).
14. The voter registration challenge "may not be based on unsupported allegations or allegations by anonymous third parties" in accordance with RCW 29A.810(3).
15. The "screen shot" from the Assessor's web page submitted by the Challenger in his Voter Registration Challenge submittal amounts to a statement made or offered for the truth of the matter by a third party, i.e., a person other than the Challenger and as such are presumably hearsay.
16. One can define hearsay (roughly) as any statement of a third-person who is not providing sworn testimony as part of this Challenge, is also not present to testify in person about what they saw or heard and thus is not subject to cross-examination about whatever testimony they might provide. Newspaper articles or letters are classic hearsay.
17. While the rules of evidence are not strictly applied during a voter registration challenge, the capture (or "screen shot") of the Assessor's web page for 140 Swaney and the photograph (apparently reflecting the mobile home at that address) do not contain or reflect the personal knowledge of the Challenger.

18. Nor does title ownership in 140 W. Swaney Avenue by someone other than the Challenged Voter have any relevance to this Voter Registration Challenge since residence and abode can exist at a rental property used and occupied pursuant to a Lease, a Lease being inherently a lesser ownership interest than fee simple ownership of real property.
19. Similarly, the photograph of the exterior of the mobile home at 140 W Swaney is of no relevance because it does not tend to prove or disprove that the Challenged Voter has made 140 W Swaney his residence or domicile.
20. The Challenger fails to offer any personal knowledge of an improper voter registration by the Challenged Voter other than his conclusory Declaration and his submission on the form provided to challengers by the WA Secretary of State-with attachments.
21. The incomplete Change of Address form listed by the Challenger as an "Infraction" is neither relevant to nor probative for this Voter Registration Challenge because it does not tend to prove or disprove the Challenged Voter's residency and domicile at 140 W Swaney Avenue.
22. The presence of two addresses, including the prior residence of the Challenged Voter, on the Challenged Voter's Declaration of Candidacy is neither relevant to nor probative for this Voter Registration Challenge because it does not tend to prove or disprove the Challenged Voter's residency and domicile at 140 W Swaney Avenue.
23. While it is impossible to have two residences or abodes under the laws and published cases of the State of Washington, the listing by the Challenged Voter of two addresses on his Declaration of Candidacy when one such address is denominated as the "campaign address" does not logically lead to the conclusion that the Challenged Voter is asserting two residences.
24. Asserting a "campaign address" on the Declaration of Candidacy as is required (if it differs from the "residential address") by that state-created form is not an assertion of residency or domicile.
25. Asserting two addresses on the Declaration of Candidacy (a residential address within Commissioner District #2 and a campaign address within Commissioner District #1) is probative towards proving that the Challenged Voter intends to and has made his permanent abode and residence at 140 W Swaney Avenue.
26. Not probative or relevant to this Voter Registration Challenge is any assertion by the Challenger that there is no such address as 140 W. Swaney Avenue in Irondale within the unincorporated portion of Jefferson County. Instead,

testimony from both the Challenger and the Challenged Voter focused solely on a mobile home at Assessor's Parcel Number 961-806-821. The location in question has been visited at least twice by the Challenger.

27. I give little or no weight to the visits the Challenger made to 140 W Swaney Avenue on May 18, 2012 (5 PM) or May 19, 2012 (3 PM). The absence of life at a residence at a particular moment is not proof of whether that residence is the residence and abode of the Challenged Voter. In addition, the Challenged Voter explained why he was away from the 140 W Swaney Avenue site on those two occasions.
28. Testimony I find credible was provided by Mr. Gregory and the Challenged Voter that the Challenged Voter had the intent to move his residence to within the boundaries of Jefferson County Commissioner District #2 no later than May 10, 2012, some eight days before he filed his Declaration of Candidacy. This evidence is probative of his intent to create his permanent residence and abode at the mobile home located at 140 W Swaney Avenue.
29. Testimony I find credible was presented by the Challenged Voter that he was intending to reside within the boundaries of County Commissioner District #2 by residing at his Hope Lane residence until he found out that the parcel was not located within Commissioner District #2 due to a revision of the District lines. This evidence is probative of his intent to create his permanent residence and abode at the mobile home located at 140 W Swaney Avenue.
30. Testimony I find credible was presented by the Challenged Voter that he spoke to the Landlord of 140 W Swaney Avenue two weeks before the filing week ended to determine if the rental property at 140 W Swaney was available for rental. This evidence is probative of the Challenged Voter's intent to create his permanent residence and abode at the mobile home located at 140 W Swaney Avenue.
31. The Lease signed between the Landlord of 140 W Swaney Avenue and the Challenged Voter was signed on May 18, 2012, the date when the Challenged Voter filed his Declaration of Candidacy. This Lease is also credible evidence of the Challenged Voter's intent to make 140 W Swaney Avenue his domicile, residence and abode.
32. The Challenged Voter provided other credible evidence to me in support of his assertion that his residence/abode/domicile were located at 140 W Swaney Avenue, i.e., inside Jefferson County Commissioner District #2, on the day (May 18, 2012) when he filed his Declaration of Candidacy and that his permanent residence remains at that Irondale address, to wit:
 - o He has slept there nearly continuously since that date

- He has moved his bed into the 140 W Swaney Avenue mobile home
 - He has moved furniture to the 140 W Swaney Avenue mobile home
 - He has requested and obtained repairs to the front deck, the entrance to 140 W Swaney Avenue
 - He has changed his Driver's License to reflect 140 W Swaney Avenue as his residence.
 - He intends to have one of his children reside with him at 140 W Swaney
 - He considers 140 W Swaney Avenue to be his residence for IRS purposes
33. No relevant or probative evidence supports the Voter Registration Challenge filed by the Challenger.
34. The Challenger has failed to provide the "clear and convincing" evidence required by RCW 29A.08.840(4) that would allow me to declare invalid the presumed-valid voter registration of the Challenged Voter.
35. Any voter lawfully registered to vote based upon an address of 140 W Swaney Avenue in Irondale is located within Precinct 305 and thus would be entitled to be a candidate for and/or run for Jefferson County Commissioner District #2.
36. The Challenged Voter is lawfully registered to vote (and run for Jefferson County Commissioner District #2) based upon his residence at 140 W Swaney Avenue because he has satisfied the preconditions for such a candidacy as are laid out in RCW 29A.20.021, particularly RCW 29A.20.021(3).

IV. CONCLUSION

37. I hereby find that the Challenger has failed to show by clear and convincing evidence that the Challenged Voter does not reside for voter registration purposes at 140 W Swaney Avenue, a property within Precinct 305, Jefferson County Commissioner District #2. The Challenged Voter's voter registration will continue to reflect 140 W Swaney Avenue as his residence.

V. ORDER

Therefore, it is ordered that the challenge is DENIED.

ENTERED this 11th day of June 2012

VI. APPEAL PROCESS:

This is a final agency decision subject to appeal to Superior Court in a manner consistent with Chapter. 34.05 RCW.



DONNA M. ELDRIDGE,
Jefferson County Auditor