

BEFORE THE CANVASSING BOARD
THURSTON COUNTY, WASHINGTON

John Clabaugh Voter Registration Challenge of
Charles Utley Voter Registration

DECISION

I. Introduction

A voter registration challenge was filed on September 4, 2023, under the provisions of RCW 29A.08.810. John Clabaugh (Challenger) filed the challenge alleging that Charles Utley (Challenged Voter) does not reside at 4709 14th Ave SE, Lacey, WA 98503, the address listed on his voter registration record. The Challenger provided notification of this challenge to the Challenged Voter via certified mail on July 7, 2023.

The hearing on the challenge was convened on October 12, 2023 at 4:00 p.m. The required Notice of hearing was provided to the Challenged Voter and to the Challenger. The purpose of the hearing was to allow all parties the opportunity to present their facts and arguments.

Present at the hearing was Mary Hall, Thurston County Auditor, Elizabeth Petrich, Chief Civil Deputy Prosecuting Attorney, Lynnette Milton, Elections Supervisor, Tillie Naputi-Pullar, Elections Manager, the Challenger, and members of the public. The Challenged Voter did not appear at the hearing, nor did he submit any documentation disputing the Challenger's evidence.

II. Evidence and Argument

The Challenger alleges that the Challenged Voter does not reside at the address listed on his voter registration, 4709 14th Ave SE, Lacey, WA 98503. The Challenger submitted the documents, listed in the Evidence Log attached and incorporated in this Order, into the record to support his challenge. In addition, the Challenger testified under oath at the hearing.

The Elections Staff submitted into the record the current voter registration records on file in the Auditor's Office of the Challenged Voter. In addition, Elections Staff submitted additional evidence of their continued attempts of their efforts to reach the Challenged Voter. The Elections Staff's documents are listed in the Evidence Log attached to this Order.

III. Legal Principles, Findings and Conclusions

The issue before the Thurston County Auditor is whether the Challenged Voter has a right to vote in the precinct associated with the address 4709 14th Ave SE, Lacey, WA 98503. A voter may lose his right to vote if they do not live at the residential address provided on their voter registration. RCW 29A.08.810(1) (a-c) and RCW 29A.08.840 (5).

Before the Challenged Voter can lose their right to vote in the assigned precinct, the Challenger has the burden to prove by clear and convincing evidence that the Challenged Voter does not reside at the address on their voter registration. RCW 29A.08.840. "Residence" for purposes of registering and voting means "a person's permanent address where he or she physically resides and maintains his or her abode." RCW 29A.04.151. Residency is a fact specific inquiry and requires physical presence and an intention to make a place one's home. *Freund v. Hastie*, 13 Wn. App. 731, 734-35 (1975). If either physical residence or the intent to presently make that place a permanent home is lacking, residence will not be established. *Id.*

"If the challenger fails to prove by clear and convincing evidence that the registration is improper, the challenge must be dismissed and the pending challenged ballot must be accepted as valid." RCW 29A.08.840(6). The courts of this state have described clear and convincing evidence as sufficient to convince the trier of fact that the "fact in issue is 'highly probable.'" *Colonial Imports v. Carlton N.W.*, 121 Wn.2d 726, 735 (1993). Therefore, the ultimate question to be answered in this matter is whether the Challenger has proven, based on the evidence, that it is highly probable that the Challenged Voter does not live at 4709 14th Ave SE, Lacey, WA 98503 and does *not* reside at the 4709 14th Ave SE address for voter registration purposes.

Having reviewed the undisputed documents and testimony submitted by the Challenger, we find that the Challenger met the high burden of proof set forth in RCW 29A.08.810(1)(c)(ii) (A-E), that the Challenged Voter does not live or reside at the residence listed in his voter registration records.

IV. Decision


For the reasons stated above, the challenge to the Challenged Voter's voter registration is sustained and he loses his right to vote in the precinct associated with his address at 4709 14th Ave SE, Lacey, WA 98503. The Challenged Voter may, however, correct the residence address on the voter registration and any races and ballot measurers on any challenged ballot the voter would have been qualified to vote for had the registration been correct shall be counted pursuant to RCW 29A.08.840(5).

Pursuant to RCW 29A.08.840(6), the Challenged Voter may seek review of this decision by the superior court pursuant to chapter 34.05 RCW.

DATE:

Oct 27, 2023

ATTEST:


Lynnette Milton (Oct 27, 2023 14:54 PDT)

Clerk of the Board


Mary Hall (Oct 27, 2023 15:05 PDT)

Mary Hall, Auditor