

# AUDITOR'S DETERMINATION ON VOTER REGISTRATION CHALLENGE

October 26, 2022

*Challenged Voter: Nicole Sessler*

*Challenger: John Trumbo*

## BACKGROUND

A voter registration challenge was submitted to the Benton County Auditor's Office on October 20, 2022, by challenger John Trumbo concerning the registration of voter Nicole Sessler. The challenge made use of the voter registration challenge form issued for that purpose by the Washington Secretary of State. A previous challenge of another voter at the same address was submitted by the same challenger in August of this year. In that instance, in a written decision following an in-person hearing on the merits, the Auditor declined to cancel the voter's registration.

In order to be timely, a voter registration challenge must be filed with the county auditor no later than 45 days before the election. RCW 29A.08.820(1). There are exceptions that apply, but only if the challenged voter registered to vote less than 60 days before the election, or changed residence less than 60 days before the election without transferring his or her registration. RCW 29A.08.820(2).

The 2022 General Election is scheduled to take place on November 8, 2022, which is 19 days after the challenge in this instance was filed with the Auditor.

Voter registration challenge procedures are set forth in RCW 29A.08.810 *et seq.* The statutory structure provides five possible grounds for such a challenge, which must be based on personal knowledge of one of the following:

- (a) The challenged voter has been convicted of a felony and the voter's civil rights have not been restored;
- (b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency;
- (c) The challenged voter does not live at the residential address provided . . .
- (d) The challenged voter will not be eighteen years of age by the next general election; or
- (e) The challenged voter is not a citizen of the United States.

RCW 29A.08.810(1). The county auditor may dismiss a challenge without a hearing if it does not meet one or more of the legal grounds for a challenge. RCW 29A.08.840(1).

The challenged voter, Ms. Sessler, is registered as living at 84009 W. Old Inland Empire Highway, Prosser WA 99350. The challenge submitted in this matter alleges that Ms. Sessler lived at a different address in the Prosser area for a six-month period, ending in February, 2022. The challenge alleges that Ms. Sessler now lives at the same W. Old Inland Empire Highway address as the one at which she is registered to vote, but asserts that although she lives there she is not *legally* authorized to do so. The challenge in this instance does not state any basis for the assertion that Ms. Sessler is without legal authorization to live at the address at which she is registered, but it is likely that the challenger was referencing arguments and evidence alleging an absence of required occupancy and housing permits that was introduced in the recent previous challenge to the voter registration of another voter at the same address.

## ANALYSIS

### **A. The voter registration challenge is dismissed as untimely**

A voter registration challenge must be filed with the county auditor not later than 45 days before the election. RCW 29A.08.820(1). The challenge in this instance was submitted only 19 days before the November 8, 2022 General Election. There is no allegation that the challenged voter registered or moved less than 60 days before the election, and so neither of the statutory exceptions to the timeliness requirements apply. *See* RCW 29A.08.820(2). The timeliness requirements in RCW 29A.08.820 protect the interests of the challenged voter, and also that of elections officials, whose limited time and attention in the days surrounding an election are necessarily focused on the immediate requirements of election administration.

Accordingly, because the voter registration challenge submitted on October 20, 2022 was untimely, it is dismissed. This dismissal does not bar the challenger from refileing the challenge following the election.

### **B. If the challenge had been timely filed, it would nonetheless have been subject to dismissal for failure to state recognized legal grounds for a challenge**

As set forth above, although the challenge is dismissed as untimely, it could be refiled following the November 8th election. Consequently, in the interest of efficiency, we also note that even if the challenge had been timely filed it would have been subject to dismissal as provided in RCW 29A.08.840(1) for not meeting the legal grounds for a challenge.

The county auditor may dismiss a challenge without a hearing if it does not meet the legal grounds for such a challenge. RCW 29A.08.840(1). None of the five possible grounds for a voter registration challenge set forth in RCW 29A.08.810(1) were alleged in the challenge now at issue.<sup>1</sup>

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<sup>1</sup> The possible grounds for a voter registration challenge listed in RCW 29A.08.810(1) are:

- (a) The challenged voter has been convicted of a felony and the voter's civil rights have not been restored;
- (b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency;
- (c) The challenged voter does not live at the residential address provided . . .
- (d) The challenged voter will not be eighteen years of age by the next general election; or
- (e) The challenged voter is not a citizen of the United States.

1. *Registration is proper at the address where the voter lives, regardless of whether occupancy is legally permitted under local codes*

One of the possible grounds for a voter registration challenge is if the challenged voter does not live at the residential address provided on his or her voter registration. Here the challenge affirmatively states that Ms. Sessler does live at the address where she is registered to vote. Instead of alleging that the challenged voter is not living where she is registered, the challenge asserts that Ms. Sessler is not living at that address *legally*.

In the previous challenge to the registration of another voter at the same address, Mr. Trumbo introduced evidence including documents and details from interactions with county planning, public works, and building department employees which suggested that the subject address had not been issued an occupancy permit allowing people to live in a home being built on the property, or a temporary housing permit allowing people to reside in any of the nearby mobile homes. We interpreted the challenger's argument to be that a voter could not be considered as residing on the subject property because of the alleged lack of necessary county permits to do so. The challenge now at issue does not contain those specifics, but it does assert that Ms. Sessler "does not 'legally' reside at the address listed on his or her voter registration" and states that the actual address at which Ms. Sessler lives is the same address as the one at which she is registered. From these contentions, it appears that the challenge argues that Ms. Sessler lives at the address where she is registered, but that her registration should be revoked because it is alleged that she lacks the necessary local permits.

As was discussed in the decision issued concerning the previous challenge, the question of what permits a voter possesses is not determinative of whether she physically resides on the property listed on her voter registration. "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 abode." RCW 29A.04.151. It is significant that under state law a voter with a "non-traditional residential address" may validly register at virtually any location that can be identified, such as "a shelter, park, motor home, marina, or other identifiable location that the voter deems to be his or her residence" [.] RCW 29A.08.112. Even though Ms. Sessler has provided what could be considered a traditional residential address, the fact that the law provides for voters to register at locations such as public parks (where taking up residence is discouraged) demonstrates that the question of whether a person's residence complies with local rules or ordinances is irrelevant when considering whether one can register as residing in that place for voting purposes. Further, the right to vote is provided under the Washington State and United States constitutions, and thus cannot be unreasonably limited by state law -- let alone by local rules or ordinances. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (examining the standards by which state election laws are reviewed for compliance with federal constitutional requirements). The relevant question is consequently not whether under local codes Ms. Sessler *should* be living at the address listed on her voter registration, but instead whether or not she *is*. It is undisputed that Ms. Sessler physically resides and maintains her abode at the address where she is registered. As a result, even if the challenge in this instance had been timely filed it would have been subject to dismissal pursuant to RCW 29A.08.840(1).

- 2. Registration is proper at the address where a voter lives, regardless of whether he or she has formerly lived at a different address*

The challenger presents documents serving as evidence that for six months ending in February, 2022, Ms. Sessler lived at a different address in Prosser than the one at which she now lives and is registered to vote. The challenge further states an intention to present testimony on that point at hearing.

However, even if the challenger were to demonstrate that Ms. Sessler at some point in the past lived at a different address than the one at which she is living now, it would not be relevant to any question to be decided by the Auditor. It is undisputed that Ms. Sessler is now living at the address where she is registered to vote. If she is living at the address where she is registered, then there is no violation of statute and no reason to cancel her registration to correct an error in the voter registration records. There would be no error to correct.

It appears from the challenges filed that the challenger may be seeking some sort of determination from the Auditor regarding past ballots cast by the challenged voter in past elections. Votes cast in previous elections, however, are not relevant to any question within the authority of the County Auditor when ruling on a voter registration challenge. A voter registration challenge concerns only the appropriateness of a voter's current registration and his or her current residence and voting eligibility.

#### CONCLUSION

For the reasons stated above the challenge to Ms. Sessler's voter registration is dismissed as untimely. Pursuant to RCW 29A.08.840(6), the Challenger may seek judicial review of this decision under chapter 34.05 RCW.

10/28/2022

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Date

*Brenda Chilton*

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Brenda Chilton, Benton County Auditor