

AUDITOR'S DETERMINATION ON VOTER REGISTRATION CHALLENGE

September 19, 2022

Challenged Voter: Jerrod Sessler

Challenger: John Trumbo

BACKGROUND

A voter registration challenge was submitted to the Benton County Auditor's Office on August 16, 2022, by challenger John Trumbo concerning the registration of voter Jerrod Sessler. The challenger amended his challenge by submitting a revised form on August 18, 2022. Both the original challenge and the amended challenge made use of the voter registration challenge form issued for that purpose by the Washington Secretary of State. The challenge alleged that Mr. Sessler does not live at the address listed on his voter registration as required under RCW 29A.08.010. Authority for such a challenge is provided in RCW 29A.08.810(1)(c).

Voter registration challenges submitted more than forty-five days before the election are heard by the County Auditor. RCW 29A.08.820(1). The challenge submitted in this instance was filed more than forty-five days prior to the upcoming November General Election, and so the hearing was presided over by Benton County Auditor Brenda Chilton. The hearing was held on September 9, 2022, at approximately 9 a.m. Notice of the hearing was provided to both the challenger and the challenged voter by certified mail, with copies of the challenge, amended challenge, and an associated declaration with supporting documents from the challenger included with the notice. Present at the hearing were the challenger Mr. Trumbo, Mr. Sessler the challenged voter, Benton County Auditor Brenda Chilton, Benton County Elections Manager Amanda Hatfield, Deputy Prosecuting Attorney Reid Hay, and Annette Cary, a reporter from the Tri-City Herald. The hearing was audio-recorded.

The parties were freely allowed to present relevant documents and testimony. Similarly to matters brought under the Administrative Procedures Act, the rules of evidence did not apply at the hearing, and "evidence, including hearsay evidence, [was] admissible if in the judgement of the presiding officer it [was] the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.455.¹

Both Mr. Trumbo and Mr. Sessler offered sworn testimony at the hearing, and both were given the opportunity to respond, to offer rebuttal evidence, and to cross-examine the other. The Auditor also posed questions to each. In addition to the testimony of the parties, the Auditor considered the challenge and

¹ The Administrative Procedures Act ("APA") does not apply to voter registration challenge hearings, *see* RCW 34.05.010(2); RCW 34.05.030; *Andrew v. King County*, 21 Wn. App. 566, 573 (1978) (determining that the APA does not apply to county agencies). However, because Washington law does not expressly set forth procedural rules governing the conduct of voter registration challenge hearings the Auditor looked to the APA as a useful source of guidance on procedural matters. Accordingly, as with actions brought under the APA, the rules of evidence were not applied to the hearing and instead the Auditor considered such evidence as "reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.455.

amended challenge, a declaration with attachments that accompanied the challenge, and an additional declaration offered by Mr. Trumbo at the hearing. Copies of all documents considered by the Auditor were also furnished to Mr. Sessler.

Mr. Trumbo's challenge alleged that Mr. Sessler does not live at 84009 W. Old Inland Empire Highway, Prosser WA 99350, the address at which Mr. Sessler is registered to vote. Mr. Trumbo contended that Mr. Sessler purchased the property (through an LLC controlled by Mr. Sessler) in 2018, registered to vote at that address in 2019, and has repeatedly cast ballots from that registered address since that time. Mr. Trumbo asserted it can be established that Mr. Sessler does not live on the property because he had not obtained an occupancy permit needed to reside in a home that is being constructed on the property and he had also not obtained a temporary housing permit from the county required to live in a motor home parked at the site. In support of his arguments, Mr. Trumbo submitted a Real Estate Excise Tax Affidavit associated with the 2018 purchase of the subject property, and documents from county building inspections conducted on the property. In his testimony Mr. Trumbo described conversations with county employees indicating that Mr. Sessler did not have permits allowing him to live on the subject property. In addition, Mr. Trumbo submitted two photographs taken at the subject property and dated July 25, 2022.

At the hearing and in a declaration presented at the hearing Mr. Trumbo asserted that rather than living at the W. Old Inland Empire Highway address Mr. Sessler has instead been living at an alternative address in Prosser owned by Mr. George Schneider. Mr. Trumbo specified that alternative address in his testimony at the hearing and in a declaration he first presented at the hearing. That address had not been mentioned or alleged to have been Mr. Sessler's actual address in either the voter registration challenge itself, or in the amendment to that challenge. The basis for the contention that Mr. Sessler is living at the alternate address was not stated, with the challenger stating simply that he had it "on information and good faith" that Mr. Sessler was living there for a "good part of the time" since claiming to reside at the W. Old Inland Empire Highway address. (*Hearing Audio*, at 10:47). The challenger stated that he had not contacted Mr. Schneider directly, who was stated to be the homeowner of the alternate address. (*Hearing Audio*, at 14:49).

In his testimony, Mr. Sessler confirmed the presence of a motor home on the property, and that he owns the subject W. Old Inland Empire Highway property through an LLC he controls. Mr. Sessler stated that for voting purposes living on a property is sufficient, even if a person has not been staying in an ordinary home. Mr. Sessler observed that there are multiple mobile homes on the property (*Hearing Audio*, at 29:22). He testified specifically that he physically lived on the property at the time that he registered to vote at that address (*Hearing Audio*, at 30:49) and that he physically lives on the property now. (*Hearing Audio*, at 29:09; 29:33).

ANALYSIS

The burden of proof in a voter registration rests with the challenger. RCW 29A.08.840(4). In other words, it is the burden of the challenger to prove his or her allegations; the challenged voter is not required to prove his or her place of residence, although he or she is entitled to introduce evidence contradicting that offered by the challenger if he or she wishes to do so. The standard of proof in a voter registration challenge is that of "clear and convincing evidence." RCW 29A.08.840(4). As a result, in order for the challenge to prevail the weight of the evidence must be "clear and convincing" in favor of the challenger. The "clear and convincing" standard is a higher burden than the "preponderance of the evidence" standard that is ordinarily used in civil litigation. Clear and convincing evidence is evidence 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).

A person's registration as a voter "is presumptive evidence of his or her right to vote." RCW 29A.08.810. Challenges to a person's voter registration are permitted on several grounds, one of which is where it is

alleged that “[t]he challenged voter does not live at the residential address provided” on the voter registration. RCW 29A.08.810(1)(c).

A person registering to vote must provide the address of his or her “actual physical residence.” RCW 29A.08.010(2). “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. The purpose of this requirement is to permit election authorities to assign the voter to the proper precinct. *See* RCW 29A.08.010(2). Assignment to the correct precinct is necessary for the election authorities to issue the voter a ballot that includes all of the measures and races for public office applicable to a person living at the voter’s address, and which includes none of the measures or races for public office specific to jurisdictions where the voter does not live and regarding which the voter is not entitled to cast a ballot. *See id.*

1. Whether a Challenged Voter’s Claimed Residence Complies With Local Planning Or Building Codes Is Not Determinative of ‘Residence’ For The Purpose of Registering and Voting

In this matter the challenger, Mr. Trumbo, introduced evidence including documents and details from interactions with county planning, public works, and building department employees which suggested that Mr. Sessler had not been issued an occupancy permit allowing him to live in a home being built on the property, or a temporary housing permit allowing him to reside in any of the nearby mobile homes. We interpret the challenger’s argument on this point to be that Mr. Sessler cannot be considered as residing on the subject property because he is alleged to lack the necessary county permits to do so.

However, the question of what permits Mr. Sessler possesses is not determinative of whether he physically resides on the property listed on his voter registration. 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 Mr. 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 ordinarily discouraged) suggests 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.² 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 Mr. Sessler *should* be living at the address listed on his voter registration, but instead whether or not he *is*.

2. The Evidence That The Challenged Voter Does Not Reside At The Listed Address Was Insufficient To Meet The Challenger’s Burden Under The ‘Clear And Convincing’ Standard

In weighing the evidence of whether the challenged voter lives at the address provided on his voter registration, we have on one hand the evidence presented by the challenger that which suggests that Mr. Sessler did not have the necessary permits to reside there under local rules or ordinances. Further, we have Mr. Trumbo’s testimony that it is his understanding that for at least part of the time Mr. Sessler has been

² Whether the registration address is consistent with local codes can certainly be considered, as it has been here, as one piece of factual evidence to the extent it could bear upon the question of actual physical residence, but it would not be determinative in and of itself.

registered at the W. Old Inland Highway address he was living at a different location owned by a Mr. Schneider.

As discussed above, the evidence that Mr. Sessler may have lacked required permits to live at the address where he is registered is not determinative – the question for voting purposes is where a voter actually lives, regardless of whether doing so conforms with local codes.³ Regarding the testimony that Mr. Sessler had been living in the home of Mr. Schneider, the weight of that evidence is reduced because it is unclear if the challenger is testifying from personal knowledge, or where, how, or from whom he learned this information. Mr. Trumbo did note that he had not spoken on the topic to Mr. Schneider directly. (*Hearing Audio*, at 14:49).

On the other hand, Mr. Sessler discussed that there are multiple mobile homes on the property (*Hearing Audio*, at 29:22), and testified that he physically lived on the property at the time that he registered to vote (*Hearing Audio*, at 30:49) and that he physically lives on the property now. (*Hearing Audio*, at 29:09; 29:33). Plainly Mr. Sessler was testifying from personal knowledge. Both Mr. Trumbo and Mr. Sessler were credible witnesses.

As noted above, the burden of proof in a voter registration challenge rests with the challenger, RCW 29A.08.840(4), the standard of proof is that of “clear and convincing evidence.” RCW 29A.08.840(4). Here the evidence presented by the challenger is insufficient to overcome the high burden of proof set forth in RCW 29A.08.840(4) and the testimony offered by the challenged voter. Accordingly, the challenge to Mr. Sessler’s voter registration is dismissed.

3. RCW 29A.08.810(c) Requires Additional Statements

Although not required for our determination today, we also observe that certain requirements of a voter registration challenge were not met in this instance. RCW 29A.08.810(1)(c) requires that if the allegation is that:

[t]he challenged voter does not live at the residential address provided, . . . the challenger must either:

(i) Provide the challenged voter's actual residence on the challenge form; or

(ii) Submit evidence that he or she exercised due diligence to verify that the challenged voter does not reside at the address provided and to attempt to contact the challenged voter to learn the challenged voter's actual residence, including that the challenger personally:

(A) Sent a letter with return service requested to the challenged voter's residential address provided, and to the challenged voter's mailing address, if provided;

(B) Visited the residential address provided and contacted persons at the address to determine whether the voter resides at the address and, if not, obtained and submitted with the challenge form a

³ It is not the role of the Auditor to determine whether or not Mr. Sessler’s residence satisfies local rules and ordinances regarding planning, zoning, building codes and the like. For the purposes of this determination it has been assumed – without deciding – that it does not, but we conclude that the question is not relevant except to the limited degree that it bears on the question of the likelihood that the challenged voter actually resides at the subject property.

signed affidavit subject to the penalties of perjury from a person who owns or manages property, resides, or is employed at the address provided, that to his or her personal knowledge the challenged voter does not reside at the address as provided on the voter registration;

(C) Searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county;

(D) Searched county auditor property records to determine whether the challenged voter owns any property in the county; and

(E) Searched the statewide voter registration database to determine if the voter is registered at any other address in the state[.]

Under that statute, if a voter registration challenge is to a voter's address, and the challenger does not allege the challenged voter's actual address on the challenge form, the challenger must provide evidence that he or she has satisfied all of the requirements listed in RCW 29A.08.810(1)(c)(ii). Pursuant to RCW 29A.08.810(3), the required information must be included in a signed affidavit.

Here, although the challenger alleged an alternative address for the challenged voter at the hearing, it was not included in the challenge form. As a result, the challenger was obligated to provide an affidavit verifying that he had followed all the steps required in RCW 29A.810(1)(c)(ii). The challenger's affidavits did not do so. As noted above, however, this was secondary because our determination today was instead based on the weight of evidence presented at the hearing.

CONCLUSION

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

September 19, 2022

Date



Brenda Chilton, Benton County Auditor