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3 BEFORE THE KING COUNTY CANVASSING BOARD

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In Re Challenge to the Voter Registration of:  
Sherril Huff

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER DENYING CHALLENGE

I. INTRODUCTION

THIS MATTER came before the King County Canvassing Board pursuant to chapter 29A.08 RCW and upon the challenge filed by Christopher Clifford to the voter registration of Sherril Huff.<sup>1</sup> In his challenge, Mr. Clifford alleges that Ms. Huff does not maintain a legal voting residence at the address shown on her voter registration records. Mr. Clifford was present at the hearing. Ms. Huff was represented at the hearing by Attorney Jenny Durkan. Ms. Huff did not appear at the hearing, but instead presented testimony by affidavit as permitted by RCW 29A.08.840(3).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This voter registration challenge was initiated in writing and was filed by Mr. Clifford on December 12, 2008. A letter to Ms. Huff with a copy to Mr. Clifford was sent on December 31, setting the hearing for January 9, 2009, at 3:00 p.m.

<sup>1</sup> This challenge was filed more than forty-five days prior to the next election and pursuant to RCW 29A.08.835(3), would therefore normally be decided by the King County Elections Director. However, since the Elections Director is the challenged voter, the challenge is being heard by the King County Canvassing Board. Because Ms. Huff is a member of the Canvassing Board, this matter was heard by the other two members of the Canvassing Board and by Nick Handy, Director of Elections for the Secretary of State, who will vote only if needed to break a tie. At the hearing, the challenger and the challenged voter stipulated to this procedure for hearing and resolving the challenge.

1           2.       Mr. Clifford alleges that Ms. Huff does not maintain a legal voting residence at  
2 the address shown on her voter registration record, 10206 66th Avenue South in Seattle (the  
3 "Seattle Address"). Mr. Clifford alleges that Ms. Huff actually resides at 6222 Illahee Road NE  
4 in Bremerton (the "Bremerton Address").

5           3.       Live testimony and argument was presented at the hearing by Mr. Clifford. Mr.  
6 Clifford was placed under oath before he gave his testimony. Ms. Durkan presented argument  
7 on behalf of Ms. Huff and also presented Ms. Huff's affidavit.

8           4.       The Canvassing Board heard and considered the testimony of Mr. Clifford, the  
9 argument of both parties, and the following exhibits:

- 10           (1)       Voter Registration Challenge Form filed by Christopher Clifford challenging the  
11 voter registration of Sherril Huff dated December 12, 2008;
- 12           (2)       Mail-In Voter Registration Form for Sherril Huff dated December 9, 2008  
13 (Clifford Exhibit 1);
- 14           (3)       Sherril Huff's Declaration of Candidacy Form dated December 11, 2008 (Clifford  
15 Exhibit 2);
- 16           (4)       Seattle Times article entitled, "Appointee to run for county elections job;  
17 opponents question residency" dated December 10, 2008 (Clifford Exhibit 3);
- 18           (5)       Washington Secretary of State - Voter Registration System page showing  
19 registration of Sherril Huff (Clifford Exhibit 4);
- 20           (6)       Record showing real estate listings for 10206 66th Avenue South in Seattle  
21 (Clifford Exhibit 5);
- 22           (7)       Rental Agent Detail Report for 10206 66th Avenue South in Seattle dated  
23 December 31, 2008 at 11:48 a.m.(Clifford Exhibit 6);
- (8)       Residential Agent Detail Report for 10206 66th Avenue South in Seattle dated  
            December 31, 2008 at 11:49 a.m. (Clifford Exhibit 7);
- (9)       Residential Agent Detail Report for 10206 66th Avenue South in Seattle dated  
            December 31, 2008 at 11:50 a.m. (Clifford Exhibit 8); and
- (10)      Affidavit of Sherril Huff with the following attached exhibits (collectively marked  
            as Huff Exhibit 1):
  1. Rental Application for the Property at 10206 66th Avenue South in Seattle  
dated December 8, 2008;
  2. Seattle Times article entitled, "Current elections chief will join race" dated  
December 9, 2008;
  3. Residential Rental Agreement for the Property at 10206 66th Avenue South in  
Seattle dated dated December 9, 2008; and

1 4. Puget Sound Energy Statement Summary dated December 26, 2008 and  
2 Seattle City Light Statement and Bill dated December 24, 2008.

3 Additionally, on January 13, 2009, members of the Canvassing Board received a  
4 document from Mr. Clifford described as an "Emergency Motion for Submission of New  
5 Evidence". On January 15, 2008, the Canvassing Board received an e-mail with an attached  
6 document from Ms. Huff's counsel in response to Mr. Clifford's January 13 filing.

7 5. This challenge was brought pursuant to RCW 29A.08.810(c)(i) which allows a  
8 challenge to a voter's residential address if the challenger provides what he alleges to be the  
9 voter's actual address on the challenge form. Mr. Clifford did provide what he alleges to be Ms.  
10 Huff's actual address on the challenge form he filed and the challenge is therefore properly  
11 before us.

12 6. Mr. Clifford argued that where a challenge relates to a change of residence, the  
13 burden of proof shifts to the challenged voter. In support of his position, Mr. Clifford relied on  
14 *In re Schoessler*, 140 Wn.2d 368 (2000). We find the discussion of the burden of proof in that  
15 case to be distinguishable from the present challenge. *Schoessler* involved a challenge to an  
16 elected official's right to hold office, not to a person's voter registration. As provided in RCW  
17 29A.08.810(4), the person challenging another's voter registration has the burden to prove by  
18 clear and convincing evidence that the registration is improper.

19 7. In the present case, therefore, by statute Mr. Clifford has the burden to prove by  
20 clear and convincing evidence that Ms. Huff's registration at the Seattle Address is improper.  
21 RCW 29A.08.810(4). The Washington Supreme Court has described clear and convincing  
22 evidence as sufficient to convince the trier of fact "that the fact in issue is 'highly probable.'"  
23 *Colonial Imports v. Carlton N.W.*, 121 Wn2d 726, 735 (1993). Therefore, the ultimate question

1 to be answered in this matter is whether Mr. Clifford has proven that based on the evidence, it is  
2 highly probable that Ms. Huff does not reside at the Seattle Address for voter registration  
3 purposes.

4 8. For purposes of voter registration, "residency" is defined by RCW 29A.04.151 as  
5 "a person's permanent address where he or she physically resides and maintains his or her  
6 abode". Analogous case law provides that residence requires physical presence plus an intention  
7 to make that place one's home. *In re Lassin's Estate*, 33 Wn.2d 163, 204 P.2d 1071 (1949);  
8 *Fiske v. Fiske*, 48 Wn.2d 69, 290 P.2d 725 (1955); *Freund v. Hastie*, 13 Wn. App. 731, 537 P.2d  
9 804 (1975); *Marriage of Strohmaier*, 34 Wn. App. 14, 659 P.2d 534 (1983). If either physical  
10 residence or the intent to presently make that place a permanent home is lacking, residence will  
11 not be established. *Id.*

12 9. In support of his case, Mr. Clifford presented testimony and documentary  
13 evidence to show that the property at the Seattle Address was listed for sale on September 10,  
14 2008, and ran through November 16, 2008. The listing was renewed on November 17, 2008. He  
15 testified that the property was not sold, but the sale listing was cancelled on December 10, 2008.  
16 Mr. Clifford also testified that the owner of the property, Kelle Louailler, is currently registered  
17 to vote at the Seattle Address and voted under that residential address in the November 2008  
18 election.

19 10. Mr. Clifford further testified that he went to the Seattle Address on December 12,  
20 2008 and found it to be empty except for a few items (sofa, table, and fake tree) that he stated he  
21 believed were there for staging purposes for the sale. He testified that he placed tape on the front  
22 door and that when he checked the tape on December 13 and December 14, he found that it had  
23 not been disturbed leading him to conclude that the front door had not been opened.

1           11.     In his presentation to the Canvassing Board, Mr. Clifford referred to a KING 5  
2 news story. Mr. Clifford did not present the actual news story at the hearing, but instead testified  
3 that on December 17, a KING 5 reporter interviewed neighbors residing near the Seattle Address  
4 who said a moving van arrived at the house on December 16.

5           12.     Mr. Clifford entered into evidence a copy of a December 10, 2008, Seattle Times  
6 newspaper article which quotes Ms. Huff as saying on December 9, that she would not sleep in  
7 the home at the Seattle Address that night, but would "in the next couple of days".

8           13.     Mr. Clifford testified that Ms. Huff has not changed her address to the Seattle  
9 Address for purposes of her drivers' license and that the only active phone numbers he found for  
10 her are those with a 360 area code which is the area code for Bremerton.

11           14.     Mr. Clifford argued Ms. Huff has no intention to reside at the Seattle Address  
12 permanently. He argued that Ms. Huff could have bought the property at the Seattle Address,  
13 but instead she rented it. He further argued that her roots are in Kitsap County and that if she is  
14 not elected Elections Director, she will move back to Kitsap County.

15           15.     In his "Emergency Motion for Submission of New Evidence", Mr. Clifford states  
16 that on January 12, 2009, he spoke with a realtor from Picket Realty in Bremerton regarding the  
17 home at the Bremerton Address. Mr. Clifford states that the home was listed on the Picket  
18 Realty website as being available. Mr. Clifford states that he was told by the realtor that Ms.  
19 Huff still had the keys to the home and the home was unavailable for rent for an undetermined  
20 time, but might be available for viewing in the next week or two.<sup>2</sup>

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22 <sup>2</sup> Though the Canvassing Board did review Mr. Clifford's Emergency Motion for Submission of New Evidence, the  
23 Board gave little weight to the information presented because it was not provided under oath. Moreover, the Board  
determined that even had the information been timely submitted under oath, it would not have affected the outcome  
of the challenge.

1           16.     In her affidavit dated January 9, 2008, Ms. Huff states that she is currently  
2 residing at the Seattle Address. She further states that although she initially thought she would  
3 not seek the elected position of elections director, she re-evaluated her position and sometime  
4 over the Thanksgiving holiday, decided to make King County her home and run for the position.

5           17.     Ms. Huff further testified in her affidavit that she began looking for a place to live  
6 the weekend of December 6, 2008 and looked at the Seattle Address on December 7. She stated  
7 that she filled out a credit application and on December 8 and signed a one-year lease on  
8 December 9, which began that day. She testified that she paid rent, deposit, and other fees  
9 totaling \$8782.66. A copy of the lease was attached to her affidavit.

10          18.     In her affidavit, Ms. Huff further stated that she opened utilities accounts at the  
11 Seattle Address on December 9. Copies of the bills were attached to Ms. Huff's affidavit.

12          19.     Ms. Huff further stated that she knew that by telling people she intended to make  
13 King County her new home and place of residence and by finding a home and signing a lease,  
14 she effectively abandoned her residence in Kitsap County. As a result, she registered a change of  
15 address for her voter registration on December 9. Ms. Huff stated that while she could not  
16 practically move all of her belongings immediately, she did begin to move some items and the  
17 bulk of her time was spent in King County. She stated that at the time she completed the rental  
18 application on December 8, she intended to remain and live in the home at the Seattle Address.  
19 She stated that it is her home and where she lives.

20          20.     At the hearing, Mr. Clifford stated that he recognized that the determination  
21 required to be made by the Canvassing Board is whether Ms. Huff's voter registration is proper.  
22 However, he asked the Canvassing Board to also determine when Ms. Huff became a resident of  
23 King County. The Board declines to do so. RCW 29A.08.840(4) describes the required

1 determination as whether "the challenged voter's registration is improper" and whether "he or she  
2 resides at the location described in his or her voter's registration records" (emphasis added). The  
3 Board's determination in this challenge is therefore whether Ms. Huff is currently a validly  
4 registered voter in King County.

5 21. Mr. Clifford presented no argument or evidence regarding Ms. Huff's actual  
6 residence after December 15, 2008. He did not assert that Ms. Huff does not presently reside at  
7 the Seattle Address nor did he assert that she is presently residing at the Bremerton Address. As  
8 the challenger, Mr. Clifford had the burden to prove by clear and convincing evidence that Ms.  
9 Huff does not presently reside at the Seattle Address. He failed to meet his burden.

10 22. Mr. Clifford also failed to meet his burden to prove that Ms. Huff does not have  
11 the intent to make the Seattle Address her permanent home. Though Mr. Clifford argued that  
12 Ms. Huff would return to Kitsap County if she lost the election for Elections Director, he  
13 provided no evidence to support this assertion except testimony indicating that Ms. Huff had not  
14 changed her address for purposes of her drivers' license and that her active phone numbers had  
15 360 area codes. We do not find these facts to be clear and convincing evidence of a lack of  
16 intent to remain in King County.

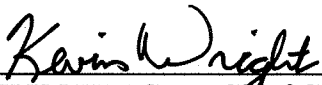
17 23. Since we find that Mr. Clifford has not met his burden to prove that Ms. Huff's  
18 registration is improper, the evidence and testimony submitted by Ms. Huff does not affect the  
19 outcome of the challenge. However, we note that Ms. Huff testified in her affidavit that she does  
20 live at the Seattle Address and that when she completed the rental application on December 8 she  
21 had the intent to remain and live in the home. She further provided evidence that she has a year-  
22 long lease at the Seattle Address and that pursuant to the lease, she paid \$8782.26 in rent,  
23


1 deposit, and other fees. She also provided evidence that utility accounts for the Seattle Address  
2 are in her name.<sup>3</sup>

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4 III. ORDER

5 For the reasons set forth above, the challenge is DENIED.

6 ENTERED this 15th day of January, 2009.

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8   
9 KEVIN WRIGHT, Chief Civil Deputy  
King County Prosecuting Attorney's Office  
King County Canvassing Board Member

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12 ANNE NORIS, Clerk  
King County Council  
King County Canvassing Board Member

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22 <sup>3</sup> As with Mr. Clifford's Emergency Motion for Submission of New Evidence, the Canvassing  
23 Board did review Ms. Durkan's e-mail and the attached document. However, as with Mr.  
Clifford's January 13 submittal, the information was not provided under oath and was therefore  
given little weight. Further, the information has no affect on our finding that Mr. Clifford failed  
to meet his burden of proof in this challenge.