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CLARK COUNTY
WASHINGTON

AUDITOR
Greg Kimsey

July 8, 2022

County Auditor Decision Re: John Ley Voter Registration Challenge

Transmitted via email and U.S. Postal Service

Facts/Evidence:

On Tuesday, June 28, 2022, beginning at 10:00am pursuant to RCW 29A.08.840 a Hearing was conducted at 1408 Franklin Street, Vancouver, Washington in response to a voter registration challenge submitted by Carolyn Crain. Ms. Crain alleged that as of May 26, 2022 the residential address in John Ley's voter registration record of 2628 NW 7th Drive, Battle Ground, Washington was not correct and that his correct residential address is 444 NW Fremont Street, Camas, Washington.

This challenge is based on a question of the residence of the challenged voter, and was initiated pursuant to RCW 29A.08.810.

This challenge was initiated in writing and was received in the Elections Office on May 26, 2022. That same day, I notified Mr. Ley of this challenge. A certified letter setting a date for the hearing was sent to the challenged voter on June 13, 2022, with a copy to the challenger.

Following my introductory comments (attached as Exhibit A) Ms. Crain was sworn in by the court reporter and agreed by oath to testify honestly.

Ms. Crain stated that she had mailed a registered letter to Mr. Ley to the current residential address in his voter registration record ("Battle Ground") as well as Mr. Ley's prior voter registration residential address ("Camas") and that the letter mailed to Battle Ground was received by Elaine Haggerty as evidenced by her signature on the USPS document, and that the letter mailed to Mr. Ley at Camas was not received by anyone at that location. Copies of the USPS documents related to these letters were provided.

Ms. Crain personally went to both the Camas and Battle Ground locations and received no response at the door of the houses at those locations. She also stated that she searched online for telephone listings for Mr. Ley and found nothing that provided evidence that he had changed his residence to Battle Ground. Information

from Clark County's Property Information Center was provided showing that Mr. Ley owns the home at the Camas location and that Philip and Eileen Haggerty own the home at the Battle Ground Location.

Ms. Crain provided a copy of a Financial Affairs Disclosure statement for the period May 17, 2021 through May 16, 2022 filed with the Washington Public Disclosure Commission by Mr. Ley listing the Camas location for two of his business associations.

Ms. Crain provided a copy of a May 27, 2022 news article from Oregon Public Broadcasting which contains the following "Reached by phone on Friday, Ley confirmed he doesn't live in the Battle Ground-area home he listed on his voter registration.", and "Ley said he couldn't recall the last time he spent a night there." (i.e. Battle Ground). The article also contains a quote from Mr. Ley as part of the following sentence: "I don't know off the top of my head," Ley said when asked if he had slept there within the last month.

Mr. Ley agreed by oath to testify honestly and then made a statement.

Mr. Ley stated "...there is no minimum time requirement in the RCW's to register to vote at any particular residence." He then stated "The majority of my adult life I have spent as a nontraditional voter, as described in law and in the references provided by Clark County Auditor Greg Kimsey."

Mr. Ley described his history of being registered to vote at his parent's residential address when he was serving in the military. He also stated that people who are experiencing homelessness may be registered to vote using the intersection of two streets as their residential address. He then submitted a copy of his voter registration record as of April 1, 2022, showing his residential address in Battle Ground and an affidavit from Philip Haggerty stating that as of April 1, 2022, he had agreed to rent a room at the Battle Ground location to Mr. Ley.

Additionally, Mr. Ley submitted copy of an article from The Columbian describing the unsuccessful voter registration challenge of Don Orange, who at the time was a candidate for commissioner for the Port of Vancouver. Finally, Mr. Ley submitted copy of a motor vehicle registration certificate showing a vehicle registered in his name at the Battle Ground location effective June 3, 2022.

I asked Mr. Ley if he had an explanation as to why the affidavit from Mr. Haggerty refers to renting him a bedroom but does not state that he (Mr. Ley) resides in that bedroom. Mr. Ley responded: "Those were the words he chose to use in the affidavit, and he is not present to add clarification."

Mr. Ley was asked if he had any further explanation of the statements he was alleged to have made that were contained in the transcript of the Oregon Public Broadcasting report. Mr. Ley responded "I have spent the night at that address and that was accurate at the time. I did not recall how many nights or specifics. My intention in renting the room was they are snowbirds, they live out of state, and, therefore, I could freely access

that location per our agreement any time I desired, but when they returned home, I would allow them the use of their home to the maximum extent possible.”

I asked Mr. Ley if the statements allegedly made by him as reported by Oregon Public Broadcasting were an accurate representation of his statements. Mr. Ley responded: “I think the nature was how many times I had slept there in the last month and I did not recall.”

In response to questions from Ms. Crain regarding Mr. and Mrs. Haggerty’s and Mr. Ley’s use of the Battle Ground home when the Haggerty’s returned, Mr. Ley stated “Eileen Haggerty returned from Arizona, my understanding is late April, or early May. My intention is I have free use of the house, but I choose not to when they are back.”

When Ms. Crain asked if he had copy of the rental or lease agreement for the room at the Battle Ground location Mr. Ley said his rental agreement is verbal. When she asked Mr. Ley if he had copies of canceled checks that were used to pay for the use of the room, his response was “I have the affidavit.”

When asked how much he paid in rent for the bedroom, Mr. Ley said the agreement was for payment of one dollar per month (\$1.00).

The Hearing was adjourned at 10:27am.

Analysis and Decision:

Prior to the hearing I provided my analysis to the parties regarding my interpretation of relevant RCWs as follows: “registration of a person as a voter is presumptive evidence of their right to vote at any election, as provided in RCW 29A.08.810. The burden to prove otherwise is therefore upon the challenger. The challenger must do so by presenting clear and convincing evidence that the voter does not reside at the address on their registration record.

The challenge in this matter is based upon the allegation that the voter does not reside at the address shown on their voter registration record. “Residence” for the purpose of voter registration is defined by RCW 29A.04.151 as follows:

“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.”

The parties did not challenge my analysis regarding the relevant standards, nor did they propose alternative analysis or standards of proof.

RCW 29A.08.840 (4) says in part “... the challenged voter may provide evidence that he or she resides at the location described in his or her voter's registration records...”

Clear and convincing evidence means that the element must be proved by evidence that carries greater weight and is more convincing than a preponderance of evidence. Clear and convincing evidence exists when occurrence of the element has been

shown by the evidence to be highly probable. However, it does not mean that the element must be proved by evidence that is convincing beyond a reasonable doubt.

After Ms. Crain presented her evidence, Mr. Ley was given an opportunity to rebut her statements, however, he did not state, or otherwise provide evidence, that he resides at the Battle Ground location.

When asked, Mr. Ley did not dispute the representations and quotes by him in the Oregon Public Broadcasting report that "...he doesn't live in the Battle Ground area...", that "...couldn't recall the last time he spent a night there.", and that he could not recall if he had slept there within the last month." A reasonable observer would conclude from this that instead of physically residing at the Battle Ground home he had listed on his voter registration form that Mr. Ley's residence was the home in Camas that he owns at which he was previously registered to vote.

Mr. Ley provided an affidavit from Mr. Haggerty (the owner, along with his wife, of the Battle Ground home) stating that Mr. Ley rented a bedroom at the Battle Ground location, however the affidavit does not state that Mr. Ley's resides at that location.

Mr. Ley's statement that he is unsure of when Mrs. Haggerty returned from Arizona ("my understanding is late April or early May") and that he chooses to not be present at the Battle Ground location when the Haggerty's are residing at that location, that he does not have a written rental agreement but instead only has a verbal agreement and that his rental payment is one dollar (\$1.00) per month is evidence that Mr. Ley's arrangement with Mr. and Mrs. Haggerty is not that of a residential lease.

It is reasonable to expect that a resident in a single-family home would know whether one of the other two residents is present. It is very uncommon for a landlord to rent a residence with only a verbal agreement because a written agreement describes the responsibilities and rights of the landlord and tenant. The current market rate for a single room occupancy unit in Clark County is approximately \$1,000.00 per month, rental of a room in a home for \$1.00 per month is a strong indication of a relationship other than landlord-resident. An occasional visit to a home someone else owns does not establish residency, residency is established by physically residing at the location on a regular, continuing, ongoing basis. While state law requires a person registering to vote to be a resident of the state for at least 30 days, Mr. Ley is correct that, after being registered to vote, there is no minimum time required to reside at new location before a voter can change their voter registration information to that new location. However, the timing is not the issue here. Instead, the issue is whether Mr. Ley resided at the Battle Ground location as of May 26, 2022 when he was registered to vote there. Mr. Ley testified that Mr. and Mrs. Haggerty were residents at the Battle Ground home at the time Mr. Ley used that location for his voter registration information. He also testified that he "chooses not to" use the Battle Ground home when the Haggerty's are present.

Mr. Ley appears to believe that because citizens who are experiencing homelessness may use a nontraditional address for voter registration purposes that he is entitled to be

registered to vote at a location of his choice. However, the address at which Mr. Ley was previously registered to vote (Camas) is a home that is owned by Mr. Ley, it does not appear that Mr. Ley lacks a traditional address. Mr. Ley's circumstance is substantially different than citizens who are experiencing homelessness.

Mr. Ley believes he is a "nontraditional" voter and therefore entitled to select an address of his choosing for his voter registration record; however, this is not supported by the voter registration laws. Instead, the laws support voters with nontraditional addresses. There is not a statute that allows for "nontraditional voters".

Mr. Ley accurately described the ability of a person who is experiencing homelessness to register to vote using the intersection of two streets as their "residential address." When a person who is experiencing homelessness registers to vote and asks for assistance regarding how to accurately provide their residential address for voter registration purposes, they may be asked "where do you put your head at night when sleeping?" The answer to that question can then be used to determine the location where they should be registered, and these locations are referred to as "nontraditional addresses."

Mr. Ley also described his experience of being registered to vote at his parents' residential address during the time he served in the military and appears to believe this allows him to change his voter registration information to a location of his choosing. The Uniformed Overseas Citizens Absentee Voting Act (52 USC 20302) provides members of the military the right to be registered to vote at the address in the state in which they were last domiciled, immediately prior to leaving the United States. UOCAVA does not apply to Mr. Ley's current situation, nor does he provide any information or argument that it should apply by analogy. Mr. Ley did not present evidence, or testify, that he is fluctuating between addresses or temporarily living somewhere.

Mr. Ley submitted as evidence his voter registration record showing the Battle Ground location as his residential address on April 1, 2022. However, the purpose of this hearing is to determine the accuracy of that information, submitting the voter registration record that is the subject of the challenge does not provide evidence that the voter registration information is correct.

Mr. Ley also submitted as evidence, a vehicle registration record showing that as of June 3, 2022, a vehicle owned by Mr. Ley is registered at the Battle Ground location. However, Mr. Ley's voter registration record is being challenged as of May 26, 2022 (he was informed of this challenge that same day), a vehicle registration document dated after that does not provide evidence of residency at an earlier date.

The timeline of events, as described by Mr. Ley and his evidence, are that he verbally leased a bedroom in Phillip Haggerty's home on April 1, 2022 for \$1 a month. He then registered to vote at that Battle Ground address on April 4, 2022. He then filed as a candidate for Representative for the 18th legislative district on May 17, 2022. At some

point in April or May, Mrs. Haggerty returned from Arizona and resided at the home in Battle Ground and Mr. Ley testified that he did not stay at the home when the homeowners were there. I received this challenge on May 26, 2022 and provided notice of the challenge to Mr. Ley. He changed his vehicle registration on June 3, 2022 and registered to vote at yet a different address on July 4, 2022.

Mr. Ley appears to believe the unsuccessful challenge of Don Orange's voter registration information created a precedent which would cause the challenge of Mr. Ley's voter registration information to also be unsuccessful. Each voter registration challenge is decided on the arguments and evidence provided, a decision for one challenge does not necessarily result in the same decision for a different challenge.

As described above clear and compelling evidence supports Ms. Crain's challenge of Mr. Ley's residential address in his voter registration record as of May 26, 2022, that challenge is founded. As of May 26, 2022 Mr. Ley did not reside at 2628 NW 7th Drive, Battle Ground, Washington. Because Mr. Ley has again changed his voter registration to yet another address, his registration will not be canceled.

Mr. Ley may seek review of my decision in Superior Court pursuant to RCW 29A.08.840.



Greg Kimsey

Clark County Auditor

Attached: Exhibit A Introductory Remarks by Auditor Greg Kimsey

Exhibit A – Introductory remarks by Auditor Greg Kimsey

Purpose of today's Hearing: Crain v. Ley

We are making a record that could be used for any appeal of my decision

Use of a Court Reporter – please do not talk over another person, no disruptions

For the record: Introductions of _____

For the record: Audience is present

This challenge is based on a question of the residence of the challenged voter and was initiated pursuant to RCW 29A.08.810.

This challenge was filed more than 30 days prior to an election, therefore, it will be resolved by, me, in my capacity as the Clark County Auditor.

This hearing is held in order to allow the challenger and the challenged voter, to present arguments and evidence. Each party is allowed to appear personally or through counsel, to call and cross examine witnesses. For the purposes of this hearing the relevant time period at question is April of 2022, through present. All parties are in agreement that prior to April of 2022 John Ley resided, and was domiciled, in Camas Washington, outside of the 18th district. Therefore, I do not need to hear testimony or evidence related to the time period prior to April of 2022.

All live testimony, including presentation of facts and arguments in this matter, shall be under oath and shall be recorded to create a clear record, in the event my determination is appealed.

If the parties or witnesses move into clearly immaterial areas, I will direct them to return to the issue at hand.

The rules of evidence do not apply to this hearing, and as a result, evidence will be freely heard. My decision, however, will be based on the kind and type of evidence which a reasonably prudent person would find relevant to the question of domicile.

I will allow each side up to ten minutes to make a statement, and present evidence. I would like to limit questioning and/or cross examination of witnesses to 10 minutes per side. If the parties do not believe that ten minutes is sufficient, they may ask for more time.

If the party calling the witness wishes to reserve a portion of their ten minutes for additional questioning, post cross examination, they may do so.

In determining this challenge, I shall be guided by the principle that the registration of a person as a voter is presumptive evidence of their right to vote at any election, as provided in RCW 29A.08.810. The burden to prove otherwise is therefore upon the challenger. The challenger must do so by presenting clear and convincing evidence that the voter does not reside at the address on their registration record.

Clear and convincing evidence means that the element must be proved by evidence that carries greater weight and is more convincing than a preponderance of evidence. Clear and convincing

evidence exists when occurrence of the element has been shown by the evidence to be highly probable. However, it does not mean that the element must be proved by evidence that is convincing beyond a reasonable doubt.

The challenge in this matter is based upon the allegation that the voter does not reside at the address shown on their voter registration record. "Residence" for the purpose of voter registration is defined by RCW 29A.04.151 as follows:

"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.

After reviewing any evidence submitted by either side, the statute requires me to rule as to whether the voter registration is valid. I will do so by written order after reviewing the evidence. I intend to issue that order sometime in the next few weeks.

Because the burden of proof is on the Challenging Party, Ms. Crain will proceed first.