

# Skagit County, Washington

## Voter Registration Challenge – Decision

Challenger: Lorilee Gates

Challenged Voter: Juan Garduno

Challenge Reason: Voter Residency

### **Introduction**

A voter registration challenge was filed by Lorilee Gates on May 6, 2024, under the provisions of RCW 29A.08.810. The challenge alleges that Juan Garduno (Challenged Voter) does not reside at 1414 S 7<sup>th</sup> St, Mount Vernon, the address listed on their voter registration record. Notification of this hearing was provided to the Challenged Voter via certified mail on June 3, 2024.

The hearing on the challenge was convened on July 11, 2024 at 10:30am. The required Notice of the 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 the county Auditor, Sandy Perkins, Election Manager, Gabrielle Clay, the Challenger, and observer Jeff McInnis. The Challenged Voter did not appear at the hearing, nor did they submit any documentation disputing the Challenger's evidence.

### **Evidence and Argument**

The Challenger alleges that the Challenged Voter does not reside at the address listed on their voter registration, 1414 S 7<sup>th</sup> St, Mount Vernon. The Challenger submitted supporting documents that were incorporated in this Decision. In addition, the Challenger testified under oath at the hearing.

The Elections Staff presented the current voter registration records on file in the Auditor's Office of the Challenged Voter.

## Legal Principles, Findings and Conclusions

The issue before the Auditor is whether the Challenged Voter has a right to vote associated with the address 1414 S 7<sup>th</sup> St, Mount Vernon. A voter may lose their 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, 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. However, "no person gains residence by reason of his or her presence or loses residency by his or her absence: . . . Absence from the state on business shall not affect the question of residence of any person unless the right to vote has been claimed or exercised elsewhere". *Id.*

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 1414 S 7<sup>th</sup> St, Mount Vernon and does *not* reside at the 1414 S 7<sup>th</sup> St, Mount Vernon address for voter registration purposes.


Having reviewed the undisputed documents and testimony submitted by the Challenger, I 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 their voter registration record.

## Decision

The challenge to the Challenged Voter's voter registration is sustained and they lose their right to vote associated with their address at 1414 S 7<sup>th</sup> St, Mount Vernon. The Challenged Voter may, however, correct the residence address on the voter registration and any races and ballot measures 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.

  
Sandy Perkins, Skagit County Auditor

  
Date