



COUNTY OF POLK
Office Of Elections

Des Moines, Iowa

JAMIE FITZGERALD
Polk County Auditor
and
Commissioner of Elections

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December 5, 2022

Via Certified Mail

Ann Gale
213 NE 14th Court
Grimes, IA 50111

Jack Whitver
3400 SE Glenstone Dr, Unit 11
Grimes, IA 50111

Re: Voter Registration Challenge

Dear Ms. Gale and Mr. Whitver:

This matter comes before me as the designated Commissioner of Registration pursuant to Chapter 48A of the Code of Iowa (2021).

Procedural History

On or about November 5, 2022, Ann Gale, registration address is 213 NE 14th Court in Grimes, Iowa through her legal counsel, submitted a voter registration challenge against Mr. Jack Whitver, whose voter's registration address is 3400 SE Glenstone Dr., Unit 11 in Grimes, Iowa. Ms. Gale alleges that Mr. Whitver is not a resident at the address where he is registered to vote. *See*, Iowa Code §48A.14 (1)(c) (2021).

As Commissioner of Registration ("Commissioner"), my first responsibility is to determine whether the Challenge submitted is valid. Iowa Code §48A.15 (1). "A Challenge is valid if it meets the criteria set forth in Iowa Code §48A.14, subsections 1, 2, and 3." In reviewing the Challenge submitted by Ms. Gale, I confirmed that it was in writing, it alleged that Mr. Whitver is not a resident at the address where he is registered to vote, it contained allegations only against one registered voter, it was signed by Ms. Gale and it was the proper form as prescribed by the Iowa Secretary of State. I therefore determined that the Challenge was valid as defined by Iowa Code §48A.15

On or about November 10, 2022, I notified the challenged registrant; the challenger and their legal counsels that there would be a hearing on the matter of the Challenge on November 30, 2022 at 2:00

PM in the Polk County Election Office. The notice included a copy of the Challenge and advised the parties that they may appear personally at the hearing or have a representative appear on their behalf. Notice was served by First Class forwardable mail addressed to the parties at their current respective voter registration addresses. *See*, Iowa Code §48A.15.

PRELIMINARY PROCEDURAL ISSUES

Challenger was present and was represented by attorney Shayla McCormally. Attorney Charlie Smithson appeared on behalf of Registrant who was not personally present.

On November 23, 2022, Challenger served a "Subpoena to Appear" on the Challenged Registrant, by substitute service, upon his spouse Rachel Whitver at 4019 NE Bellagio Circle, Ankeny, Iowa. The Commissioner did not issue or authorize the issuance of subpoenas in this matter. Chapter 48A does not confer upon the Commissioner subpoena power. Challenger asserted she is authorized to issue subpoenas in this matter pursuant to Iowa Code Section 17A.13. The Commissioner is the (Polk) County Commissioner of Elections. *See*, §48A.3. Chapter 17A of the Code of Iowa does not mean or apply to subdivisions of the state or its offices. For these reasons the Commissioner determined there was no statutory authority for the issuance of Challenger's subpoena.

Challenger requested the Commissioner cancel Mr. Whitver's voter registration, before hearing, because he did not personally appear at the hearing. Challenger cited a limited portion of §48A.16(2) which states, "If a challenged registrant does not personally appear at the hearing ...," as the authority for her assertion that the challenged registrant is required to personally appear at the hearing, and authorization for the Commissioner to cancel the registration of the challenged registrant, without hearing, solely based on a challenged registrant not having personally appeared. However, Iowa Code §48A.15 states in part, the Commissioner "shall advise the challenged registrant that the registrant *may* personally appear at the hearing ..." (emphasis added). Generally, Iowa courts interpret "may" to confer a power and "shall" to impose a mandatory duty. *See*, Iowa Code Section 4.1(30). Attorney Charlie Smithson did personally appear in a legal and representative capacity for Mr. Whitver. For these reasons the Commissioner determined the hearing should proceed and both represented parties be permitted to submit their evidence, documentation and statements in support of their respective positions.

Challenger requested the Commissioner to deny the Challenged Registrant the opportunity to submit evidence, documentation, or statements refuting the challenge because he did not submit his evidence, documentation, or statements to the Commissioner "before the hearing." Challenger cited a limited portion of §48A.15(3) which states, "The notice of a hearing shall ... advise the challenged registrant that the registrant may personally appear at the hearing, or may submit to the commissioner before the hearing evidence, documentation, or statements refuting the challenge," as the authority for her assertion, that the challenged registrant is should be denied the opportunity to submit his evidence, documentation and statements at the hearing. For the same reasons cited above the Commissioner determined, the Challenged Registrant should be provided the opportunity to submit his evidence, documentation and statements refuting the challenge.

ISSUE

The issue before me today is whether Mr. Whitver is not a resident at his declared residence, as that word "Residence" is determined by Chapter 48A of the Code of Iowa.

FINDINGS OF FACT

Challenger, Ann Gale submitted her verbal statement, the verbal statement of Emma Weinert and documentary evidence through her legal representative. Based on that verbal and documentary evidence, the Commissioner finds that Mr. Whitver is the owner of two residential properties, one in Grimes and one in Ankeny; that on or about October 9, 2022 Emma Weinert spoke with Rachel Whitver at the Ankeny residence; various screen shots of Mr. Whitver's the social media profiles, such as the Iowa Senate Republicans identify Mr. Whitver's residence to be the Ankeny address where he had previously been registered to vote prior to August 2022; the Iowa Secretary of State's website identifies the names and home office address of Mr. Whitver's business entities, that address being the Ankeny address; water bills from January to September 2022 for the Grimes address; and documentation that indicates Mr. Whitver did not vote in the 2022 Primary and General Elections.

Mr. Whitver submitted documentary evidence through his legal representative. Based on that documentary evidence the Commissioner finds the Challenged Registrant, Jack Whitver, is the registered owner of the residential property located at 3400 Glenstone Dr., Unit 11, Grimes, IA 50111. On or about August 8, 2022 Mr. Whitver declared his residence to be 3400 SE Glenstone Dr. Unit 11, Grimes, IA. On or about August 1, 2022 Mr. Whitver requested to withdraw his homestead exemption on his previously declared residence located at 4019 NE Bellagio Circle, Ankeny, IA 50021. On August 5, 2022, Mr. Whitver obtained an Iowa Driver's License wherein he documented his residence to be the Grimes address. Mr. Whitver has and pays for the utilities of electric, gas, water and sewer at the Grimes address. On September 2, 2022, Mr. Whitver notified the Secretary of State he changed his residence to the Grimes address. As of September 2, 2022 Mr. Whitver's payroll records indicated his residence is the Grimes address. On September 4, 2022, Mr. Whitver filed his DR-1 Statement of Organization with the Iowa Ethics and Campaign Disclosure Board wherein he identified his residence as the Grimes address. Mr. Whitver also provided photo documentation of his Grimes residence along with a photo showing he has received a UPS package addressed to him with the Grimes address. In addition, Mr. Whitver submitted a sworn affidavit under the penalty of perjury in August of 2022 he was preparing to establish residency at the Grimes address with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time.

Applicable Law

The Challenger bears the burden of proof in this matter. The standard of proof shall be by a preponderance of the evidence. See, §48A.5A(8) Code of Iowa (2021).

Voter registration requirements are codified in Chapter 48A of the Code of Iowa. It is the intent of the Iowa general assembly that Chapter 48A and other statutes relating to voter registration are to be liberally construed to facilitate the registration of eligible residents. See, §48A.1 Code of Iowa (2021).

Residence shall be determined in accordance with the following principles . . . A person's residence, for voting purposes only, is the place which the person declares is the person's home with the *intent* to remain there permanently or for a definite, or indefinite or indeterminable length of time. Iowa Code §48A.5(2)(b) (emphasis added). The residence of a person in the precinct where the person's home or dwelling is located. Iowa Code §48A.5A(1).

A person's declaration of residency for voter registration and voting purposes is *presumed* to be valid unless a preponderance of evidence indicates that another location should be considered the person's voting residence under the provisions of this chapter. Iowa Code §48A.5A(8) (emphasis added). A registrant shall be *presumed* to revoke any earlier claim of residence for voter registration purposes. Iowa Code §48A.5(2)(d) (emphasis added). Generally, a voter's residence is where the voter claims it to be, as long as the voter does not claim any other residence for voter registration. (SOS: Chapter 1 Voter Registration).

Analysis of Evidence

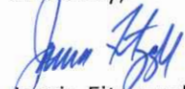
The Challenger asserts Mr. Whitver is not a resident where he is registered to vote. Challenger bases her assertions based on the fact that Mr. Whitver is the registered title holder of two residential properties, one in Grimes and one in Ankeny; documents which included a blank voter registration form; an affidavit from a political door knocker who spoke with Rachel Whitver at one of the residential properties which she owns with Mr. Whitver, which was the Ankeny address; water bills from the registered address in Grimes dated January 2022-September 2022 showing either a lack of or minimal usage; social media posts and documents from various websites that indicate Mr. Whitver's residence is located at 4019 NE Bellagio Circle in Ankeny; a copy of a Polk County Assessor web page showing Mr. Whitver does own a house located at 4019 NE Bellagio Circle in Ankeny. However, Challenger also provided a copy of a Polk County Assessor's web page showing Mr. Whitver also owns a home located at 3400 SE Glenstone Dr. Grimes, IA where he is registered to vote. Mr. Whitver's voting profile where it shows he has not voted in the 2022 Primary and General Elections. The Challenger does not allege Mr. Whitver is registered to vote at more than one place, only that he is registered to vote at the Grimes address.

On or about August 8, 2022, Mr. Whitver declared his residence to be the residential property he owns located at 3400 SE Glenstone Dr. Grimes, IA. A person's declaration of residency is presumed to be valid. Iowa Code §48A.5A(8). Upon his declaration of residency in Grimes, his prior claim of residency in Ankeny is presumed to be revoked. Iowa Code §48A.5(2)(d). On or about August 1, 2022 Mr. Whitver requested his homestead exemption in Ankeny be canceled. Mr. Whitver has signed a sworn affidavit under the penalty of perjury that it is his intent remain at his owned residential residence permanently or for a definite, or indefinite or indeterminable length of time. Iowa Code §48A.5(2)(b). Mr. Whitver has submitted actual substantial financial evidence that supports his declaration and intent.

Conclusion

Challenger's dated social media, websites and water bill evidence prior to Mr. Whitver's September 2022 move to Grimes is found to be insufficient to overcome the presumption that Mr. Whitver's declared residency is valid and his submitted evidence. I conclude Mr. Whitver is a resident at the 3400 Glenstone Dr., Unit 11 Grimes, IA 50111 address where he is registered. The challenge therefore is rejected.

Sincerely,



Jamie Fitzgerald

Polk County Auditor and Commissioner of Elections