



Clallam County Auditor's Office

Shoona Riggs, Auditor

223 E. 4th St., Suite 1 ♦ Port Angeles, WA 98362

(v) 360-417-2222 ♦ (f) 360-417-2312

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July 26, 2017

Mr. David Gilles
Campaign Treasurer – Campaign to Re-Elect Colleen for Port Commissioner
21 Lighthouse View Drive
Sequim, WA 98382

Re: Voter Registration Challenge Pursuant To RCW 29A.08.810(1)(c)

Mr. Gilles,

As an initial matter, the Clallam County Auditor's Office has published the documents that you submitted to challenge the voter registration of Mr. Michael Cobb as required under RCW 29A.08.835. These documents can be viewed at the following link: <https://wei.sos.wa.gov/county/clallam/en/Elections/voterinformation/Pages/Voter-Registration-Challenges.aspx>.

In reviewing the materials that you submitted, the Auditor's Office has determined that the challenge is not in the proper form because it is incomplete on its face and it does not substantially comply with the requirements prescribed under RCW 29A.08.110(1)(c)(ii). As such, the Auditor's Office must dismiss the challenge pursuant to RCW 29A.08.840(1).

In order to help you understand the underlying reasoning, the Auditor's Office submits the following analysis. Under RCW 29A.08.810(1) a challenge to the person's right to vote must be based on personal knowledge of one of the following:

- (a) The challenged voter has been convicted of a felony and the voter's civil rights have not been restored;
- (b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency;
- (c) The challenged voter does not live at the residential address provided;



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- (d) The challenged voter will not be eighteen years of age by the next election;
or
- (e) The challenged voter is not a citizen of the United States.

A review of the challenge that you submit relies on RCW 29A.08.810(1)(c) – *i.e.* that Mr. Cobb does not presently live at the residential address provided to the Auditor's Office.

A challenge pursuant to RCW 29A.08.810(1)(c) requires the challenger to provide either (1) the challenged voter's actual residence on the challenge form; or (2) 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 challenge voter to learn the challenged voter's actual residence. If the challenge relies on the latter as the basis to contest the voter registration, then the documents submitted to the Auditor's Office must demonstrate that the challenger has observed the following statutory requirements:

- 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 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 if 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.



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RCW 29A.08.810(1)(c)(ii) (emphasis added). In the present case the materials you submitted rely on 29A.810(1)(c)(ii), but they do not substantially comply with the requirements of the statute.

First, there is nothing in your sworn affidavit that you actually sent a letter with return service requested to Mr. Cobb's address that is on file with the Auditor's Office, nor that you sent a letter with return service requested to Mr. Cobb's mailing address if any. Instead, your affidavit merely reads "his campaign address is 136 E. 8th Street, #304; Port Angeles, 98362, a PO Box in a Port Angeles UPS store located in District 2." This does not meet the requirement that a letter sent with return service requested was mailed to the two addresses (the one listed on the registration, and mailing address) as required under RCW 29A.08.810(1)(c)(ii)(A).

Second, while you have purportedly visited the residential address provided and contacted persons that manage the John Wayne Marina via a public records act request, you have not provided a signed affidavit, subject to the penalties of perjury, from the person who owns or manages the property, testifying that Mr. Cobb does not reside at the address as is required under RCW 29A.08.810(1)(c)(ii)(B).

Third, there is nothing to show that you have searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county. This is required under RCW 29A.08.810(1)(c)(ii)(C). Instead, your affidavit questions his residency because "[h]is phone number is a Ventura County CA prefix and his website displays "Under Construction" with no further details about his residency." In today's day where cellular phones are common and the assigned number may not reflect the area code that corresponds with a specific geographical location, the fact that Mr. Cobb may have a California phone number is not particularly dispositive of any fact. Moreover, a campaign website does not appear to be an "online directory" within the spirit and intent of RCW 29A.08.810(1)(c)(ii)(C).

Fourth, while your affidavit purports to have searched the Clallam County Auditor's records to determine whether Mr. Cobb owns any property in the county, there is nothing documenting the search performed. For example, a corresponding print out



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from the "Online Document Search", which may be accessed at the following link:
<http://vpn.clallam.net:8080/recorder/web/>.

Fifth, your affidavit does not show that you searched the statewide voter registration database to determine if the voter is registered at any other address within the state of Washington. This is required under RCW 29A.08.810(1)(c)(ii)(D). For your edification, the statewide voter registration database may be accessed at the following link:
<https://www.sos.wa.gov/elections/vrdb/extract-requests.aspx>.

Finally, RCW 29A.08.810(3) expressly reads "[t]he challenge may not be based on unsupported allegations or allegations by anonymous third parties." Your affidavit begins that "[i]t has been alleged by campaign supporters that Michael R. Cobb is not a resident of Sequim[.]" Thus, it appears that your affidavit does not comply to the requisites of 29A.08.810(3) as it references "anonymous third parties." To the extent that this language was prefatory, the allegations contained in your affidavit do not appear to be supported as required under RCW 29A.08.810(1)(c)(ii)(A)-(E). In sum, the Auditor's Office cannot conclude that the affidavit meets the legal sufficiency prescribed under the statute.

Without a complete voter challenge that substantially complies with RCW 29A.08.810(1)(c), the Auditor's Office cannot provide Mr. Cobb with due process in the context of knowing the evidentiary support for the challenge, nor can it find that there is clear and convincing evidence that the registration is improper. *See* RCW 29A.08.840(2); RCW 29A.08.840(4). The law states that "[r]egistration of a person as a voter is presumptive evidence of his or her right to vote"; and a "challenger has the burden to prove by clear and convincing evidence that the challenged voter's registration is improper." RCW 29A.08.810(1); RCW 29A.08.840(4). The Auditor's Office does not have an investigative arm and, thus, the law requires the challenger to comply with the prerequisites of RCW 29A.08.810(1).

The Auditor's Office is aware of the recent article in the Peninsula Daily News (dated 7/23/2017), which attributed certain statements to Mr. Cobb. While hearsay is admissible in proceedings to challenge a voter's registration, *see* RCW 34.05.452(1), the attributed assert that Mr. Cobb actually resides within the district. Pursuant to RCW



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29A.08.840(5), the law "permit[s] the voter to correct his or her voter registration and any races and ballot measures on the challenged ballot that the voter would have been qualified to vote for had the registration been corrected shall be counted." As such, the hearsay statements do not necessarily vitiate Mr. Cobb's voter registration.

You are welcome to resubmit a legal challenge, and one that meets the statutory requirements under RCW 29A.08.810(1)(c), if you believe such is warranted under the circumstances. At this time, however, the Auditor considers the matter to be closed and will take no further action.

Sincerely,

A handwritten signature in black ink that reads "Shoona Riggs".

Shoona Riggs
Clallam County Auditor
223 E. 4th Street, Suite 1
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CC: Michael Cobb
Colleen McAlleer
Mark Nichols
Paul Gottlieb