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4 BEFORE THE DIRECTOR, KING COUNTY
5 RECORDS, ELECTIONS, AND LICENSING SERVICES DIVISION
6 KING COUNTY, WASHINGTON

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7)
7 In Re Challenge to the Voter Registration of) FINDINGS OF FACT,
Daniel M. Sosin) CONCLUSIONS OF LAW AND
8) ORDER
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10)

11 I. INTRODUCTION

12 THIS MATTER came before Dean Logan, Director (the “Director”), King County
13 Records, Elections, and Licensing Services Division (“King County Elections”), pursuant to
14 RCW 29A.08.810-850 on February 18, 2005, upon the challenge to the voter registration of
15 Daniel M. Sosin (the “Challenged Voter”). The voter registration challenge was filed by Stefan
16 M. Sharkansky (the “Challenger”) and alleges that the Challenged Voter does not maintain a
17 legal voting residence at the address shown on his voter registration records. The Challenger
18 was present at the hearing. The Challenged Voter did not appear at the hearing and did not
19 present any affidavits or other documentary evidence to be considered by the Director.

20 II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

21 1. The voter registration challenge at issue was initiated in writing and was filed on
22 February 7, 2005. The letter to the Challenged Voter with a copy to the Challenger was sent on
23 February 10, 2005, setting a date for the hearing. Because the voter registration challenge was

1 filed less than thirty days prior to the election that was held in King County on February 8, 2005,
2 the voter registration challenge would normally have been heard and decided by the canvassing
3 board. However, in this instance, because Mr. Sosin was not eligible to vote in the February 8th
4 election, RCW 29A.08.830 directs that the voter registration challenge be heard by the Director.
5 On February 10, 2005, letters were sent to the Challenged Voter and the Challenger informing
6 them that a hearing would be held on February 18, 2005 before the Director.

7 2. The Challenger alleges that the Challenged Voter does not maintain a legal voting
8 residence at the address shown on his voter registration record. The voter registration challenge
9 is made pursuant to RCW 29A.08.830, the first paragraph of which reads:

10 Any registered voter may request that the registration of another voter be canceled
11 if he or she believes that the voter does not meet the requirements of Article VI, section 1
12 of the state Constitution or that voter no longer maintains a legal voting residence at the
13 address shown on his or her registration record. The challenger shall file with the county
14 auditor a signed affidavit subject to the penalties of perjury, to the effect that to his or her
15 personal knowledge and belief another registered voter does not actually reside at the
16 address as given on his or her registration record or is otherwise not a qualified voter and
17 that the voter in question is not protected by the provisions of Article VI, section 4 of the
18 Constitution of the state of Washington. The person filing the challenge must furnish the
19 address at which the voter actually resides.

20 3. The rules of evidence do not apply to voter registration challenge hearings and
21 evidence was therefore liberally admitted at the hearing.

22 4. Live testimony was presented at the hearing by Bill Huennekens, Superintendent
23 of Elections, King County Records, Elections and Licensing Services Division. The Challenger
also presented live testimony. Both witnesses were placed under oath before they gave their
testimony. The Director heard and considered the testimony of Mr. Huennekens, the testimony
of the Challenger, and the following exhibits:

- (1) Voter Registration Challenge Form filed by Stefan M. Sharkansky regarding the voter registration of Daniel M. Sosin dated received February 7, 2005;

- (2) Certified Mail Receipts for Mr. Sosin;
- (3) Mr. Sharkansky's Voter Registration Screen Shot;
- (4) Copy of Image, Mr. Sharkansky's Voter Registration Form;
- (5) Voter Registration Record Screen Shot of Daniel M. Sosin;
- (6) Properties Detail Screen, Mr. Sosin;
- (7) Mr. Sosin's Voter Registration Record Screen Print Shot;
- (8) Transaction Log of Record Changes, Mr. Sosin's Voter Record;
- (9) Voting History Screen Shot for Mr. Sosin;
- (10) Copy of Image, Mr. Sosin's Voter Registration Form;
- (11) Copies of Return Ballot Envelope, Mr. Sosin;
- (12) Original E-Mail from Mr. Sharkansky dated February 1, 2005;
- (13) Response to E-Mail from Mr. Logan to Mr. Sharkansky dated February 2, 2005;
- (14) Response to E-Mail from Mr. Logan to Mr. Sharkansky dated February 3, 2005;
- (15) E-Mail from Mr. David Goldstein to Mr. Logan dated February 17, 2005;
- (16) Letter from Captain H. Austin Hayes to Irene E. Song dated February 18, 2005;
- (17) Second Letter from Captain H. Auston Hayes to Irene E. Song dated February 18, 2005;
- (18) Document from Composite State Board of Medical Examiners, Mr. Sosin;
- (19) Copy of Voter Registration Data for Mr. Sosin;
- (20) Report of King County Assessor, 2301 Bigelow Avenue North;
- (21) Document of Georgia Superior Court Clerks' Cooperative Authority, Real Estate Index;
- (22) Letter from the Composite State Board of Medical Examiners dated February 16, 2005;
- (23) Letter from the Washington State Department of Health to Mr. Sharkansky dated February 17, 2005;
- (24) Voter Registration Record of Jacalyn Sosin, DeKalb County, Georgia;
- (25) Property Tax Record, DeKalb County, Georgia, 2912 Fontainebleau Drive

5. The registration of a person as a voter is presumptive evidence of his right to vote at any election, as provided in RCW 29A.08.810. The burden to prove otherwise is upon the Challenger. The Challenger must do so by presenting clear and convincing evidence that the voter is not properly registered under the state Constitution and state law at the address listed on his registration record. RCW 29A.08.820 and 29A.08.840¹

¹ RCW 29A.08.820 governs voter registration challenges heard by the canvassing board. There is no burden of proof stated in RCW 29A.08.840, which governs challenges heard by the director. There appears to be no reason to conclude that a different standard would apply to challenges heard by the director. The issues to be decided are the same and the only factor that determines whether a voter registration challenge is heard by the canvassing board or the director

1 6. For purposes of voter registration, “residency” is defined by RCW
2 29A.04.151.01.140 as “a person’s permanent address where he physically resides and maintains
3 his abode”.

4 7. “Elector” is defined by RCW 29A.04.061 as “any person who possesses all of the
5 qualifications to vote under Article VI of the state Constitution”.

6 8. “Service Voter” is defined by RCW 29A.04.163 as “any elector of the state of
7 Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active
8 service, is a student or member of the faculty at a United States military academy, is a member of
9 the merchant marine of the United States, is a program participant as defined in RCW 40.24.020,
10 or is a member of a religious group or welfare agency officially attached to and serving with the
11 armed forces of the United States”.

12 9. The state constitution, Article VI, section 1 sets forth the qualifications of electors
13 as “[A]ll persons of the age of eighteen years or over who are citizens of the United States and
14 who have lived in the state, county, and precinct thirty days immediately preceding the election
15 at which they offer to vote, except those disqualified by Article VI, section 3 of this Constitution,
16 shall be entitled to vote at all elections.

17 10. The state Constitution, Article VI, section 4, further provides that “[N]o person
18 shall be deemed to have gained residence by reason of his presence or lost it by reason of his
19 absence, while in the civil or military service of the state or of the United States, nor while a
20 student at any institution of learning, nor while kept at public expense at any poor-house or other
21 asylum, nor while confined in public prison, nor while engaged in the navigation of the waters of
22 this state or the United States, or of the high seas”.

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is the date upon which the challenge is filed.

1 11. In support of his case, the Challenger presented evidence including letters from
2 the United State Department of Health and Human Services, Centers for Disease Control and
3 Prevention detailing the Challenged Voter’s status as a Commissioned Officer with the United
4 States Public Health Service. Exhibit 16 and Exhibit 17. The documents show that the
5 Challenged Voter is a Captain with the United States Public Health Service currently assigned to
6 the Centers for Disease Control and Prevention in Atlanta, Georgia and that the Challenged
7 Voter has held various positions with the Public Health Service including locations in Frankfort,
8 Kentucky, Seattle, Washington, and Atlanta, Georgia. Further the letters document that the
9 Challenged Voter was assigned to Seattle, Washington from September 9, 1991 to August 21,
10 1992 in a field assignment with the Centers for Disease Control and Prevention.

11 12. The Challenger also presented evidence from a website for the State of Georgia
12 Composite State Board of Medical Examiners consisting of a Physician Profile for the
13 Challenged Voter. Exhibit 18. The document details the licensure and medical education and
14 training of the Challenged Voter.

15 13. The Challenger presented a letter from the State of Georgia Composite State
16 Board of Medical Examiners indicating the active status of the Challenged Voter’s physician
17 license. Exhibit 22. In addition to listing the license as active, the letter indicates that the current
18 license expires December 31, 2005 and lists dates of previous renewals.

19 14. The Challenger presented a letter from the State of Washington Department of
20 Health indicating that a search of the Health Practitioner Database found no matches to the
21 Challenged Voter’s name. Exhibit 23.

1 15. The Challenger presented reports from the King County Assessor’s Office
2 website showing property ownership for the address where the Challenged Voter is registered to
3 vote. Exhibit 20. The Challenged Voter is not listed as the property owner.

4 16. The Challenger presented a report from the Georgia Superior Court Clerks’
5 Cooperative Authority website that shows the existence of a Warranty Deed filed in January
6 1993 for property in DeKalb County, Georgia where the Challenged Voter is listed as the
7 Grantor and Grantee. Exhibit 21.

8 17. The Challenger presented a report from the DeKalb County, Georgia Tax
9 Commissioner’s website detailing property ownership by the Challenged Voter. Exhibit 25. The
10 report lists a property address of 2912 Fontainebleau Drive and an owner address of 1253
11 Arborvista Drive NE, Atlanta, Georgia under the name of the Challenged Voter.

12 18. The Challenger presented a screen print report from the DeKalb County, Georgia
13 Voter Registration and Election database of the voter registration of Jacalyn Sosin who was
14 represented by the Challenger to be the spouse of the Challenged Voter. Exhibit 24. The voter
15 registration record shows an address of 1253 Arborvista Drive NE, Atlanta, Georgia.

16 19. The Challenger twice made reference to a “layman’s understanding” of case law
17 in support of the challenge, but no cases were cited or decisions submitted for consideration in
18 this matter.

19 20. In response to questions, the Challenger indicated that he had checked with the
20 Washington State Department of Licensing and determined that the Challenged Voter has a
21 current Washington State Driver’s License. No evidence was submitted indicating the address
22 listed on the driver’s license.

1 21. In response to questions, the Challenger indicated that he was not aware of the
2 Challenged Voter being registered to vote anywhere other than his current registration and that
3 the Challenger had confirmed that the Challenged Voter is not registered to vote in DeKalb
4 County, Georgia.

5 22. The Challenged Voter did not appear at the hearing and did not submit a written
6 affidavit for consideration. However, the Challenged Voter did contact King County Records,
7 Elections and Licensing Services after the hearing was held and expressed a desire to contest the
8 challenge. I did not speak with the Challenged Voter nor did I consider any information provided
9 by him in making this decision.

10 23. The ultimate question to be answered in this matter is whether the Challenger has
11 proven that based on the evidence described above, it is highly probable that the Challenged
12 Voter does not meet the requirements to be properly registered to vote under the state
13 Constitution and state law at the address listed on his registration record.² The Challenger did
14 establish a reasonable conclusion that the Challenged Voter presently physically resides outside
15 of the state of Washington. The Challenger’s evidence also demonstrated conclusively that the
16 Challenged Voter is a commissioned officer with the United States Public Health Service and
17 that he was, at the time of his registration, on assignment in Seattle, Washington and that he is
18 currently on assignment in Atlanta, Georgia. Therefore, the relevant questions are whether the
19 Challenged Voter met the qualifications of an elector at the time of registration and whether he
20 appropriately maintains eligibility for voter registration through the provisions cited in Article
21

22 ² The Washington Supreme Court has described clear and convincing evidence as evidence
23 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, 853 P.2d 913 (1993); Davis v. Dept. of Labor and
Industries, 94 Wn.2d 119, 126, 615 P.2d 1279 (1980).

1 VI, section 4 of the state Constitution based on his civil service status with the United States
2 Public Health Service.

3 24. Based on the qualifications of electors in the state Constitution and the voter
4 registration form of the Challenged Voter, the evidence indicates the Challenged Voter met all of
5 the qualifications for voter registration at the time he registered in 1991. He attested to being
6 over the age of eighteen, to being a citizen of the United States, to not be denied his civil rights
7 due to a felony conviction and to have lived in the state, county and precinct thirty days
8 preceding the next election. Additionally, the Challenged Voter obtained a Washington State
9 Driver's License which new Washington residents must do within 30 days of becoming residents
10 of Washington State. RCW 46.20.021. Therefore, I conclude that the Challenged Voter's
11 eligibility at the time of registration met the requirements of the state Constitution and state voter
12 registration laws.

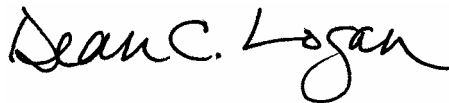
13 25. While the Challenger demonstrated that the Challenged Voter owns property in
14 Atlanta, Georgia where he is on what reasonably appears to be a long term assignment with the
15 United States Public Health Service at the Centers for Disease Control and Prevention and that
16 he maintains his physician's license in the State of Georgia, the Challenger did not provide clear
17 and convincing evidence to refute the language in the state Constitution which specifically
18 preserves residence for voting purposes for any person while in the civil or military service of the
19 United States. The evidence shows that the Challenged Voter had physical presence in
20 Washington prior to and upon registering to vote. He has maintained that registration and cast
21 ballots consistently since his registration. He obtained a Washington State Driver's License and
22 has kept it current. These facts demonstrate signs of a present intent to make Washington his
23 home or domicile after his service. Therefore, I conclude that the Challenged Voter is properly

1 registered to vote under the state Constitution and state law at the address listed on his
2 registration record so long as he continues in commissioned civil or military service to the state
3 or the United States or until such time he establishes voting residency and registers to vote in
4 another jurisdiction.

5 III. ORDER

6 Therefore, it is ordered that the challenge is DENIED.

7 ENTERED this 15th day of March, 2005.

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11 DEAN C. LOGAN
12 Director, King County Records, Elections, and
13 Licensing Services Division
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