

(Handwritten signature)

TO: ME 23-017
Alaska County Court

Washington State Voter Registration Challenge Form

1 Personal Information of Challenger

Pivec Michael Francis
 last first middle suffix
 1831 152nd St. SW
 residential address in Washington state
 Lynnwood, WA 98087
 city ZIP apt #
 (425) 318-0968 mikepivec40@yahoo.com
 phone number email address

2 Personal Information of Challengee

Broyles Jack Owen Jr.
 last first middle suffix
 17327 31st Dr. SE
 residential address in Washington state
 Bothell, WA 98012
 city ZIP apt #
 (425) 210-3558 broylesj@icloud.com
 phone number email address

3 Basis of Challenge (provide evidence to support your challenge)

The challenged voter:

- is not a US citizen
- will not be at least 18 years old by the next election
- is convicted of a felony in Washington and serving a sentence of total confinement under the jurisdiction of the Department of Corrections, or a felony conviction in another state's court or federal court and voting rights have not been restored under RCW 29A.08.520
- has been judicially declared ineligible to vote due to mental incompetency under RCW 29A.08.515
- does not reside at the address listed on their voter registration and is not subject to RCW 29A.04.151 or RCW 29A.08.112

Provide voter's actual residential address if known:

Unknown works for Anchorage Water and
 residential address city, state wastewater utility in Anchorage,
 Alaska

4 Oath

I, Michael Pivec, declare under penalty of perjury under the laws of the State of Washington that I:

- am a registered voter in the State of Washington;
- have personal knowledge and belief that the person named above is not qualified to vote for the reason or reasons indicated in this affidavit;
- have exercised due diligence to personally verify the evidence that accompanies this affidavit;
- believe that the challenged voter is not qualified to vote or does not live at the address listed on their voter registration.

sign here Michael Pivec

date here 8/15/23

For official use



Snohomish County

Auditor's Office - Elections and Voter Registration Division

www.snoco.org/elections

Garth Fell
County Auditor

Connie Barndt
Chief Deputy Auditor

(425) 388-3444
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M/S 505
3000 Rockefeller Avenue
Everett, Washington 98201-4046

September 13, 2023

Re: **In re the Voter Registration Challenge of Jack O. Broyles, Jr.**

On August 24, 2023, at 3:01 p.m., pursuant to chapter 29A.08 RCW, Michael Pivec filed a Voter Registration Challenge with the Snohomish County Auditor. He alleges that Jack O. Broyles, Jr. does not reside at the address listed in his voter registration record.

I. Factual Background

On August 2, 1991, Jack O. Broyles, Jr. ("Broyles") registered to vote with the Snohomish County Auditor's Office ("Auditor"). Exhibit A. Broyles updated his residence address on his voter registration record in June 2019 to 17327 31st Dr. SE, Bothell, WA 98012 ("17327 31st Dr. SE").

On August 24, 2023, pursuant to chapter 29A.08 RCW, Michael Pivec ("Pivec"), filed a Voter Registration Challenge ("Challenge"). Exhibit B. The Challenge alleges that Broyles "does not reside at the address listed on his voter registration," and that Broyles' actual residential address is "unknown". ("unknown address"). Id.

The Auditor determined that the Challenge was in proper form and alleged a factual basis sufficient to meet legal grounds for a challenge. RCW 29A.08.840(2). Within 72 hours of receiving the Challenge, the Auditor's Office published the Challenge on its website. See RCW 29A.08.835. On August 25, 2023, the Auditor sent a letter, via certified mail, to 17327 31st Dr. SE, Bothell, WA 98012, notifying Broyles that a Challenge had been received. RCW 29A.08.840; Exhibit C. The letter included a copy of the Challenge and notified Broyles that a hearing on the Challenge would be held on September 5, 2023, at 11:00am. Pivec was also notified of the hearing time and date. Id.

On August 31, Pivec emailed the Auditor's Office an email exchange he had with Broyles on May 24, 2023, regarding Broyles attendance at Alderwood Water and Wastewater District meetings where Broyles is a current commissioner. Exhibit D.

On September 5, 2023, the Auditor heard testimony from Pivec, Broyles, Brad Nelson in support of Broyles, and Kelly Boswell in support of Broyles. Broyles also provided a written response to the challenge of his voter registration as well as 17 documents supporting his position that he maintains residency at 17327 31st Dr SE. Exhibit E.

The Auditor considered the written documents submitted by the parties as well as in-person testimony in rendering his decision.

II. Standards for Voter Registration Challenge

In order to register to vote, a voter must provide, on the registration application, “the actual physical residence of the voter in Washington.” RCW 29A.08.010. Registration of a person as a voter is presumptive evidence of his or her right to vote. RCW 29A.08.810(1). Knowingly providing false information on a voter registration form is class C felony. RCW 29A.08.210.

A voter’s registration may be challenged by any registered voter or the county prosecuting attorney. RCW 29A.08.810(2). A challenge to a voter’s registration must be based on personal knowledge and one of the following grounds:

- The challenged voter has been convicted of a felony that includes serving a sentence of total confinement under jurisdiction of the department of corrections, or a felony conviction in another state’s court or federal court and the voter is serving that sentence of total confinement and the person’s voting rights have not been restored under RCW 29A.08.520;
- The challenged voter has been judicially declared ineligible to vote due to mental incompetency under RCW 29A.08.515;
- The challenged voter resides at a different address than the residential address provided and is not subject to RCW 29A.04.151 or 29A.08.112;
- The challenged voter will not be eighteen years of age by the next general election; or
- The challenged voter is not a citizen of the United States.

RCW 29A.08.810(1).

In order to commence a challenge, the challenger must “file a signed affidavit subject to the penalties of perjury swearing that, to his or her personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, the challenged voter either is not qualified to vote or does not reside at the address given on his or her voter registration record” based on one of the grounds listed above. RCW 29A.08.810(3).

When a challenge is based on the allegation that the voter does not live at the residential address provided, the challenger is required to either provide the challenged voter’s actual residence on the challenge form or submit alternative evidence to verify that the challenged voter does not reside at the listed address. RCW 29A.08.810(1)(c)(i), (ii). If the challenge is based on alternative evidence, the challenger must exercise due diligence to verify that the voter does not reside at the address listed. RCW 29A.08.810(1)(c)(ii). Evidence of due diligence requires that the challenger:

- (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) Searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county;
- (C) Searched county auditor property records to determine whether the challenged voter owns any property in the county;
- (D) Searched the statewide voter registration database to determine if the voter is registered at any other address in the state; and
- (E) Searched the voter registration database of another state to determine if the voter is registered to vote in any other state.

Id. A challenge is decided either by the county auditor or by the County Canvassing Board, depending on when the challenge is filed. Challenges filed within forty-five days before an election are decided by

the canvassing board. RCW 29A.08.820(2)(a). Challenges filed forty-five or more days before the next election are decided by the county auditor. RCW 29A.08.820(1).

Upon receipt of a challenge in proper form and that alleges legal statutory grounds, the auditor must notify the voter, via certified mail, of the challenge, and provide a copy of the challenge. RCW 29A.08.840(2), (3). The auditor must also schedule a hearing and provide notice of the time and place to the challenger and the challenged voter. Id. When the challenge is based on the voter's residential address, the notice must advise the voter of exceptions to the residence requirement allowed in RCW 29A.08.112, 29A.04.151, and Article VI, section 4 of the state constitution. Id. A challenged voter may update the residence address on the voter's voter registration or reregistering until 8:00p.m. the day of the election. RCW 29A.08.840(2)(a).

At the hearing the challenger bears the burden of proving that the challenged voter's registration is improper by clear and convincing evidence. RCW 29A.08.840(4). Clear and convincing evidence is "evidence sufficient to convince the trier of fact, that the fact at issue is highly probable." Colonial Imports v. Carlton NW, 121 Wn.2d 726, 735 (1993).

A voter may defend the challenge by providing evidence sufficient to convince the auditor or canvassing board that he or she resides at the location described on the registration record, or that the use of the location as a residence is supported by RCW 29A.08.112 or 29A.04.151, or by Article VI, Section 4 of the state constitution. RCW 29A.08.840(4).

III. Decision of the Auditor

Chapter 29A.08 RCW sets forth the standards for voter registration challenges. Since the Challenge was filed more than forty-five days before the next election, it is properly before the county auditor. As relevant in this case, it is the role of the auditor to determine whether Broyles resides at the address listed on his voter registration?

Does Broyles reside at the address listed on his voter registration?

"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. However, no person gains residence by reason of his or her presence or loses his or her residence by reason of his or her absence:

- (1) While employed in the civil or military service or the state or of the United States;
- (2) While engaged in the navigation of the waters of this state or the United States or the high seas;
- (3) While a student at any institution of learning;
- (4) While confined in any public prison.

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. RCW 29A.04.151.

According to Pivec, Pivec was informed in May 2023 that Broyles was remotely attending meetings of the Alderwood Water and Wastewater District (AWWD), where Broyles serves as an elected Commissioner. Testimony of Pivec. Pivec emailed Broyles on May 24, 2023, and asked Broyles "how long [he has] been living and working in Alaska and if [he intends] to resume living in the AWWD

boundaries anytime soon.” Exhibit D. Broyles confirmed that he is working and living in Alaska but clarified that he continues to reside in Washington and maintain his status as a Washington resident. Id.

Pivec contends that Broyles’ remote participation in AWWD board meetings, Broyles’ employment and living in Alaska, Broyles’ failure to accept certified mail at 17327 31st Dr SE, and Broyles’ ownership or connection to property outside of the AWWD “strongly points to [Broyles] not living 50%¹ of the time within the AWWD an/or (sic) Snohomish County voting boundaries.” Id.

Pivec, in his search of voter registration records as required by RCW 29A.08.810(1) (E), did not identify that Broyles is registered to vote at any address other than 17327 31st Dr SE. Exhibit B. Broyles also testified that he is not registered to vote in Alaska. Testimony of Broyles.

Broyles contends that he physically resides at 17327 31st Dr SE. Exhibit E. Broyles provided 17 separate documents indicating a connection to 17327 31st Dr SE, including recent energy bills and documents from the Washington State Department of Licensing. Id. Broyles testified that the current owner of 17327 31st Dr SE is Kelly Boswell, that Kelly Boswell is Broyles fiancé and that Broyles has resided at the property for 10 years. Testimony of Broyles. Broyles stated that he does not intend to become a resident of Alaska. Id.

Broyles is registered to vote 17327 31st Dr SE, and is presumed to reside there. The burden is on Pivec, it to demonstrate by clear, cogent and convincing evidence that Broyles does not reside at 17327 31st Dr SE.

The evidence is un rebutted that Broyles is employed and performs work in Alaska. It is also undisputed that Broyles attends some AWWD meetings remotely. While this evidence shows that Broyles travels and spends time in Alaska for work, it does not demonstrate that is it highly probable that Broyles resides somewhere other than 17327 31st Dr SE.

By contrast, Broyles submitted recent energy bills and documents from the Washington State Department of Licensing to support his current residency at 17327 31st Dr SE. In addition, Broyles and Kelly Boswell both provided sworn testimony that they reside at 17327 31st Dr SE.

Based on the evidence and testimony provided, the Auditor finds that Pivec has not shown that Broyles does not reside at 17327 31st Dr SE.²

IV. Summary

On the basis of the evidence and testimony presented, the Auditor finds that Broyles resides for the purposes of voter registration at 17327 31st Dr. SE. The voter registration challenge of Jack O. Broyles, Jr. is dismissed.

¹ Pivec asserts that the definition of being a resident requires a person spend at least 50% of the time in a place. RCW 29A.04.151 which defines residence for the purpose of voter registration and voting has no prescribed amount of time a person must spend at a place to establish it as their residence. The definition states clearly that a person does not gain or lose residence by reason of his or her absence for several reasons including on business.

² Because the Auditor finds that Pivec has failed to meet his burden, the Auditor does not evaluate whether any of the residency exceptions listed in RCW 29A.08.112, 29A.04.151, or Article VI, Section 4 of the state constitution, apply.

Summary of Documents submitted to the Auditor

- Exhibit A - Snohomish County Auditor's Office Registration Record N Broyles
- Exhibit B - Registration Challenge Form with attachments
- Exhibit C - Notice to Broyles and Pivec Regarding Voter Challenge Hearing
- Exhibit D – Email Exchange Between Pivec and Broyles dated May 24, 2023
- Exhibit E – Response to Pivec's Challenge to Voter Registration



Digitally signed by Fell, Garth
Date: 2023.09.13 10:41:22
-07'00'

Garth Fell
Snohomish County Auditor

Date

Notification of Appeal Right

The decision of the county auditor is final subject only to judicial review by the superior court under chapter 34.05 RCW. RCW 29A.08.840(6). Accordingly, any person with standing may file an appeal of this decision in Superior Court within 30 days from the date of the decision. RCW 34.05.542.