

1  
2 BEFORE THE GRANT COUNTY CANVASSING BOARD  
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4 )  
5 ) FINDINGS OF FACT,  
6 In Re the Voter Registration Challenge of: ) CONCLUSIONS OF LAW AND  
7 Albert Lin ) ORDER DENYING CHALLENGE  
8 )  
9 \_\_\_\_\_)

10  
11 I. INTRODUCTION

12 THIS MATTER came before the Grant County Canvassing Board pursuant to chapter  
13 29A.08 RCW and upon the challenge filed by David Canfield to the voter registration of Albert  
14 Lin. In his challenge, Mr. Canfield alleges that Mr. Lin does not reside in Grant County.  
15 Neither Mr. Canfield nor Mr. Lin were present at the hearing, but both presented testimony by  
16 affidavit, as permitted by RCW 29A.08.840, and both were represented by counsel.  
17

18 II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

19 1. Mr. Canfield is a registered voter in Grant County. Mr. Canfield filed the voter  
20 registration challenge in the Grant County Auditor's Office on July 22, 2010.<sup>1</sup> The hearing was  
21 held on August 11, 2010 in the hearing room of the Grant County Board of Commissioners.

22 2. Mr. Canfield alleges that Mr. Lin's voter registration is improper because he does  
23 not maintain a legal voting residence at his voter registration address: 203 Patrick Rd., Ephrata,  
24 Grant County, WA. Mr. Canfield alleges that Mr. Lin actually resides in Kitsap County, at  
25 11153 Shipside Ln. N.W., Apt. 202, Silverdale, WA.

26 3. The challenge was brought pursuant to RCW 29A.08.810(1)(c)(i), which allows a  
27 challenge to a voter's residential address if the challenger provides what he alleges to be the

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<sup>1</sup> Because the challenge was filed within 45 days prior to the August 17, 2010 Primary Election, the challenge was heard by the County Canvassing Board pursuant to RCW 29A.08.820(2). Because Mr. Lin and the current County Prosecuting Attorney, Angus Lee, are both declared candidates for Grant County Prosecuting Attorney, Prosecutor Lee recused himself from the Canvassing Board for purposes of hearing this challenge. Prosecutor Lee appointed Katie Blinn as a special deputy prosecuting attorney for purposes of this voter registration challenge. The other members of the County Canvassing Board were Grant County Auditor William Varney and Grant County Commissioner Carolann Swartz.

1 voter's *actual* address on the challenge affidavit. Mr. Canfield did provide what he alleges to be  
2 Mr. Lin's actual residential address on the challenge affidavit, so the challenge is procedurally  
3 sufficient.

4 4. The following exhibits were entered into the record:

5 (a) Voter registration challenge affidavit filed by David Canfield, dated July 22,  
6 2010, which includes:

- 7 (i) Declaration of Shih-Chen Chen, dated June 30, 2010;
- 8 (ii) Declaration of Shih-Chen Chen, dated June 30, 2010;
- 9 (iii) Declaration of Shih-Chen Chen, dated June 30, 2010;
- 10 (iv) Unsigned financial form, filed July 15, 2010;
- 11 (v) Grant County Superior Court Temporary Order, dated July 16, 2010;
- 12 (vi) Declaration of Melissa Ziss, dated July 11, 2010;
- 13 (vii) Committee to Elect Albert Lin PDC C3 form, dated June 15, 2010; and
- 14 (viii) Google maps of western Washington;

15 (b) Copy of the Columbia Basin Herald, dated July 29, 2010;

16 (c) Copy of the Grant County Journal, dated July 29, 2010;

17 (d) Declaration of Dean Hallatt, dated July 28, 2010;

18 (e) Declaration of Angus Lee, dated August 3, 2010, which includes;

19 (i) Deposition transcript of Albert Lin, dated June 11, 2010;

20 (f) Requests for Admission, dated August 4, 2010;

21 (g) Declaration of Theresa Scheib, dated August 9, 2010;

22 (h) Declaration of Shih-Chen Chen, dated August 5, 2010; and

23 (i) Declaration of Albert Lin, dated August 8, 2010, which includes:

24 (i) Apartment Lease Contract, dated June 9, 2010;

25 (ii) Albert Lin Earnings Statement, date redacted;

26 (iii) Albert Lin Guardian insurance statement, undated;

27 (iv) Albert Lin and Shih-Chen Chen 2009 1040 tax return;

28 (v) Albert Lin DOL vehicle registration, dated December 28, 2009;

29 (vi) Albert Lin Farmers vehicle insurance card, dated July 26, 2010;

30 (vii) Albert Lin Discover statement;

31 (viii) Albert Lin and Shih-Chen Chen Chase statement, dated June 30, 2010;

- 1 (ix) Albert Lin BECU statement, dated July 16, 2010;
- 2 (x) Albert Lin driver's license, dated November 3, 2005;
- 3 (xi) Albert Lin and Shih-Chen Chen Farmers homeowners' insurance
- 4 statement, dated July 30, 2009;
- 5 (xii) Albert Lin Verizon statement, dated July 10, 2010;
- 6 (xiii) Albert Lin Dish Network statement, dated July 16, 2010;
- 7 (xiv) Albert Lin Grant County PUD statement, dated June 15, 2010;
- 8 (xv) Albert Lin City of Ephrata statement, dated June 29, 2010;
- 9 (xvi) Albert Lin and Shih-Chen Chen BECU mortgage payment book;
- 10 (xvii) Albert Lin Farmers vehicle insurance statement, dated December 15,
- 11 2009;
- 12 (xviii) Albert Lin and Shih-Chen Chen 2010 Grant County property tax
- 13 statement;
- 14 (xix) Albert Lin American Education Services statement, dated October 3,
- 15 2009;
- 16 (xx) Albert Lin ACS Education Loan payment book;
- 17 (xxi) Grant County Superior Court Temporary Order, page 3, dated July 16,
- 18 2010; and
- 19 (xxii) Pictures of the interior of the Silverdale apartment.

20 5. "The challenger and challenged voter may either appear in person or submit  
21 testimony by affidavit." RCW 29A.08.840(3). The Board gave little weight to statements that  
22 were not under oath, and exhibits that were not close in time to the current challenge. In  
23 addition, the Board did not consider either the pending civil lawsuit between Mr. Lin and Grant  
24 County, or the pending election for Grant County Prosecuting Attorney, as relevant to the  
25 question of Mr. Lin's current residency.

26 6. "Registration of a person as a voter is presumptive evidence of his or her right to  
27 vote." RCW 29A.08.810(1). "The challenger has the burden to prove by clear and convincing  
28 evidence that the challenged voter's registration is improper. The challenged voter must be  
29 provided a reasonable opportunity to respond. If the challenge is to the residential address  
30 provided by the voter, the challenged voter may provide evidence that he or she resides at the  
31 location described in his or her voter's registration records, or meets one of the exceptions

1 allowed in RCW 29A.08.112 or 29A.04.151, or Article VI, section 4 of the state Constitution.”  
2 RCW 29A.08.840(4). “If the challenger fails to prove by clear and convincing evidence that the  
3 registration is improper, the challenge must be dismissed ....” RCW 29A.08.840(6). Mr.  
4 Canfield has the burden of proving by clear and convincing evidence that Mr. Lin does not reside  
5 at his address on Patrick Rd. in Ephrata, Grant County.

6 7. “‘Residence’ for the purpose of registering and voting means a person's  
7 permanent address where he or she physically resides and maintains his or her abode.  
8 However, no person gains residence by reason of his or her presence or loses his or her  
9 residence by reason of his or her absence:

10 (1) While employed in the civil or military service of the state or of the United  
11 States;

12 (2) While engaged in the navigation of the waters of this state or the United States  
13 or the high seas;

14 (3) While a student at any institution of learning;

15 (4) While confined in any public prison.

16 Absence from the state on business shall not affect the question of residence of  
17 any person unless the right to vote has been claimed or exercised elsewhere.”

18 RCW 29A.04.151.

19 8. “RESIDENCE, CONTINGENCIES AFFECTING. For the purpose of voting and  
20 eligibility to office no person shall be deemed to have gained a residence by reason of his  
21 presence or lost it by reason of his absence, while in the civil or military service of the  
22 state or of the United States, nor while a student at any institution of learning, nor while  
23 kept at public expense at any poor-house or other asylum, nor while confined in public  
24 prison, nor while engaged in the navigation of the waters of this state or of the United  
25 States, or of the high seas.”

26 Wash. Const. Art. VI, Sec. 4.

27 9. It is undisputed that Mr. Lin resided at the home on Patrick Rd. in Ephrata until  
28 mid-June 2010. “The rule is that a residence once established is presumed to continue.” *Fiske v.*  
29 *Fiske*, 48 Wn.2d 69, 72, 290 P.2d 725 (1955). “The domicile, once established, continues until it  
30 is superseded by a new domicile. ... The fact of temporary absence from the domicile, of itself

1 and without any intention to change domiciles, does not result in its loss or change.” *Sasse v.*  
2 *Sasse*, 41 Wn.2d 363, 366, 249 P.2d 380 (1952).

3 10. A change in residence must be demonstrated by *both* physical presence at a new  
4 location, and the intention to make that new location home, to remain in that new location  
5 permanently. *In re Schoessler*, 140 Wn.2d 368, 998 P.2d 818 (2000). “The fact of physical  
6 presence at a dwelling place and the intention to make it a home must concur, and, if they do so,  
7 the change of domicile takes place.” *Sasse v. Sasse*, 41 Wn.2d 363, 366, 249 P.2d 380 (1952).  
8 A residence, once established, continues until a new one is acquired; a change of residence does  
9 not consist solely in going to and living in another place, but it must be with the intent of making  
10 that place the permanent residence. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888 n.  
11 10, 969 P.2d 64 (1998); *Polk v. Polk*, 158 Wn. 242, 248, 290 P. 861 (1930). If either physical  
12 presence or the intent to make that place a permanent home is lacking, residence will not be  
13 established.

14 11. It is undisputed that Mr. Lin has been working in Kitsap County, and renting an  
15 apartment in Silverdale, Kitsap County, since mid-June 2010. In support of his allegation that  
16 Mr. Lin now *resides* in Kitsap County, Mr. Canfield submitted declarations and a court order  
17 filed in Grant County Superior Court relating to the pending divorce between Mr. Lin and his  
18 wife, Shih-Chen Chen. In these declarations, Ms. Chen states that Mr. Lin has moved to the  
19 Seattle area. Mr. Canfield has presented substantial evidence that Mr. Lin is physically located  
20 outside Grant County at least part of each week in order to work in Kitsap County, over four  
21 hours away.

22 12. Mr. Canfield submitted evidence that the temporary court order in Mr. Lin’s  
23 divorce orders Mr. Lin to vacate the home on Patrick Rd. in November 2010. Mr. Canfield also  
24 submitted evidence that, as of June 11, 2010, Mr. Lin had not told his new employer that he was  
25 running for Grant County Prosecutor. Mr. Canfield failed to prove by clear and convincing  
26 evidence that Mr. Lin intends to make Silverdale his permanent residence.

27 13. Mr. Lin stated under oath that he has been a resident of Grant County since 1999,  
28 that his son attends school in Ephrata, that he lives in his home at 203 Patrick Rd. in Ephrata, that  
29 he stays at that home on the weekends and holidays, that he helps to maintain that home both  
30 physically and financially, and that he intends to remain in Grant County. Mr. Lin swore under  
31 oath that he does not claim residency in Kitsap County and that he rents an apartment in

1 Silverdale because the commute is too far to drive on a daily basis. Mr. Lin submitted photos of  
2 the apartment in Silverdale, which demonstrated that it is very sparsely furnished. While Mr. Lin  
3 does not bear the burden of proof in this challenge, he provided clear and convincing evidence  
4 that Ephrata is his permanent residence and that he does not intend to make Silverdale his  
5 permanent residence.

6 14. "Absence from the state on business shall not affect the question of residence of  
7 any person unless the right to vote has been claimed or exercised elsewhere." RCW 29A.04.151.  
8 It is undisputed that the reason Mr. Lin is in Kitsap County is employment. Mr. Lin swore under  
9 oath that he is in Kitsap County because he could not find a job in Grant County. It would be  
10 incongruous to conclude that his absence from Grant County due to employment in Kitsap  
11 County terminates his residency in Grant County, when absence from Grant County due to  
12 employment in Oregon or Idaho could not affect his residency. It is undisputed that Mr. Lin has  
13 not registered or exercised the right to vote in Kitsap County.

14 15. Mr. Canfield proved by clear and convincing evidence that Mr. Lin is renting an  
15 apartment in Silverdale, WA and is physically present in Kitsap County part of each week.  
16 However, Mr. Canfield failed to prove by clear and convincing evidence that Mr. Lin intends to  
17 make Silverdale his permanent home, and that Mr. Lin no longer resides at the Patrick Rd.  
18 address in Ephrata, Grant County.

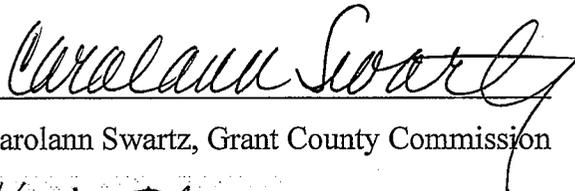
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20 III. ORDER

21 For the reasons set forth above, the voter registration challenge is DENIED.

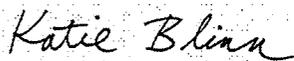
22 ENTERED this 31<sup>st</sup> day of August, 2010.

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25 William Varney, Grant County Auditor

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28 Carolann Swartz, Grant County Commission

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30 Katie Blinn, Special Deputy Prosecuting Attorney