

COURT OF APPEALS  
DIVISION TWO

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STATE OF WASHINGTON  
BY: [Signature]

No. 45020-8-II

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COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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GENE CAMARATA,

APPELLANT,

v.

KITTITAS COUNTY, KITTITAS COUNTY AUDITOR, KITTITAS  
COUNTY AUDITOR JERRY V. PETTIT, KITTITAS COUNTY  
PROSECUTOR GREG ZEMPEL, & DARREN M. HIGASHIYAMA

RESPONDENTS.

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APPEAL FROM THE SUPERIOR  
COURT OF THURSTON COUNTY

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BRIEF OF APPELLANT

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## **A. ASSIGNMENTS OF ERROR**

1. Kittitas County Auditor erred by failing to mail Appellant a copy of the voter registration challenge and notice of hearing to the voter registration address of 1001 E. 8<sup>th</sup> Ave., (#4), Ellensburg, WA 98926 by certified mail.
2. Kittitas County Auditor erred by failing to mail Appellant a copy of the voter registration challenge and notice of hearing to the mailing address of General Delivery, Ellensburg, WA 98926 by certified mail.
3. Kittitas County Auditor erred by failing to mail Appellant a copy of the voter registration challenge and notice of hearing to the additional contact address (contained in the challenge) of Father, Salvador Camarata, 402 W. Helena, Ellensburg, WA 98926 by certified mail.
4. Kittitas County Auditor erred by failing to post the entire content of the voter registration challenge on its internet web site within 72 hours of the challenge being filed, and instead only posting the two page challenge declaration without any of the supporting documentation.
5. Kittitas County Auditor erred by failing to apply RCW 29A.08.112, which allowed Appellant, a homeless person without a traditional residential address, and who otherwise met all constitutional and statutory requirements, to register to vote at any location provided by the Appellant, and to be assigned a precinct based on location provided.
6. Kittitas County Auditor erred by granting the voter registration challenge, when the Challenger had not provided the actual physical address of the Appellant, and did not provide any affidavit or declaration of a person owning, managing, residing at, or employed at the registration address stating that Appellant did not reside at that address.
7. Kittitas County Auditor erred in entering Findings or Conclusions No. 9 and 11, in granting the voter registration challenge, and in cancelling the voter registration of Appellant.
8. It was erroneous for the Kittitas County Prosecuting Attorney to represent both the Challenger (who had filed the challenge at the request of the prosecuting attorney) and the Kittitas County Auditor, especially when done so by the same deputy prosecuting attorney.
9. The trial court erred in entering Findings 1, 2, 3 and 4, and in affirming the decision of the Kittitas County Auditor to uphold the challenge and cancel the voter registration of the Appellant.

## **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did RCW 29A.08.840(2),(3) require the Kittitas County Auditor to mail Appellant a copy of the voter registration challenge and notice of hearing to the voter registration address of 1001 E. 8<sup>th</sup> Ave., (#4), Ellensburg, WA 98926 by certified mail?
2. Did RCW 29A.08.840(2),(3) require the Kittitas County Auditor to mail Appellant a copy of the voter registration challenge and notice of hearing to the mailing address of General Delivery, Ellensburg, WA 98926 by certified mail?
3. Did RCW 29A.08.840(2),(3) require the Kittitas County Auditor to mail Appellant a copy of the voter registration challenge and notice of hearing to the additional contact address (contained in the challenge) of Father, Salvador Camarata, 402 W. Helena, Ellensburg, WA 98926 by certified mail?
4. Did RCW 29A.08.835 require the Kittitas County Auditor to post the entire content of the voter registration challenge on its internet web site within 72 hours of the challenge being filed, and not just the two page challenge declaration without any of the supporting documentation?
5. Did RCW 29A.08.112 allow Appellant, a homeless person without a traditional residential address, and who otherwise met all constitutional and statutory requirements, to register to vote at any location provided by the Appellant, and to be assigned a precinct based on location provided?
6. Did RCW 29A.08.810(1)(c)(ii)(B) require the Challenger, who did not provide the actual physical address of the Appellant, to provide an affidavit or declaration of a person owning, managing, residing at, or employed at the registration address stating that Appellant did not reside at that address?
7. Was it a conflict of interest and a violation of the appearance of fairness doctrine for the Kittitas County Prosecuting Attorney to represent both the Challenger (who had filed the challenge at the request of the prosecuting attorney) and the Kittitas County Auditor, especially when done so by the same deputy prosecuting attorney?
8. Should Appellant be awarded his reasonable attorney fees under RCW 4.84.340 to 4.84.360, since he is a qualified person with a net worth under one million dollars and the actions of the Kittitas County Auditor to cancel his voter registration were not substantially justified?
9. Should Appellant be awarded his reasonable attorney fees under RCW 34.05.598 and RCW 4.84.185, since any defense by the

Kittitas County Auditor of its actions in cancelling Appellant's voter registration would be advanced frivolously and without reasonable cause?

### **C. STATEMENT OF THE CASE**

This case involves the cancellation of Appellant Gene Camarata's voter registration by the Kittitas County Auditor. Since Mr. Camarata did not have actual notice of or participate in the proceedings, the factual record below was developed without any participation by Mr. Camarata.

On May 17, 2012, Mr. Camarata registered to vote in Kittitas County through the Secretary of State website. Mr. Camarata provided a voter registration address of 1001 E. 8th Ave., (#4), Ellensburg, WA 98926 and a mailing address of General Delivery, Ellensburg, WA 98926 (CP 50-51). The next day, May 18, 2012, Mr. Camarata filed a candidacy declaration for Democratic Party Precinct Committee Officer for his assigned precinct through the Kittitas County Auditor website. (CP 53-54)

This candidacy filing attracted the attention of the Kittitas County Prosecuting Attorney, which assigned Kittitas County Sheriff's Deputy Darren Higashiyama to investigate for potential voter fraud. (CP 33)

Deputy Higashiyama discovered that the property at 1001 E. 8th Ave., Ellensburg, WA 98926 was formerly an apartment building, that had been sold to Kittitas County in 2008, and was the torn down and turned into a parking lot for the Kittitas County Fairgrounds. (CP 33-34)

Deputy Higashiyama also learned that Mr. Camarata had previously been registered to vote at the same address of 1001 E. 8th Ave., (#4), Ellensburg, WA 98926 in the past, but that the previous voter registration had been closed. (CP 34, 49) The record does not contain the

dates of Mr. Camarata's previous voter registration at that address, or the reasons why the previous voter registration had been closed out. There were no other Washington voter registrations found for Mr. Camarata at any other address in the Secretary of State data base. (CP 34, 49)

Deputy Higashiyama also checked on-line data sources for Mr. Camarata's address. (CP 34) Zaba Search provided an address of 1001 E. 8th Ave., Ellensburg, WA 98926. (CP 42-43) Free People Search provided a similar address, including the same apartment number as where Mr. Camarata registered, but with an different street name of 1001 E. University Way, Apt. 4, Ellensburg, WA 98926. (CP 39-41)

Deputy Higashiyama stated that Mr. Camarata was regularly in contact with him, and called him about twice a week. (CP 35) On June 12, 2012, Mr. Camarata called Mr. Higashiyama, told him that he was homeless, and that he was currently trying to sleep on busses in Yakima, but was getting in trouble for not paying the bus fares. (CP 35)

On June 20, 2012, Deputy Higashiyama filed a voter registration challenge against Mr. Camarata with the Kittitas County Auditor, which consisted of a total of twenty seven pages. (CP 30-56) This consisted of a two page challenge declaration form (CP 30-31) and 25 pages of supporting documentation. (CP 32-56) Deputy Higashiyama admitted on the challenge declaration that Mr. Camarata lacked a traditional residential address, stating his residence was: "Transient, Yakima County". (CP 31) The Secretary of State challenge form contained the following language:

## **Residency Requirements**

**Residency requirements**, as defined in Article VI, section 4 of the Washington State Constitution and RCW 29A.04.151, and 29A.08.112 **may not be challenged if the voter is:**

- absent while in service of the state or federal government
- attending school
- confined in a public prison
- at sea
- **lacking a traditional residential address** such as a shelter, park, motor home or marina. (emphases added) (CP 30)

Deputy Higashiyama also included documentation with the voter registration challenge that Mr. Camarata did not own any property in Kittitas County (CP 45-48) and was not listed in the traditional telephone company directory. (CP 49) Deputy Higashiyama did not include any affidavit or declaration from any person owning, managing, residing at, or employed at the registration address of 1001 E. 8th Ave., Ellensburg, WA 98926 stating that Mr. Camarata did not reside at that address.

On June 26, 2012, the Kittitas County Auditor determined that Deputy Higashiyama had filed the voter registration challenge at the request of the Kittitas County Prosecuting Attorney and scheduled a hearing for July 13, 2012 at 10:00 a.m. (CP 61)

There is absolutely no documentation whatsoever in the record furnished by the Kittitas County Auditor to the trial court below that Mr. Camarata was ever furnished with a copy of the voter registration challenge and notice of hearing in any manner whatsoever, much less by certified mail by required by RCW 29A.08.840(2),(3).

The original administrative record filed by the Kittitas County Auditor on December 24, 2012 is completely lacking in any proof of service of anything on Mr. Camarata. (CP 16-62)

On April 15, 2013, the Kittitas County Auditor filed a supplement to the administrative record. (Docket # 21, App. C, CP tbd supplement) This supplemental record contained four envelopes that were mailed by the Kittitas County Auditor to Gene Camarata, General Delivery, Ellensburg, WA 98926, all of which were returned unclaimed.

These envelopes consisted of: (1) certified mail, postmarked June 28, 2012, with 45 cents basic postage, and \$5.75 total postage, (2) regular mail, postmarked September 6, 2012, with 45 cents postage, (3) regular mail, postmarked May 21, 2012, with 45 cents postage, and (4) regular mail, postmarked May 22, 2012, with 45 cents postage.

There was no declaration or any other evidence contained in the April 15, 2012 supplemental record indicating what was contained in any of these envelopes mailed by the Kittitas County Auditor to Mr. Camarata. The second envelope was almost two months after the July 13, 2012 hearing and the third and fourth envelopes were mailed almost a month before Deputy Higashiyama filed his voter registration challenge.

It should be noted that the voter registration challenge consisted of a total of 27 pages. (CP 30-56) Standard 20 pound bond paper (almost universally used in copying and other office applications) weighs five pounds for a 500 sheet ream of 8-1/2" by 11" letter size (with 20 pounds referring to the basis weight of a 17" x 22" 500 sheet ream).

<http://home.howstuffworks.com/question329.htm> This works out to one pound per 100 sheets, or 0.16 ounces per page (just under 1/6 ounce).

So if the notice of hearing was just one page additional, sending 28 pages to Mr. Camarata would have been 4.48 ounces, without adding the weight of the mailing envelope (about 1/6 ounce more). This would have required five ounces worth of postage, at the very minimum. In June 2012, U.S. postage rates were 45 cents for the first ounce, and 20 cents for each additional ounce. However, basic postage on all four envelopes sent to Mr. Camarata was only 45 cents, which was enough for only one ounce. In addition, it would have been basically impossible to fold 28 pages to fit into a standard # 10 envelope, which is what each of the four envelopes in the supplemental record appear to be. If a larger envelope was used, or the envelope was more than ¼ inch thick, additional postage would be needed.

So even if the Kittitas County Auditor had supplied some sort of declaration that Mr. Camarata had actually been mailed the voter registration challenge and notice of hearing – which it did not – the actual mailing envelopes used and the actual postage paid – all of which were for only 45 cents basic postage – would directly contradict and falsify any such declaration. At most, Mr. Camarata could have been mailed only five or six pages (one ounce of postage) in any of the four envelopes, and certainly not the complete 27 page challenge with a notice of hearing.

Furthermore, the Kittitas County Auditor provided absolutely no proof or other evidence of Mr. Camarata being mailed anything to his

voter registration address of 1001 E. 8<sup>th</sup> Ave., (#4), Ellensburg, WA 98926 by certified mail or any other means. Nor was there any proof of Mr. Camarata being mailed anything at any other address, even though the voter registration challenge also includes an additional contact address for Mr. Camarata of “Contact: Father, Salvador Camarata, 402 W. Helena, Ellensburg, WA 98926, (509) 925-5225”. (CP 32, 62)

The Kittitas County Auditor also published only the two page standard voter registration challenge declaration on its internet web site, instead of the entire 27 page challenge. (CP 77-78)

Mr. Camarata did not receive actual notice of the voter registration challenge, and did not submit any evidence of his own for the July 13, 2012 hearing. (CP 24) Neither Deputy Higashiyama nor Mr. Camarata attended the July 13, 2012 hearing. (CP 21) Therefore, the Kittitas County Auditor only considered the voter registration challenge and supporting materials filed by Deputy Higashiyama (CP 30-56), and no other evidence appears in the record or is cited in the Auditor’s decision. (CP 22-23)

The Kittitas County Auditor entered a decision on September 5, 2012 cancelling Mr. Camarata’s voter registration. (CP 18-25) The decision was solely based upon the Auditor determining that it was highly probable that Mr. Camarata did not reside at the voter registration address of 1001 E. 8th Ave., (#4), Ellensburg, WA 98926 (Findings/Conclusions 9 and 11, CP 23-24) and therefore the registration should be cancelled.

The Kittitas County Auditor decision does not reflect any consideration of the undisputed fact that Mr. Camarata was a transient and

homeless person lacking any traditional residential address, or that RCW 29A.08.112 would entitle Mr. Camarata to register to vote at whatever location he provided, or that the Secretary of State challenge form expressly provides that the voter registration address of a voter who lacks a traditional residential address cannot be challenged in the first place.

Mr. Camarata filed a timely petition for review to Thurston County Superior Court on October 4, 2012. (CP 4-9)

Neil Caulkins of the Kittitas County Prosecuting Attorney's office filed a notice of appearance on October 10, 2012 on behalf of all of the respondents, including the Kittitas County Auditor, the Challenger Deputy Higashiyama, and the Kittitas County Prosecuting Attorney. (Docket # 10, App. D, CP tbd supplement) In later briefing, the respondents admitted that the Kittitas County Prosecuting Attorney's office had also represented or advised both the Kittitas County Auditor and the Challenger Deputy Higashiyama in the administrative challenge proceeding. (CP 72-73)

The Thurston County Superior Court affirmed the Kittitas County Auditor Decision to cancel Mr. Camarata's voter registration on June 14, 2013. (CP 118-19) Mr. Camarata filed a timely appeal to the Court of Appeals on June 21, 2012. (CP 120)

#### **D. ARGUMENT**

This case is a matter of first impression in the State of Washington. While there have been several published decisions under election contest statutes involving the legal residence of a candidate for public office, there have never been any published decisions under the voter registration

challenge statutes. So there is no case law involved the procedural due process required under the voter registration challenge statutes. Likewise, there is no Washington case law involving transient or homeless voters.

Under the Washington Administrative Procedure Act (APA), which governs judicial review of this final administrative decision, a reviewing court may reverse an administrative decision, inter alia, when: (1) the decision is based on an error of law; (2) the decision is not based on substantial evidence in the record; (3) the agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; or (4) the decision is arbitrary and capricious. RCW 34.05.570(3); Tapper v. Employment Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). In reviewing an administrative action, an appellate court sits in the same position as the superior court, applying the APA standards directly to record before the agency. Tapper, 122 Wn. 2d at 402. Because an appellate court reviews the same record on the same basis as the superior court, findings of fact and conclusions of law entered by the superior court are superfluous. Durham v. Department of Empl. Sec., 31 Wn. App. 675, 676, 644 P.2d 154 (1982). The party challenging the validity of the agency's action bears the burden of demonstrating the alleged invalidity. RCW 34.05.570(1)(a); Evans v. Employment Sec. Dep't, 72 Wn. App. 862, 865, 866 P.2d 687 (1994).

**1. Lack of Required Notice and Due Process to Mr. Camarata**

The right to vote is one of the most fundamental rights in a civilized and democratic society, with the entirety of Article VI of the

Washington Constitution being devoted to elections and voting rights. Both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the Washington Constitution require due process of law before anyone can be deprived of life, liberty, property or other rights.

Reasonable notice, time to prepare and respond to claims and charges, and opportunity for a meaningful hearing in an orderly proceeding are all essential elements of civil due process. Goldberg v. Kelly, 397 U.S. 254 (1970); In Re Myricks, 85 Wn. 2d 252, 533 P.2d 841 (1975); Moore v. Burdman, 84 Wn.2d 408, 526 P.2d 893 (1974); In Re Messmer, 52 Wn.2d 510, 326 P.2d 1004 (1958); In Re Ross, 45 Wn.2d 654, 277 P.2d 335 (1954). Orders entered without notice and opportunity to be heard are void. Marriage of Ebbinghausen, 42 Wn. App. 99, 102, 708 P.2d 1220 (1985); In Re Sumey, 94 Wn. 2d 757, 762, 621 P.2d 108 (1980); Baxter v. Jones, 34 Wn. App. 1, 3, 658 P.2d 1274 (1983).

Our legislature has emphasized the special importance of the right to vote in enacting the voter challenge statutes found at RCW 29A.08.810 to 29A.08.850. To challenge a voter registration in the first place, the challenger must provide extensive and specific documentation in support of the challenge and support the challenge by declaration under penalty of perjury. RCW 29A.08.810. The challenger also has the burden of proving the challenge by clear and convincing evidence. RCW 29A.08.840(4),(6).

Probably the most fundamental protection is the requirement that the county auditor provide notice to the challenged voter by certified mail

at the registration address and all other addresses that the voter is alleged to reside at or where the auditor may expect the voter to receive notice:

**29A.08.840 County auditor duties — Dismissal of challenges — Notification — Hearings — Counting or cancellation of ballots.**

(2) If the challenge is in proper form and the factual basis meets the legal grounds for a challenge, **the county auditor must notify the challenged voter and provide a copy of the affidavit.** The county auditor shall also provide to any person, upon request, a copy of all materials provided to the challenged voter. If the challenge is to the residential address provided by the voter, the challenged voter must be provided notice of the exceptions allowed in RCW 29A.08.112 and 29A.04.151, and Article VI, section 4 of the state Constitution. A challenged voter may transfer or reregister until the day before the election. **The county auditor must schedule a hearing and notify the challenger and the challenged voter of the time and place for the hearing.**

(3) **All notice must be by certified mail to the address provided in the voter registration record, and any other addresses at which the challenged voter is alleged to reside or the county auditor reasonably expects the voter to receive notice.** The challenger and challenged voter may either appear in person or submit testimony by affidavit.

(4) The challenger has the burden to prove by clear and convincing evidence that the challenged voter's registration is improper. **The challenged voter must be provided a reasonable opportunity to respond.** If the challenge is to the residential address provided by the voter, the challenged voter may provide evidence that he or she resides at the location described in his or her voter's registration records, or meets one of the exceptions allowed in RCW 29A.08.112 or 29A.04.151, or Article VI, section 4 of the state Constitution. If either the challenger or challenged voter fails to appear at the hearing, the challenge must be resolved based on the available facts.

In the present case, the Kittitas County Auditor had three addresses that were either given by Mr. Camarata, or contained in the voter registration challenge itself, at which Mr. Camarata could have been reasonably expected to receive notice, if any such notice had been given:

- (1) Voter registration address of 1001 E. 8th Ave., (#4), Ellensburg, WA 98926 (CP 50-51)
- (2) Mailing address on voter registration form of General Delivery, Ellensburg, WA 98926 (CP 50-51)
- (3) Additional contact address for Mr. Camarata, developed in Deputy Higashiyama's investigation and contained in voter registration challenge of "Contact: Father, Salvador Camarata, 402 W. Helena, Ellensburg, WA 98926, (509) 925-5225". (CP 32, 62)

Unfortunately, while the Kittitas County Auditor was expressly required by RCW 29A.08.840(2),(3) to send the voter registration challenge and notice of hearing to Mr. Camarata by certified mail to all three of these addresses, the agency record filed with the trial court contains no evidence whatsoever of any of these documents being mailed to Mr. Camarata at any of these addresses whatsoever.

There certainly is no declaration from anyone at the Kittitas County Auditor that anything specific whatsoever was mailed to Mr. Camarata at any address at any time, much less the required voter registration challenge and notice of hearing.

The closest thing approaching evidence of mailing to Mr. Camarata is the April 15, 2012 supplement to the administrative record.

(Docket # 21, App. C, CP tbd supplement) All four of the returned envelopes contained a mere 45 cents of basic postage, which was sufficient to mail at most one ounce under the postage rates that were in effect in June 2012. (45 cents for the first ounce, 20 cents thereafter)

Under ER 201(b), any court may take judicial notice of facts that are generally known and not subject to reasonable dispute. ER 201(d) requires a court to take judicial notice if requested by a party and supplied with the necessary information. ER 201(f) allows judicial notice to be taken at any stage of the proceeding, including appellate review.

Even if the Kittitas County Auditor had provided the trial court with a declaration or affidavit that the 27 page voter registration challenge (together with a page or more for notice of the July 13, 2012 hearing) had been mailed to Mr. Camarata in the June 28, 2012 certified mail envelope, that declaration would be easily proven false.

Standard 20 pound bond paper (almost universally used in copying and other office applications) weighs five pounds for a 500 sheet ream of 8-1/2" by 11" letter size (with 20 pounds referring to the basis weight of a 17" x 22" 500 sheet ream).

<http://home.howstuffworks.com/question329.htm> This works out to one pound per 100 sheets, or 0.16 ounces per page (just under 1/6 ounce).

If the notice of hearing was just one page additional, sending 28 pages to Mr. Camarata would have been 4.48 ounces, without adding the weight of the mailing envelope (about 1/6 ounce more). However, the June 28, 2012 certified mail only shows basic postage of 45 cents, which

is only sufficient to cover one ounce – at most six pages, without even considering the weight of the envelope itself. Additional credibility problems would be presented by the basic impossibility of folding at least 28 pages and making them fit into a standard # 10 letter envelope.

As it is, the Kittitas County Auditor failed to provide the trial court with a declaration or other record stating what it mailed to Mr. Camarata in any of the four envelopes in question addressed to General Delivery, Ellensburg, WA 98926. (The other three envelopes – also with one ounce postage of 45 cents – were all regular non-certified mail, with two of them being mailed before the voter registration challenge was filed, and the other being mailed some time after the July 13, 2012 hearing.)

Since there is absolutely no evidence that the Kittitas County Auditor mailed the required voter registration challenge and notice of hearing to Mr. Camarata by certified mail at any of the three addresses in question, ALL of which were required under 29A.08.840(2),(3), the decision of the Kittitas County Auditor must be reversed due to failure to provide Mr. Camarata with the statutorily required notice and constitutional due process mandated to deprive him of his voting rights.

**2. Failure to Publish Entire Content of Challenge on Internet**

In 2006, the legislature adopted RCW 29A.08.835, which further requires the county auditor publish the entire content of any voter challenge on its internet web site within 72 hours after it has been filed:

**RCW 29A.08.835 County auditor to publish voter challenges on the internet — Ongoing notification requirements.**

The county auditor shall, within seventy-two hours of receipt, **publish on the auditor's internet web site the entire content of any voter challenge filed under chapter 29A.08 RCW**. Immediately after publishing any voter challenge, the county auditor shall notify any person who requests to receive such notifications on an ongoing basis.

Instead of following the clear mandates of RCW 29A.08.835, the Kittitas County Auditor decided instead to publish only the two page standard voter challenge form on its website, and not to include any of the 25 pages of supporting documentation. (CP 77-78) The Elections Supervisor, Sue Higginbotham, provided the trial court with a declaration stating that she made this decision based upon the alleged advice of an unnamed person in the Secretary of State's office. (CP 77-78)

In any event, the language RCW 29A.08.835 is crystal clear: "must publish on the auditor's internet web site **the entire content of any voter challenge**". There are no WAC regulations adopted by the Secretary of State that are contrary of the express language of the statute. Any reliance upon an alleged conversation with an unnamed employee of the Secretary of State must fall before the clear requirement of the law.

There are many valid reasons for the legislature to require that the entire content of a voter registration challenge be published on the internet. Many voters may not actually reside at their registration address, or at least may be absent for prolonged periods of time, due to military service, working abroad, being homeless, or even taking a vacation. These voters might not be available to pick up their mail within the time

before the scheduled hearing, and providing additional notice via the internet might be their only possible way of obtaining this information.

The Kittitas County Auditor decision to cancel Mr. Camarata's voter registration must also be reversed due to the failure to publish the entire content of the challenge on the internet under RCW 29A.08.835.

**3. RCW 29A.08.112 allows Homeless to Register Anywhere**

The Legislature has adopted RCW 29A.08.112 to protect the rights of the homeless and other transients to register to vote (provided they meet the other constitutional requirements, such as age and citizenship), without being subject to disqualification based on residential address issues:

**RCW 29A.08.112 Voters without traditional residential addresses.**

No person registering to vote, who meets all the qualifications of a registered voter in the state of Washington, shall be disqualified because he or she lacks a traditional residential address. **A voter who lacks a traditional residential address will be registered and assigned to a precinct based on the location provided.**

The Secretary of State is vested by various rule-making and other administrative powers and duties under the Election Code of Title 29A RCW. Among these powers and duties are those of providing official forms for voter registration challenges under RCW 29A.08.850.

The official Secretary of State voter registration challenge form, which Deputy Higashiyama used, contains the following language:

**Residency Requirements**

**Residency requirements**, as defined in Article VI, section 4 of the Washington State Constitution and RCW

29A.04.151, and 29A.08.112 **may not be challenged if the voter is:**

- absent while in service of the state or federal government
- attending school
- confined in a public prison
- at sea
- **lacking a traditional residential address** such as a shelter, park, motor home or marina. (emphases added) (CP 30)

While Mr. Camarata did not present evidence or attend the July 13, 2012 hearing (due to the fact that he was not properly notified in the first place), RCW 29A.08.840(4) does not allow for default in this situation, but instead mandates that “the challenge must be resolved based on the available facts” that are available to the auditor at the time of hearing.

There is absolutely no dispute that Mr. Camarata was over 18 years of age, a citizen of the United States, and otherwise met the requirements to be a registered voter in the State of Washington.

And there is also no dispute that Mr. Camarata lacked a “traditional residential address”. Deputy Higashiyama conducted a fairly thorough investigation, and found no evidence of Mr. Camarata actually living at any sort of permanent residential address. (CP 33-35) When Deputy Higashiyama had telephone contact, Mr. Camarata told him that he was homeless, and that he was currently trying to sleep on busses in Yakima, but was getting in trouble for not paying the bus fares. (CP 35) Based on investigation and professional judgment, Deputy Higashiyama stated that Mr. Camarata was a “transient” when he filled out the voter registration challenge under penalty of perjury. (CP 31)

The language of RCW 29A.08.112 could not be more clear. First, Mr. Camarata could not be disqualified as a registered voter because of his lack of a traditional residential address. Second, Mr. Camarata was required to be registered to vote based upon the location that he provided on his voter registration and assigned a precinct based on this location. Third, the Secretary of State official voter registration challenge form expressly prohibits challenging the voter registration address provided by a person who lacks a “traditional residential address”.

Mr. Camarata complied with the requirements of RCW 29A.08.112 by providing a physical location on which to base his voter registration and to be assigned a precinct for voting purposes. The statute places no restriction on the location that a homeless or transient voter may choose to register at, and Mr. Camarata happened to pick a parking lot in Ellensburg, Washington, where a demolished former residence previously existed – the last place and only place that he had previously registered at.

It may be very interesting that Mr. Camarata happened to be trying to find shelter in Yakima by sleeping on busses and trying to avoid paying the fare on June 12, 2012 when he spoke to Deputy Higashiyama by telephone. But a homeless or transient person such as Mr. Camarata may be in lots of different places, in an attempt to find shelter, or food, or clothing, or money. Another week, he may be trying to sleep in a public park or parking lot in Ellensburg. A different week, he might be staying in a homeless shelter in Spokane. And yet another week, he might beg for money in downtown Tacoma or sleep on the sidewalk in Seattle.

Once Mr. Camarata qualifies to vote as someone lacking a “traditional residential address” under RCW 29A.08.112, his right to vote at the location he provided on his voter registration form cannot be taken away unless and until he has actually established a “traditional residential address” by obtaining a permanent domicile in some specific location.

“The rule is that a residence once established is presumed to continue.” Fiske v. Fiske, 48 Wn.2d 69, 72, 290 P.2d 725 (1955). “The domicile, once established, continues until it is superseded by a new domicile...The fact of temporary absence from the domicile, of itself and without any intention to change domiciles, does not result in its loss or change.” Sasse v. Sasse, 41 Wn.2d 363, 366, 249 P.2d 380 (1952).

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

to make that place a permanent home is lacking, residence will not be established.

The Secretary of State has recognized an even stronger right for a registered voter to continue to vote at the address where they are registered, even if there is doubt as to whether they have established a new domicile elsewhere. The Secretary of State website states:

You may only be registered to vote at one location, even if you own multiple residences. **If you move or are temporarily away, you may maintain your voter registration at that address until you register to vote elsewhere.** ...

**You may maintain your voter registration in Washington State until you register to vote elsewhere.**

[https://wei.sos.wa.gov/agency/osos/en/voters/Pages/residency\\_requirements.aspx](https://wei.sos.wa.gov/agency/osos/en/voters/Pages/residency_requirements.aspx)

It should also be noted that RCW 29A.08.810(1)(c), the section under which the voter registration challenge was filed, allows for challenges on the basis that “[t]he challenged voter does not live at the residential address provided”. Since a voter, such as Mr. Camarata, who registers under RCW 29A.08.112 lacks a “traditional residential address”, by definition it would not be legally permissible to sustain a challenge to such a voter, since they are expressly allowed to register at whatever location they provide, without being required to physically live there.

The Kittitas County Auditor completely failed to note the undisputed fact that Mr. Camarata was transient, homeless, and lacked a “traditional residential address” anywhere in the decision. (CP 18-25) Instead, the Auditor focused solely on the fact that it was highly probable

that Mr. Camarata did not reside at the voter registration address of 1001 E. 8th Ave., (#4), Ellensburg, WA 98926 (Findings/Conclusions 9 and 11, CP 23-24) and therefore the registration should be cancelled.

Since the Kittitas County Auditor failed to properly apply RCW 29A.08.112, allowing Mr. Camarata to register to vote at whatever location he provided since he lacked a “traditional residential address”, the decision to uphold the challenge and cancel Mr. Camarata’s voter registration is contrary to law and must be reversed.

4. **Failure to Provide Declaration from Owner, Manager, Resident, or Employee of the Challenged Registration Address**

RCW 29A.08.810(1)(c) imposes very detailed and specific requirements when a voter is challenged based upon residential address:

**29A.08.810 Basis for challenging a voter's registration  
— Who may bring a challenge — Challenger duties.**

(1) Registration of a person as a voter is presumptive evidence of his or her right to vote. A challenge to the person's right to vote must be based on personal knowledge of one of the following: ...

(c) The challenged voter does not live at the residential address provided, in which case the challenger must either:

(i) Provide the challenged voter's actual residence on the challenge form; or

(ii) 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 challenged voter to learn the challenged voter's actual residence, including that the challenger personally:

(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 whether 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;

The highlighted requirement above was adopted by Laws 2006, ch. 320, § 4. The legislative history makes clear that an declaration or affidavit from an owner, manager, resident, or employee of the claimed residential address is mandatory when challenging a voter on the basis of failure to live at the residential address claimed, unless the challenger can prove the actual address at which the challenged voter resides:

If the challenge is based on an allegation that the voter does not live at the address provided, the challenger must provide the voter's actual residence, or submit evidence that the challenger exercised due diligence to verify that the challenged voter does not reside at the address provided. **The bill specifies the minimum actions necessary for a challenger to establish that he or she exercised due diligence, including obtaining a signed affidavit from a person who owns, manages, resides, or is employed at the address as listed on the registration form.**

Final Bill Report, SSB 6362 (2006),  
<http://apps.leg.wa.gov/documents/billdocs/2005-06/Pdf/Bill%20Reports/Senate/6362-S.FBR.pdf>

In the present case, Deputy Higashiyama failed to provide any evidence of Mr. Camarata's actual residential address – something which was impossible to do in any event, as Mr. Camarata was homeless and lacked a “traditional residential address” to begin with. Therefore, RCW 29A.08.810(1)(c)(ii)(B) required Deputy Higashiyama to provide an affidavit or declaration from an owner, manager, resident, or employee of the registration address of 1001 E. 8th Ave., Ellensburg, WA 98926, stating that Mr. Camarata did not reside there. Deputy Higashiyama failed to do this, making his challenge insufficient as a matter of law, and the decision of the Kittitas County Auditor should therefore be reversed.

5. **Appearance of Fairness in Prosecutor Initiating Voter Challenge and Representing Both Challenger and Auditor**

Under the appearance of fairness doctrine, proceedings before a quasi-judicial tribunal are valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing. Swift v. Island County, 87 Wn.2d 348, 361, 552 P.2d 175 (1976). Although this doctrine originated in the land use area, *see* Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969), it has been extended to other types of quasi-judicial administrative proceedings, *see* Chicago, M., St. P. & Pac. R.R. v. State Human Rights Comm'n, 87 Wn.2d 802, 557 P.2d 307 (1976).

A genuinely impartial hearing, conducted with critical detachment, is psychologically improbable if not impossible, when the presiding officer has at once the

responsibility of appraising the strength of the case and of seeking to make it as strong as possible.

Wong Yang Sung v. McGrath, 339 U.S. 33, 44, 70 S.Ct. 445, 451, 94 L.Ed. 616 (1950). *Accord*, Huber Pontiac, Inc. v. Allphin, 431 F. Supp. 1168, 1172 (S.D.Ill.1977), *vacated on other grounds*, Huber Pontiac, Inc. v. Whitler, 585 F.2d 817 (7<sup>th</sup> Cir.1978).

The same concerns were expressed by Justice Brennan, then a New Jersey state judge, when he said the concern with concentration:

springs from the fear that the agency official adjudicating upon private rights cannot wholly free himself from the influences toward partiality inherent in his identification with the investigative and prosecuting aspects of the case; in other words, that the atmosphere in which he must make his judgments is not conducive to the critical detachment toward the case expected of the judge. In a sense the combination of functions violates the ancient tenet of Anglo-American justice that "No man shall be a judge in his own cause." ... "The litigant often feels that, in this combination of functions within a single tribunal or agency, he has lost all opportunity to argue his case to an unbiased official and that he has been deprived of safeguards he has been taught to revere." (citations omitted)

In re Larsen, 17 N.J. Super. 564, 574, 86 A.2d 430 (1952) (Brennan, J., concurring).

When the performance of any legal duties required of the Attorney General presents actual conflicts of interest, a different assistant attorney general can, and should, be assigned to handle those inconsistent functions.... [W]hen the dual roles of the Attorney General present such a conflict, two separate attorneys should handle those functions.

Washington Med. Disciplinary Bd. v. Johnston, 99 Wn.2d 466, 480-81, 663 P.2d 457 (1983).

The Court of Appeals applied these principles in Amoss v. University of Washington, 40 Wn. App. 666, 700 P.2d 350 (1985), a case

involving the University of Washington division of the Attorney General's office. There, the dean of the College of Arts and Sciences appealed to the University president the tenure committee's decision to reconsider a tenure denial. *Amoss*, 40 Wn. App. at 672. An assistant attorney general represented the dean as an adversary, while another assistant attorney general, who supervised the dean's counsel, represented the University president. *Id.* at 672-73. The two assistant attorneys general, however, kept separate files and did not confer about the matter with each other. *Id.* at 686. The Court of Appeals noted these procedures with approval and concluded that there had been no impropriety or violation of the appearance of fairness doctrine.

In some cases, the conflict is so severe, that an entire government law office must be disqualified, and the normal solution of assigning two different attorneys, screened from each other, will not suffice. In *State v. Stenger*, 111 Wn.2d 516, 521-22, 760 P.2d 357 (1988), the elected county prosecuting attorney had previously represented the defendant in some criminal proceedings before being elected, and this disqualified both the prosecutor personally and all the deputies in the office, requiring the appointment of a special prosecutor by the superior court. The Supreme Court held this conflict of interest could not be resolved simply by assigning the case to one of the prosecutor's regular deputies.

In the present case, the Kittitas County Prosecuting Attorney basically initiated the voter registration challenge, since Deputy Higashiyama filed the challenge at the request of the prosecuting attorney.

(CP 33, 61) When the challenge was being adjudicated by the Kittitas County Auditor, the same deputy prosecutor advised both the Auditor and the Challenger Deputy Higashiyama. (CP 72-73) When Mr. Camarata petitioned the Thurston County Superior Court for review, the same deputy prosecutor represented both the Auditor and Deputy Higashiyama. (Docket # 10, App. D, CP tbd supplement) Moreover, the same deputy prosecutor is representing both the Auditor and Deputy Higashiyama in the Court of Appeals. (*see Substitution of Counsel*, filed 10/25/2013)

This is clearly an impermissible conflict of interest and violation of the appearance of fairness doctrine to have the same deputy prosecutor advise and represent both the Challenger, who is prosecuting the case against Mr. Camarata's voter registration, and the Auditor, who is supposed to be a fair and impartial adjudicator of the challenge.

While it is already too late to undo the damage that has been done through the apparently unfair and impermissibly conflicted decision to cancel Mr. Camarata's voter registration, the conflict of interest problem could not have been solved by the Kittitas County Prosecuting Attorney assigning two different deputy prosecutors to Deputy Higashiyama and the Kittitas County Auditor, and screening them from participation in the case.

The real party in interest that caused the voter registration challenge to be filed in the first place was the elected Kittitas County Prosecuting Attorney, who supervises all the deputy prosecutors in the office, all of whom serve at the pleasure of the elected prosecutor under RCW 36.27.040. Just as was the case in Stenger, where the elected

prosecutor's involvement required the disqualification of the entire office, it would have been necessary in this case for the Kittitas County Prosecuting Attorney's office to entirely recuse itself from advising and representing the Kittitas County Auditor, and for the Kittitas County Superior Court to appoint a special prosecutor to represent the Auditor.

As matters stand, if the Court of Appeals were to remand this voter registration challenge for adjudication, as opposed to totally reversing the decision on its merits, the Kittitas County Auditor would have to be recused from further participation in this matter. The Auditor has been impermissibly and irreversibly tainted by being advised and represented by the same elected prosecutor and deputy prosecutor who are advocating the very voter registration challenge that the Auditor is supposed to be deciding impartially. This matter would have to be referred to the Secretary of State, as chief elections officer under RCW 29A.04.230, for adjudication, with appropriate advice and representation of the Secretary of State by the state Attorney General's office – which happens to be quite skilled in assigning different and screened assistants to conflictive cases.

**6. Mr. Camarata Should be Awarded Attorney Fees on Appeal**

RCW 4.84.340 to 4.84.360 provide for the award of reasonable attorney fees in a judicial review proceeding under Chapter 34.05 RCW when the prevailing appellant is an individual with a net worth under one million dollars, RCW 4.84.340(5), unless the court finds the agency action to have been substantially justified. RCW 4.84.350(1).

In Cascade Court Limited Partnership v. Noble, 105 Wn. App. 563, 20 P.3d 997 (2001), the Court of Appeals ruled that the definition of “agency” in RCW 4.84.340(1) could include a local county officer. However, the King County Assessor did not qualify as an “agency”, since a county assessor has no rule-making authority (which lies in Department of Revenue) and did not conduct adjudicative proceedings (the county Board of Equalization and the state Board of Tax Appeals resolved assessment and valuation appeals). Noble, 105 Wn. App. at 571-72.

By contrast, a county auditor is authorized to conduct adjudicative proceedings under RCW 29A.08.810 to 29A.08.850 to decide voter registration challenges. Therefore, the Kittitas County Auditor qualifies as an “agency” under RCW 4.84.340(1) and can be liable for attorney fees.

The Court of Appeals should not find the actions of the Kittitas County Auditor to be “substantially justified” in this matter. The Auditor failed to send the voter registration challenge and notice of hearing to Mr. Camarata by certified mail to any address whatsoever, when RCW 29A.08.840(2),(3) required these documents be mailed certified to at least three different addresses for Mr. Camarata. The Auditor cancelled Mr. Camarata’s voter registration impermissibly based upon residential address issues that clearly do not apply to transient voters lacking a “traditional residential address” under RCW 29A.08.112. Finally, the Auditor was impermissibly advised and represented in judging the case against Mr. Camarata by the same elected prosecutor and deputy

prosecuting attorney who was prosecuting the same case. All of these actions were clearly wrong, and none were “substantially justified”.

Mr. Camarata is a “qualified party” under RCW 4.84.340(5), since his net worth is less than one million dollars, and in fact, is practically nothing. A financial affidavit will be submitted at least 10 days before oral argument or consideration, in accordance with RAP 18.1(c).

In addition, RCW 34.05.598 applies the provisions of RCW 4.84.185 to judicial review proceedings under Chapter 34.05 RCW. RCW 4.84.185 allows a court to award reasonable attorney fees incurred in opposing a frivolous claim or a frivolous defense, if the court finds that the claim or defense was advanced frivolous and without reasonable cause.

Mr. Camarata would respectfully submit that it was frivolous and unreasonable for the Kittitas County Auditor to fail to send the voter registration challenge and notice of hearing to any of the three known possible addresses for himself by any means whatsoever, when RCW 29A.08.840(2),(3) clearly required the voter registration challenge and notice of hearing to be sent by certified mail to all three known possible addresses, and common sense and due process of law required some appropriate notice to Mr. Camarata even absent the express statute.

As a result, the Kittitas County Auditor frivolously cancelled Mr. Camarata’s voter registration without notice or opportunity to be heard, and by adhering to this frivolous decision, has forced Mr. Camarata to file a Thurston County Superior Court petition for review and now an appeal to the Court of Appeals. Since there was clearly no legal basis for the

Kittitas County Auditor to defend its decision to cancel Mr. Camarata's voter registration, its defense of Mr. Camarata's review proceedings in the trial court and in this court is likewise frivolous and has been advanced without reasonable cause, warranting attorney fees under RCW 4.84.185.

**E. CONCLUSION**

The September 5, 2012 decision by the Kittitas County Auditor to uphold the voter registration challenge of Deputy Higashiyama and cancel Mr. Camarata's voter registration should be reversed. The June 14, 2013 decision of the Thurston County Superior Court affirming the decision of the Kittitas County Auditor should be reversed. This reversal should be outright. If the decision is remanded, the Kittitas County Auditor and Kittitas County Prosecuting Attorney's office should be disqualified from further participation in this matter, and the voter registration challenge should be adjudicated by the Secretary of State. Mr. Camarata should be awarded his reasonable attorney fees in this proceeding.

RESPECTFULLY SUBMITTED on April 16, 2014.

/s/ Richard L. Pope, Jr.  
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**CERTIFICATE OF MAILING**

I certify that I mailed a copy of this Brief of Appellant, postage prepaid, on April 16, 2014 to:

(1) Christopher Horner, Kittitas County Prosecutor, 205 West Fifth Avenue, Suite 213, Ellensburg, Washington 98926 (and by e-mail to [christopher.horner@co.kittitas.wa.us](mailto:christopher.horner@co.kittitas.wa.us))

Dated: April 16, 2014

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SEP 05 2012

KITTITAS COUNTY AUDITOR

BEFORE THE COUNTY AUDITOR  
KITTITAS COUNTY, WASHINGTON

In Re Challenge to the Voter Registration	)	
of	)	
Gene A. Camarata	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
	)	ORDER
	)	
	)	
	)	

I. INTRODUCTION

THIS MATTER came before Jerald V. Pettit, County Auditor, Kittitas County, pursuant to RCW 29A.08.840 on , upon the challenge to the voter registration of Gene A. Camarata (the "Challenged Voter"). The challenge was filed by Darren M. Higashiyama (the "Challenger") and alleges that the Challenged Voter does not maintain a legal voting residence at the address shown on their voter registration records. Gene A. Camarata ("the Challenged Voter") was not present at the hearing. Darren M. Higashiyama ("the Challenger") was not present at the hearing. Present was Sue Higginbotham, Deputy Administrator and Obie DJ O'Brien, County Commissioner.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The challenge at issue was initiated in writing and was filed on June 22, 2012. The certified letters setting the time and place for the hearing were sent to the Challenged Voter and the Challenger on June 28, 2012.

2. The challenge alleges that the Challenged Voter does not maintain a legal voting residence at the address shown on the voter registration records. The challenge is made pursuant to RCW 29A.08.810 (1)(c), which reads:

(1) Registration of a person as a voter is presumptive evidence of his or her right to vote. 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, in which case the challenger must either:

(i) Provide the challenged voter's actual residence on the challenge form;  
or

(ii) 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 challenged voter to learn the challenged voter's actual residence, including that the challenger personally:

(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 whether 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;

(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.

3. These challenges were made more than forty-five days prior to the next election in this jurisdiction, and therefore under RCW 29A.08.820 was heard by the Kittitas County Auditor.

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

were considered by the County Auditor in determining the appropriate weight to give each piece of evidence.

5. The registration of a person as a voter is presumptive evidence of the right to vote at any election, as provided in RCW 29A.08.810. The burden to prove otherwise is upon the Challengers, and in this case they must prove by clear and convincing evidence that the address as it appears on each Challenged Voter's registration is not the Challenged Voter's residence. RCW 29A.04.151 and 29A.08.840

6. For purposes of voter registration, "residency" is defined by RCW 29A.04.151 as "a person's permanent address where he physically resides and maintains his abode". Analogous caselaw provides that residence is established only when a person physically resides at a place with the intent to presently make that place a permanent home. In re Lassin's Estate, 33 Wn.2d 163, 204 P.2d 1071 (1949); Fiske v. Fiske, 48 Wn.2d 69, 290 P.2d 725 (1955); Freund v. Hastie, 13 Wn. App. 731, 537 P.2d 804 (1975); Marriage of Strohmaier, 34 Wn. App. 14, 659 P.2d 534 (1983). If either physical residence or the intent to presently make that place a permanent home is lacking, or do not exist simultaneously, residence will not be established. Id.

7. Neither the Challenger nor the Challenged Voter were present at this hearing. Therefore, pursuant to RCW 29A.08.840 (4):

(4) The challenger has the burden to prove by clear and convincing evidence that the challenged voter's registration is improper. The challenged voter must be provided a reasonable opportunity to respond. If the challenge is to the residential address provided by the voter, the challenged voter may provide evidence that he or she resides at the location described in his or her voter's registration records, or meets one of the exceptions allowed in RCW 29A.08.112 or 29A.04.151, or Article VI, section 4 of the state Constitution. If either the challenger or challenged voter fails to appear at the hearing, the challenge must be resolved based on the available facts.

8. Sue Higginbotham, Deputy Administrator, submitted documents for evidence that have been received from the Challenger.

Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15

- (1) Voter Registration Challenge Form filed by Darren M. Higashiyama regarding the voter registration of Gene A. Camarata dated June 22, 2012;
- (2) Kittitas County Sheriff's Office Detail Incident Report Fraud Complaint Incident #S12-06661;
- (3) Copy of a letter written by Darren Higashiyama sent to the challenged voter's residential address and mailing address of record;
- (4) Copies of three photographs taken of the residential address site;
- (5) Copy of printout from People Search website;
- (6) Copy of printout from ZABA Search website;
- (7) Kittitas County Assessor Property Summary of Challenged Voter's residential address;
- (8) Kittitas County Staff Taxsifter Parcel Search for last name Camarata;
- (9) Copy of phone Ellensburg Phone Book page that includes the name Camarata;

- (10) Copy of Washington Secretary of State Voter Registration System search record for Gene Camarata;
- (11) Printout of Kittitas WEI Online Voter Registration Record for Gene Camarata;
- (12) Printout of Secretary of State Voter Registration System Selected Registration Details for Gene Camarata;
- (13) Printout of Washington Election Information System Candidate Detail for Gene Camarata Precinct Committee Officer candidacy for Precinct 22 – Ellensburg 15;
- (14) Copy of RCW 29A.08.810: Basis for challenging a voter's registration – Who may bring a challenge – Challenger duties.;
- (15) Copy of Kittitas County Sheriff's Office Case Processing Sheet Case #5112-06661;

9. The ultimate question to be answered in this matter is whether the Challenger has proven based on the evidence as described that it is highly probable that the Challenged Voter does not reside at the address stated on his voter registration. The evidence presented by the Challenger appears clear and convincing proof that the Challenged Voter, Gene Camarata does not reside at address provided for his voter registration.

The definition of residence for the purpose of voter registration is very broad. "Residence" for the purpose of registration is defined by RCW 29A.04.151 as follows:

"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.

The evidence provided by the Challenger is documentation that the voter registration address is a vacant lot owned by Kittitas County and used for parking for the Kittitas County Fair and other events. Stated in the narrative of the incident report: "The lot where 1001 E. 8<sup>th</sup> would be is connected to other parking area for the Kittitas County Fair Grounds. The Kittitas County Fairgrounds do not rent/lease housing to anyone. The parking area is not considered a shelter or a park. There is no person(s) living or residing on any of the Kittitas County Fairground properties." Evidence is also provided of attempts to contact the Challenged Voter at address provided in the voter registration and the physical address. Pictures of the address are provided as evidence that no structure permanent or temporary exists at the physical address.

10. It is also noted that the Challenged Voter provided no evidence contrary to the Challenger's documented evidence.

11. I hereby find that the Challenger provided proof by clear and convincing evidence that the Challenged Voter, Gene Camarata, does not reside at the Kittitas County address for voter registration purposes.

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SUPERIOR COURT  
THURSTON COUNTY, WA  
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BETTY J. GOULD, CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

GENE A. CAMARATA, a registered voter	)	
	)	NO.: 12-2-02029-6
Petitioner,	)	
	)	FINAL ORDER
v.	)	(proposed)
	)	
KITTITAS COUNTY, KITTITAS	)	
COUNTY AUDITOR, KITTITAS	)	
COUNTY AUDITOR JERRY V. PETTIT,	)	
KITTITAS COUNTY PROSECUTOR	)	
GREGORY L. ZEMPEL, DARREN M.	)	
HIGASHIYAMA,	)	
	)	
Respondents,	)	

This matter having come before the Court on June 14, 2013 on Gene A. Camarata's appeal of the decision by the Kittitas County Auditor to cancel Mr. Camarata's voting registration, and the Court being fully advised in the premises, and having considered all files, records, and pleadings herein,

THE COURT FINDS that:

1. The Auditor followed the statutorily required process.
2. The Auditor's decision is supported by substantial evidence.

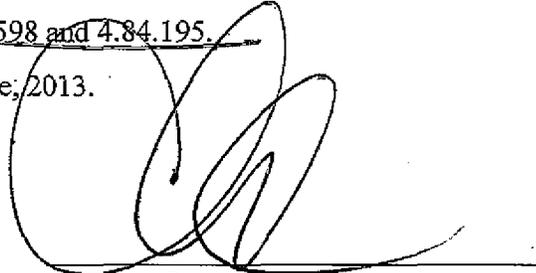
GREGORY L. ZEMPEL  
KITTITAS COUNTY PROSECUTOR  
KITTITAS COUNTY COURTHOUSE - ROOM 213  
ELLENSBURG, WASHINGTON 98926-3129  
TELEPHONE 509 962-7520

- 1 3. No constitutional or statutory rights of Mr. Camarata were violated.  
2 4. The Auditor's decision and actions are neither arbitrary nor capricious.  
3 ~~5. Mr. Camarata's appeal is frivolous and advanced without reasonable cause.~~ CW

4 IT IS HEREBY ORDERED AND ADJUDGED that:

- 5 1. The decision of the Kittitas County Auditor related to Mr. Camarata's voter  
6 registration, dated September 5, 2012 is hereby affirmed. CW  
7 ~~2. Kittitas County is awarded its reasonable expenses and attorney fees from Mr.  
8 Camarata for having to defend a frivolous action advanced without reasonable cause  
9 pursuant to RCW sections 34.05.598 and 4.84.195.~~

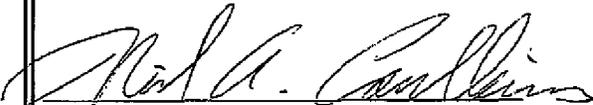
10 IT IS SO ORDERED this 14<sup>th</sup> day of June, 2013.



11 Superior Court Judge

12 CHRIS WICKHAM

13 Presented by:



14 Neil A. Caulkins, WSBA #31759  
15 Kittitas County Deputy Prosecutor

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22 GREGORY L. ZEMPEL  
23 KITTITAS COUNTY PROSECUTOR  
24 KITTITAS COUNTY COURTHOUSE - ROOM 213  
ELLENSBURG, WASHINGTON 99026-3129  
TELEPHONE 509 982-7520

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

GENE A. CAMARATA, a registered )  
voter )  
Petitioner, ) 12-2-02029-6  
vs. )  
KITTITAS COUNTY, KITTITAS ) CERTIFICATION OF  
COUNTY AUDITOR, KITTITAS ) AMENDMENT TO THE  
COUNTY AUDITOR JERRY V. PETIT, ) RECORD  
KITTITAS COUNTY PROSECUTOR )  
GREGORY L. ZEMPEL, DARREN M. )  
HIGASHIYAMA. )  
Respondents )  
)  
)  
)

I, Sue Higginbotham, Administrative Assistant III, do hereby  
certify that the attached four (4) pages are true and correct  
copies of various notices sent to the Petitioner in this matter  
which are therefore part of the administrative record in this  
matter. These notices were and are part of the administrative  
file in this matter, but were inadvertently omitted from the  
initial Certification of Record. I do hereby certify that these  
attached four (4) pages should be added to the administrative

1 record previously certified. I swear or affirm that the forgoing  
2 is true and correct to the best of my knowledge and belief.

3  
4 DATED this 15<sup>th</sup> day of April 2013.

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Sue Higginbotham

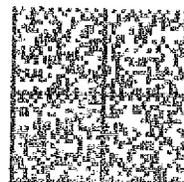
CERTIFIED MAIL™

JERALD V. PETTIT  
Kittitas County Auditor  
205 W. 5th - Suite 105  
Ellensburg, WA 98926-2891



7011 1570 0003 2292 3809

②  
C. J. A.



US POSTAGE  
\$ 05.75  
1ST CLASS RTL  
Mailed From 98926  
06/28/2012  
031A 0005180813

UNCLAIMED

June 26, 2012

Gene Camarata  
General Delivery  
Ellensburg, WA 98926

for Mr. Camarata

RECEIVED  
SEP 04 2012  
KITITAS COUNTY AUDITOR

C-3

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

ELLENSBURG WA 98926

**OFFICIAL USE**

Postage	\$ 04.45	0730
Certified Fee	\$2.95	09
Return Receipt Fee (Endorsement Required)	\$2.35	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
<b>Total Postage &amp; Fees</b>	<b>\$ 5.75</b>	06/28/2012

Sent To **GENE CAMARATA**  
Street, Apt. No.,  
or PO Box No. **GENERAL DELIVERY**  
City, State, ZIP+4 **ELLENSBURG, WA 98926**

PS Form 3800, August 2006 See Reverse for Instructions

RECEIVED  
MAR 28 2013  
KITITAS COUNTY  
PROSECUTING ATTORNEY

ENTIRE CONTENTS OF MAIL MUST BE RETURNED TO THE POST OFFICE  
609E 2622 E000 Q25T 1102

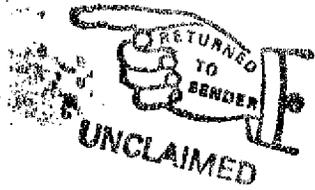
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (<i>Printed Name</i>) <input type="checkbox"/> Date of Delivery</p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>GENE CAMARATA GENERAL DELIVERY ELLENSBURG, WA 98426</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

2. Article Number  
(Transfer from service label) 7011 1570 E003 2292 3869

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

C-4

JERALD V. PETTIT  
Kittitas County Auditor  
205 W. 5th - Suite 105  
Ellensburg, WA 98926-2891



US POSTAGE  
\$ 00.45  
1ST CLASS RTL  
Mailed From 98926  
09/06/2012  
WJTA 0005180613

SEP 07 2012

GENE CAMARATA  
GENERAL DELIVERY  
ELLENSBURG, WA 98926



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Department of Elections  
Kittitas County  
205 W. 5th, Suite #105  
Ellensburg, WA 98926-2891



54133



US POSTAGE  
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1ST CLASS RTL  
Mailed From 98926  
05/21/2012

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RETURN SERVICE REQUESTED

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JUN 25 2012

KITTITAS COUNTY AUDITOR

GENE CAMARATA  
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON**

GENE A. CAMARATA, a registered voter

Petitioner,

v.

KITTITAS COUNTY, KITTITAS  
COUNTY AUDITOR, KITTITAS  
COUNTY AUDITOR JERRY V. PETTIT,  
KITTITAS COUNTY PROSECUTOR  
GREGORY L. ZEMPEL, DARREN M.  
HIGASHIYAMA.

Respondents,

NO.: 12-2-02029-6

**NOTICE OF APPEARANCE**

TO: The Clerk of the Court

AND TO: Gene A. Camarata  
General Delivery  
Ellensburg, WA 98926

NOTICE IS HEREBY GIVEN THAT KITTITAS COUNTY, KITTITAS  
COUNTY AUDITOR, KITTITAS COUNTY PROSECUTOR, and DARREN M.  
HIGASHIYAMA hereby enter their appearance in the above-entitled cause by NEIL A.

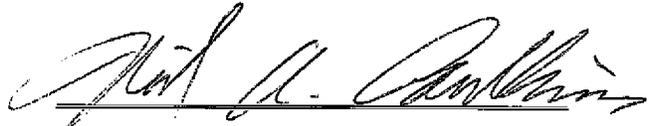
**GREGORY L. ZEMPEL**  
KITTITAS COUNTY PROSECUTOR  
KITTITAS COUNTY COURTHOUSE - ROOM 213  
ELLENSBURG, WASHINGTON 98926-3129  
TELEPHONE 509 962-7520

 **ORIGINAL**  
SCANNED - 002

D-1

1 CAULKINS, Deputy Prosecuting Attorney for Kittitas County, Washington, and  
2 respectfully requests that all papers and pleadings in said cause, other than process, be  
3 served upon the above-mentioned attorney at his office below stated.

4 DATED this 9<sup>th</sup> day of October, 2012.

5  
6 

7 NEIL A. CAULKINS, WSBA# 31759  
8 Deputy Prosecuting Attorney  
9 Kittitas County, Washington  
10 Room 213, Kittitas County Courthouse  
11 205 West Fifth  
12 Ellensburg, WA 98926  
13 Telephone: (509) 962-7520  
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GREGORY L. ZEMPEL  
KITITAS COUNTY PROSECUTOR  
KITITAS COUNTY COURTHOUSE - ROOM 213  
ELLENSBURG, WASHINGTON 98926-3129  
TELEPHONE 509 962-7520