

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-008627

06/14/2018

HON. ROSA MROZ

CLERK OF THE COURT
T. Cooley
Deputy

BRENT BACKUS

TIMOTHY A LASOTA

v.

DONALD SHOOTER, et al.

TIMOTHY A NELSON

COLLEEN CONNOR
KARA MARIE KARLSON
WILLIAM J KEREKES
ANDREA CUMMINGS
JOSEPH E LA RUE

ELECTION CHALLENGE

Prior to commencement of trial, Defendant, Donald Shooter's exhibits 1 through 14 and Plaintiff's exhibits 14 through 25 are marked for identification.

Courtroom 414- ECB

1:31 p.m. This is the time set for hearing re: election contest. Plaintiff is represented by counsel, Timothy A. LaSota. Defendant, Donald Shooter is present and represented by counsel, Timothy Nelson. Defendants, Adrian Fontes, Denny Barney, Clint Hickman, Bill Gates, Steve Chucri, and Steve Gallardo are represented by counsel, Colleen Connor. Defendant, Michele Reagan is represented by counsel, Kara Karlson and Joseph E. LaRue. Yuma County Recorder and Yuma County Board of Supervisor are represented by Bill Kerekes. Maricopa County Recorder is represented by Andrea Cummings.

Court Reporter, Luz Franco is present. A record of the proceedings is also made digitally.

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Counsel invokes the rule of exclusion of witnesses.

Discussion is held regarding Defendant Donald Shooter's Motion to Quash Subpoena for Susan Shooter's Testimony and Memorandum of Points and Authorities in Support Thereof, filed June 13, 2018.

IT IS ORDERED granting Defendant Donald Shooter's Motion to Quash Subpoena for Susan Shooter's Testimony and Memorandum of Points and Authorities in Support Thereof.

Discussion is held regarding exhibits.

Exhibits 1 through 25 are received in evidence by stipulation.

Plaintiff's exhibit 26 and Defendant, Donald Shooter's exhibit 27 are identified and received in evidence by stipulation.

Opening statements.

Defendants' case:

Donald Shooter is sworn and testifies.

Witness is excused and remains in the courtroom.

Defendants rests.

Plaintiff's case:

Robyn Pouquette is sworn and testifies.

Witness is excused.

Janine Petty is sworn and testifies.

Witness is excused.

Kristi Passarelli is sworn and testifies.

Witness is excused.

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Plaintiff rests.

Closing statements.

For the reasons stated on the record,

IT IS FURTHER ORDERED taking this matter under advisement.

3:45 p.m. Matter concludes.

LATER:

The Court has considered the evidence presented at the hearing and the arguments of counsel. Plaintiff Backus challenges Defendant Shooter's candidacy for Senate in Legislative District 13 ("LD 13") because Shooter does not reside in LD 13.

Shooter argues that Plaintiff's Complaint for Special Action/Injunctive Relief should be dismissed because Shooter has been a resident of at least one county in which LD 13 is located, that Shooter has always been a resident of Yuma County and LD 13, and that there is no durational requirement for residing in the legislative district from which a person is elected.

Conclusions of Law

Article IV, Part 2, Section 2 of the Arizona Constitution states: "No person shall be a member of the Legislature unless he shall be a citizen of the United States at the time of his election, nor unless he shall be at least twenty-five years of age, and shall have been a resident of Arizona at least three years and of the county from which he is elected at least one year before his election." At the time the Arizona Constitution was enacted, Senators and Representatives were elected at large within their county. That system has been changed to a district system. However, Article IV, Part 2, Section 2 remains unchanged.

Article VII, Section 15 of the Arizona Constitution states: "Every person elected or appointed to any elective office of trust or profit under the authority of the state, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which such person shall be elected." There is no durational requirement on residency in this provision.

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Arizona Revised Statutes section 16-311(A) states, in relevant part: “a candidate for public office shall be a qualified elector at the time of filing and shall reside in the county, district or precinct that the person proposes to represent.”

Arizona Revised Statutes section 16-121(A) defines a “qualified elector” as “[a] person who is qualified to register to vote pursuant to § 16-101 and who is properly registered to vote shall, if he is at least eighteen years of age on or before the date of the election, be deemed a qualified elector for any purpose for which such qualification is required by law, except as provided in § 16-126. A person continues to be a qualified elector until that person’s registration is canceled pursuant to § 16-165 or until that person does not qualify as a resident as prescribed by § 16-101, subsection B.”

Arizona Revised Statutes section 16-101 states:

A. Every resident of the state is qualified to register to vote if he:

1. Is a citizen of the United States.
2. Will be eighteen years of age or more on or before the date of the regular general election next following his registration.
3. Will have been a resident of the state twenty-nine days next preceding the election, except as provided in § 16-126.
4. Is able to write his name or make his mark, unless prevented from so doing by physical disability.
5. Has not been convicted of treason or a felony, unless restored to civil rights.
6. Has not been adjudicated an incapacitated person as defined in § 14-5101.

B. For purposes of this title, “resident” means an individual who has actual physical presence in this state, or for purposes of a political subdivision actual physical presence in the political subdivision, combined with an intent to remain. A temporary absence does not result in a loss of residence if the individual has an intent to return following his absence. An individual has only one residence for purposes of this title.

Arizona Revised Statutes section 16-101 also does not have a durational requirement on residency.

The Court finds that the language of the above cited constitutional provisions and statutes are unambiguous and should be given its plain meaning. Taken these constitutional provisions and statutes together, the Court finds that a candidate for Legislative District 13 must be: (1) a citizen of the United States at the time of his election; (2) at least twenty-five years of age; (3) a

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resident of Arizona for at least three years before his election; (4) a resident of the county from which he is elected for at least one year before his election; and (5) a resident of Legislative District 13 at the time the nominating petition was filed and at the time of the election. *See Nicol v. Superior Court*, 106 Ariz. 208 (1970) (whether a candidate meets the qualification for residency is determined based on the circumstances of the candidate on election day).

In deciding whether Shooter is a resident of LD 13 at the time the nominating petition was filed and at the time of the election, the Court has also taken into consideration Arizona Revised Statutes section 16-593(A), which states:

A. The election board, in determining the place of residence of a person, shall be governed by the following rules, so far as applicable:

1. The residence of a person is that place in which his habitation is fixed and to which he has the intention of returning when absent.
...
3. A person does not lose his residence by leaving his home to go to another county, state or foreign country for merely temporary purposes, with the intention of returning.
4. A person does not gain a residence in any county into which he comes for merely temporary purposes, without the intention of making that county his home.
...
7. The place where a person's family permanently resides is his residence, unless he is separated from his family, but if it is a place of temporary establishment for his family, or for transient purposes, it is otherwise.
8. If a person has a family residing in one place and he does business in another, the former is his place of residence, but a person having a family who has taken up his abode with the intention of remaining and whose family does not so reside with him shall be regarded as a resident where his abode has been taken.
...
10. The mere intention of acquiring a new residence without the act of removal avails nothing and neither does the act of removal without the intention.

B. The term of residence shall be computed by including the day on which the person's residence commenced and by excluding the day of election.

Although A.R.S. § 16-593 are rules determining the residence of voters, the Court finds that this statute is also applicable for determining the residence of qualified electors. *See McIntosh v. Maricopa County*, 241 P.2d 801, 803 (1952) (“while these rules apply specifically

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only to voters ... we think they also set forth the general rule for determining residence whenever that may be an issue.”).

Findings of Fact

1. Donald Shooter is a citizen of the United States; is at least twenty-five years of age; and has been a resident of Arizona for at least three years before the election.
2. Property records show that a house on 5620 N. 22nd Street, Phoenix (“Phoenix House”). was purchased in 2015 and was owned by Shooter’s wife Susan Shooter as her sole and separate property. In November 2017, Susan Shooter conveyed the Phoenix House to Shooter and to herself. Subsequently, Susan Shooter conveyed her share of the Phoenix House to the Shooter Family Trust. Shooter and the Shooter Family Trust own the Phoenix House.
3. The Phoenix House is not in Legislative District 13.
4. According to the Maricopa County Assessor’s record, the Phoenix House is claimed as a “Primary Residence” for property tax purposes.
5. Shooter also rents an apartment at 2901 S. Palo Verde Lane, Yuma, Arizona (“Yuma Apartment”).
6. The Yuma Apartment is in Legislative District 13.
7. Shooter has lived at the Yuma Apartment (unit #42 and #44 combined) for over five years. He considers the Yuma Apartment to be his primary residence and has always intended to go back to the Yuma Apartment and remain as a resident of Yuma County. He lived with his wife at the Phoenix House whenever the legislature was in session until he was expelled in February 2018, because it was a seven-hour commute from the Capitol to the Yuma Apartment. Since February 2018, he has spent two-thirds of his time at the Phoenix House.
8. Evidence of Shooter’s intention to remain at the Yuma Apartment include: (a) that he still has the Yuma Apartment address on his driver’s license, on his voter’s registration (with the exception of the period from April 30, 2018 to May 14, 2018), on his motor vehicle registration, and on his tax returns; (b) that he continues to receive mail at his Yuma Apartment; (c) that he continues to pay rent for the Yuma Apartment; (d) the Yuma Apartment remains furnished; (e) that he received visitors at the Yuma Apartment as

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recently as one week ago; and (f) that he has continuously voted in Yuma County since September 2006.

9. Shooter was registered to vote in Yuma County until April 30, 2018. On April 30, 2018, he registered to vote in Maricopa County with his address listed at the Phoenix House. On May 14, 2018, Shooter registered to vote in Yuma County with his address listed at the Yuma Apartment. Although Shooter denies that he was the person who registered to vote in Maricopa County, the Court believes that the evidence supports that Shooter was the person who did it. However, statement as to the place of residence made in a voter's registration is not conclusive, but does constitute strong proof of the correctness of residence. *Kauzlarich v. Board of Trustees of Oak Creek School Dist. No. 16, Yavapai County*, 78 Ariz. 267, 278 P.2d 888 (1955).
10. Other evidence contradicting Shooter's intention to remain in Yuma Country include: (a) that a notice dated May 3, 2018 from the Yuma County Recorder's Office was returned to the Yuma County Recorder's Office with a forwarding address for Shooter listed at the Phoenix House; (b) that his electricity to the Yuma Apartment was turned off as of February 2018; (c) that his wife resides at the Phoenix House and rarely visits the Yuma Apartment; (d) that the Phoenix House is listed as the primary residence for property tax purposes; (e) that Shooter is renting the Yuma Apartment on a month to month lease; and (e) that Shooter does not own any real property in Yuma.
11. Shooter's explanation as to why the electricity was turned off is that he does not pay any of the household bills and that his wife probably turned it off to save money after Shooter was expelled from the Arizona Senate in February 2018. Shooter further explained that he was unaware the power was turned off because the power has been on whenever he was at the Yuma Apartment. The Court accepts Shooter's explanation regarding the electricity.

Considering all of the evidence presented,

THE COURT FINDS that the Yuma Apartment has been and still is Shooter's primary residence, and that the Phoenix House is Shooter's temporary residence.

THE COURT FURTHER FINDS that Shooter has been a resident of Yuma County for at least one year before his election in November 2018.

THE COURT FURTHER FINDS that Shooter is a resident of Legislative District 13 at the time the nominating petition was filed and presumably at the time of the election.

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IT IS ORDERED granting Defendant Shooter's Motion to Dismiss.

IT IS FURTHER ORDERED dismissing Plaintiff's Complaint for Special Action/Injunctive Relief.

No matters remain pending in this case. This is a final judgment under Ariz. R. Civ. P. 54(c).

/s/ Rosa Mroz
Rosa Mroz
Judge of the Superior Court