

BEFORE THE MARYLAND STATE BOARD OF ELECTIONS

JOSHUA E. SHONTS,

Complainant

v.

KENT COUNTY BOARD
OF ELECTIONS,

Respondent

FINAL DETERMINATION

Statement of the Case

On November 21, 2019, the Maryland State Board of Elections (“State Board” or “SBE”) received an administrative complaint filed by Joshua E. Shonts (“Mr. Shonts” or “Complainant”) against the Kent County Board of Elections (“Kent County Board” or “Respondent”). The complaint was filed pursuant to the Code of Maryland Regulations (“COMAR”) 33.01.05, which provides administrative complaint procedures for complaints, “[b]rought by an individual who feels aggrieved by an action of a local board regarding voter registration.”¹ The complaint states that Mr. Shonts’s voter registration was changed from Queen Anne’s County to Kent County on two different occasions “without [his] consent.” The complaint further states that Mr. Shonts used the United States Postal Service mail forwarding/change of address form to forward his mail to Kent County for personal reasons, and that as a result, his voter registration was moved from Queen Anne’s County to Kent County by Respondent because of Maryland’s participation in the Electronic Registration Information Center (“ERIC”).² Finally, the complaint states that as

¹ COMAR 33.01.05.01A(3).

² ERIC, or the Electronic Registration Information Center, is a non-profit organization whose mission is to assist states with improving the accuracy of their voting rolls. Thirty states (including Maryland) are members of ERIC, which is managed by the member states. ERIC uses sophisticated and secure data-matching tools which allow member states to compare official data on eligible voters – such as voter and motor vehicle registrations, U.S. Postal Service addresses and Social Security death records – to keep voter rolls correct and up to date.

a result of this change to his voter registration, Mr. Shonts has been unable to be sworn in as a duly elected member of the Centreville Town Council in Queen Anne’s County. Mr. Shonts “understand[s] that the log” of his registration history “cannot be altered,” and instead seeks “confirmation that I did not change my status with intent, nor did I confirm my status in Kent County.”

A hearing on the complaint was held on December 12, 2019.³ The State Administrator of Elections designated Amanda S. La Forge, Esq., to serve as the hearing officer.⁴ The hearing officer is tasked with determining, under a preponderance of the evidence standard, whether the local board, here the Kent County Board of Elections, acted properly regarding the voter registration activity raised in the complaint.⁵

Present at the hearing were the Complainant, Mr. Shonts; the Respondent, Kent County Board, represented by Cheemoandia Blake, Election Director; Michelle Meekins, Election Data Applications Specialist; and Charles D. MacLeod, counsel to the Kent County Board. Also present were SBE staff members Mary Cramer Wagner, Director, Voter Registration Division and Janet Smith, Manager of Audits, Voter Registration Division. Andrea Trento, Assistant Attorney General and counsel to the State Board was present, as were Sharon Van Emburagh, Centreville Town Attorney; Tim McClusky, Centreville Town Councilmember; and Dan Worth, a member of the public.

Testimony and Exhibits

At the hearing, Mr. Shonts was sworn as a witness.⁶ Mr. Shonts stated that in July 2019 he changed his mailing address for personal reasons using a National Change of Address (“NCOA”) form available at the post office. *Complainant Exhibit 1 (NCOA Form)*. Mr. Shonts changed his mailing address from Centreville, in Queen Anne’s County, to his father’s property in Chestertown, in Kent County. *Id.* Mr. Shonts testified that he was entirely unaware that changing his mailing address would affect his voter registration and noted that the NCOA form does not contain any information regarding voter registration or the effect that an address change can have on a person’s voter registration. Mr. Shonts stated that while it was not his intention to

³ COMAR 33.01.05.06C(1)(a).

⁴ COMAR 33.01.05.06C(5).

⁵ COMAR 33.01.05.06D(1)(b).

⁶ COMAR 33.01.05.06C(7).

forward his mail permanently, he was instructed by staff at the post office to indicate that the move was permanent, because he could not provide a definitive end date for the mail forwarding at that time.⁷ *Complainant Exhibit 2 (Josh Shonts Timeline)*. Mr. Shonts testified that if he had known that forwarding his mail to his father's property in Kent County would impact his voter registration, he would have instead forwarded his mail to his business address, which is located in Queen Anne's County. Mr. Shonts testified that it was never his intent to change his voter registration, that he currently resides in, and intends to remain a resident of, Queen Anne's County, and that he has never lived anywhere else.

On July 25, 2019, Mr. Shonts filed paperwork to register as a candidate for the Centreville Town Council. *Id.* On July 27, 2019, Mr. Shonts was "vetted" as a candidate by the Town of Centreville and the Town Ethics Commission and was "found to be in complete compliance." *Id.* On October 7, 2019 Mr. Shonts's name appeared on the ballot for a seat on the Centreville Town Council at the Town's municipal election.⁸ *Complaint Exhibit 3 (Election Results)*. Mr. Shonts testified that when he appeared to vote on Election Day, he discovered that he was not listed as a registered voter in Queen Anne's County. *Complainant Exhibit 2*. Mr. Shonts testified that he received a notification card from the Kent County Board informing him that his address for voting purposes had been changed to (his father's) Kent County address on the Friday before the election (October 3, 2019). *Complainant Exhibit 2*. The day after he received the notification card, Mr. Shonts testified that he left a message with Ms. Blake, the Kent County Election Director, informing her that he did not want to change his voter registration to Kent County but instead wanted to remain in Queen Anne's County. *Id.* Mr. Shonts testified that the receipt of the notification card did not overly concern him, as he did not think the change to his registration had already been made, and that he was "floored" by the revelation that he was not a registered voter in Queen Anne's County when he arrived to vote on Election Day.⁹ *Complainant Exhibit 2*.

⁷ The NCOA form asks: "Is this Move Temporary?" and gives the person filling out the form the option to answer "Yes" or "No." Mr. Shonts checked "No." *Complainant Exhibit 1*.

⁸ Judicial notice is taken of the fact that Mr. Shonts's name did appear on the ballot as a candidate for Town Council, indicating that Mr. Shonts satisfied the candidate qualifications at that time. COMAR 33.05.06D(4).

⁹ While Mr. Shonts immediately changed his voter registration back to his Queen Anne's county address on Election Day when he found he was no longer registered there, he did not fill out another NCOA form to have his mail sent back to Queen Anne's County. As a result, the registration card sent to his Queen Anne's County address was returned as undeliverable, and as such Mr. Shonts's registration was changed back to Kent County again, hence his complaint that his voter registration was changed twice without his consent.

Mr. Shonts was elected to the Town Council with 374 votes. *Complainant Exhibit 3*. His election was not certified by the Centreville Board of Supervisors of Elections, nor was he sworn in as a member of the Centreville Town Council, because he did not meet the candidate eligibility requirements of the Centreville Town Charter which states that, “[c]ouncil members shall be at least 25 years of age, have resided in the town for at least two years immediately preceding their election and *shall be registered voters of the town for at least six months preceding their election. ...*”¹⁰ (emphasis added); *Complainant Exhibit 3 and Complainant Exhibit 4 (Board of Supervisors Certification)*. Because Mr. Shonts’s voter registration had been moved to Kent County, he did not meet the third candidate qualification as he had not been a continuously registered voter in Queen Anne’s County for six months prior to his election.

At the hearing, Mr. Shonts stated that he did not fault the Kent County Board for changing his voter registration after receiving the NCOA information from ERIC. In fact, he testified that the Kent County Board had “done their job” with respect to his address change. Mr. Shonts testified that his grievance was not with the Kent County Board, but rather with the absence of any warning information on the NCOA form that his address change would impact his voter registration; the lack of knowledge of the U.S. Postal Service employees regarding the impact of an NCOA form on a person’s voter registration;¹¹ and a lack of information from the State Board regarding its participation in ERIC.¹² Mr. Shonts testified that it was this absence of information regarding the effect on his voter registration, not the actions of the Kent County Board with respect to his voter registration, that prevented him from being sworn in as a duly elected member of the Centreville Town Council, and that he filed this administrative complaint against the Kent County Board because it was the only procedural remedy available to him.

Mr. Shonts testified that following the October 7, 2019 municipal election, the Centreville Town Council conducted a “quasi-judicial hearing” on the matter of his candidacy and election. At the hearing, the Town Council voted 2-1 that Mr. Shonts met the candidate eligibility requirements of the Town Charter and could be sworn in as a councilmember, *if he*

¹⁰ Town of Centreville Town Charter, Chapter C, Article II, Section 202, *available at* <https://www.ecode360.com/9868018>.

¹¹ Mr. Shonts testified that when, after the fact, he asked a postal employee if the NCOA form would affect his voter registration, he was told that it would not, and that a voter would need to change this information with the Board of Elections not at the post office.

¹² This “lack of information” appears to be based on the fact that Mr. Shonts was unaware that the State Board participates in the ERIC system.

could somehow correct the “gap” in his voter registration record, *i.e.* the period of time between September 19, 2019 and October 8, 2019 when he was listed as a voter in Kent County.

Complainant Exhibit 5 (Shonts Voter Profile Report).¹³ Mr. Shonts testified that he contacted Mary Cramer Wagner, Director of Voter Registration at SBE, and that Ms. Wagner informed him that such a retroactive correction is not possible. As Ms. Wagner explained, because Mr. Shonts willingly filled out the NCOA form and because the form was properly processed by the post office, the information regarding Mr. Shonts’s address change received by ERIC and subsequently forwarded to the Kent County Board, was entirely valid and processed appropriately and that his Voter Profile Report could not be changed. Mr. Shonts testified that as of the date of the hearing, he had yet to be sworn in as a member of the Town Council and that the Town of Centreville is awaiting the outcome of this administrative process before making any further decisions regarding his office. Counsel to the Kent County Board noted for the record that the incumbent councilmember continues to serve until such time as a replacement is sworn in.

Following Mr. Shonts’s presentation, Cheemoandia Blake, Election Director and Michelle Meekins, Election Data Applications Specialist, Kent County Board were duly sworn.¹⁴ Counsel for the Kent County Board proposed that Ms. Blake read the affidavit she prepared for the aforementioned quasi-judicial hearing conducted by the Centreville Town Council regarding Mr. Shonts’s eligibility. The affidavit is summarized here and is incorporated in its entirety into the record as *Respondent Exhibit 1*. Ms. Blake explained that in the case of Mr. Shonts, the Kent County Board followed the “normal process for receiving and processing registered voter address updates” when such information is received through ERIC. *Id.* The information regarding Mr. Shonts’s change of address was received by the Kent County Board on September 17, 2019¹⁵ and was processed on September 19, 2019. Again, as was the customary practice, on September 19, 2019, the Kent County Board sent two notification cards to Mr. Shonts at both his “old” (Queen Anne’s County) address and his “new” Kent County address. *Id.* (blank copies of cards attached as Exhibits A & B to *Respondent Exhibit 1*). Ms. Blake testified that neither she,

¹³ Mr. Shonts’s Voter Profile Report shows that the Kent County Board received his address change via an ERIC report on September 19, 2019. The Voter Profile Report further shows that his registration was subsequently changed back to his Centerville, Queen Anne’s County address on October 8, 2019. *Id.*

¹⁴ COMAR 33.01.05.06C(7).

¹⁵ Though Mr. Shonts filled out the NCOA form in July 2019, ERIC reports are received by SBE every two months, hence the lag in the reporting of his change of address to the Kent County Board.

nor Ms. Meekins, who are the only two employees at the Kent County Board, had ever spoken directly with Mr. Shonts regarding the change to his voter registration. Ms. Blake stated that the Kent County Board caller ID did show that two calls were received from Mr. Shonts's number on October 4, 2019 and October 8, 2019, but that no voicemail messages were left.¹⁶ Finally, Ms. Blake confirmed that for the period of September 19, 2019 to October 8, 2019, Mr. Shonts was a registered voter in Kent County.¹⁷ Counsel for the Kent County Board moved SBE's procedures for processing ERIC reports (specifically NCOA data) into the record as *Respondent Exhibit 2*, and SBE's NVRA¹⁸ Procedures, Business Process for NVRA Management, into the record as *Respondent Exhibit 3*. At that time, the hearing concluded.

Findings of Fact

1. Mr. Shonts filed a NCOA change of address/mail forwarding form in July 2019. His address was changed from Centreville, in Queen Anne's County, to Chestertown, in Kent County.
2. Because he could not provide a definitive date upon which mail forwarding would end, Mr. Shonts was advised by staff at the post office to indicate that it was a permanent address change.
3. The NCOA form does not contain any language that advises the person filling out the form that a permanent address change will impact the person's voter registration.
4. The State of Maryland is a participant in ERIC, a non-profit organization whose mission is to improve the accuracy of state voting rolls. ERIC uses data, including data received from U.S. Postal Service NCOA forms, to help keep voter rolls up to date.
5. Mr. Shonts did not intend to change his voter registration by filling out the NCOA form and was not aware that filling out the form would impact his voter registration.
6. Mr. Shonts was a qualified candidate for the Town Council of the Town of Centreville in the October 7, 2019 municipal election. His name appeared on the ballot and by virtue of

¹⁶ Mr. Shonts also testified that he attempted to visit the Kent County Board in person the day before the election, October 6, 2019, but that the office was closed. Ms. Blake confirmed that the entire staff was in training that day and that the office was closed.

¹⁷ These changes are also reflected on Mr. Shonts's Voter Profile Report, *Respondent Exhibit 4*.

¹⁸ The NVRA, or National Voter Registration Act of 1993, 52 U.S.C. §§ 20501 *et seq.* is the federal law that governs national voter registration procedures.

receiving the most votes, he was elected.

7. The Centreville Town Charter requires that candidates for the Town Council shall, among other things, be registered voters of the Town for at least six months preceding their election.
8. Following his election, Mr. Shonts was not sworn in as a member of the Centreville Town Council. He has not been sworn in as of this date.
9. The Kent County Board sent notification cards to Mr. Shonts at both his “old” (Queen Anne’s County) and his “new” (Kent County) addresses on September 19, 2019.
10. Upon learning that he was not registered to vote in Queen Anne’s County on Election Day, Mr. Shonts changed his voter registration back to Queen Anne’s County.
11. From September 19, 2019 to October 8, 2019, Mr. Shonts was a registered voter in Kent County.
12. At no time did Mr. Shonts confirm the change of his voter registration to Kent County
13. Mr. Shonts’s NCOA form was received from the U.S. Postal Service, processed by ERIC, and forwarded to SBE and the Kent County Board.
14. Because the NCOA form was properly received by ERIC, Mr. Shonts’s Voter Profile Report and data regarding Mr. Shonts’s voter registration cannot be retroactively changed.
15. The Kent County Board followed all applicable SBE, ERIC and HAVA guidelines with respect to Mr. Shonts’s address change and voter registration.

Conclusions of Law

The purpose of this administrative complaint process is to address complaints “[b]rought by an individual who feels aggrieved by an action of a local board regarding voter registration.”¹⁹ As the hearing officer, I am tasked with determining, under a preponderance of the evidence standard, whether the local board acted properly regarding the voter registration activity raised in the complaint.²⁰ Having reviewed the evidence before me, I determine that the Kent County Board acted properly at all times with respect to Mr. Shonts’s voter registration activity. As Mr. Shonts himself testified, and as I have concluded based on the evidence presented, the Kent

¹⁹ COMAR 33.01.05.01A(3).

²⁰ COMAR 33.01.05.06D(1)(b).

County Board appropriately followed all the usual and customary practices and procedures regarding the receipt of Mr. Shonts's NCOA data through ERIC. *See, Respondent Exhibit 2; Respondent Exhibit 3.*

The novel issue presented by Mr. Shonts, specifically his inability to be sworn in as a duly elected member of the Centreville Town Council due to the aforementioned "gap" in his voter registration, is unfortunately beyond the scope of this administrative complaint process, which is simply not designed to offer the relief he seeks.²¹ *Complainant Exhibit 5.* While a nexus exists between Mr. Shonts's voter registration and his qualifications to serve as a member of the Centreville Town Council, the remedy he seeks, a retroactive change to his voter registration record, cannot be provided by either the Kent County Board or the State Board, later objections regarding the lack of information concerning the effects of the NCOA form on his voter registration notwithstanding.

In Maryland, an eligible voter must register to vote in the ward or election district in which he or she resides. Md. Const., Art. I, § 1. Similarly, to be eligible to serve as a Maryland Senator or Delegate, the candidate must have resided in the district he or she wishes to represent for at least six months prior to the election. Md. Const., Art. III, § 9. For the purposes of both voter registration and candidate qualification, Maryland courts have consistently interpreted the terms "reside" or "resided" to mean "domicile" or "domiciled." *Roberts v. Lakin*, 340 Md. 147, 153 (1995) (citations omitted). Domicile is "defined as the place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning." *Id.* at 153-54 (quoting *Dorf v. Skolnik*, 280 Md. 101, 116-117 (1977)).

Similarly, Maryland courts have long recognized that "[t]he controlling factor in determining an individual's domicile is the individual's intent. ... One's domicile, generally, is that place where he intends it to be." *Roberts v. Lakin*, 340 Md. at 153-54 (quoting *Dorf v. Skolnik*, 280 Md. at 116-117); *see also, Oglesby v. Williams*, 372 Md. 360, 372 (2002); *Blount v. Boston*, 351 Md. 360, 364-66 (1998). Despite filling out the NCOA form, which he was not

²¹ Other issues presented by Mr. Shonts, though not without merit, are similarly beyond the scope of this process, *i.e.* the lack of information on the NCOA form regarding voter registration and the lack of training of U.S. Postal Service employees about voter registration.

aware would impact his voter registration, Mr. Shonts testified that it has always been his intent to be domiciled in Centreville, in Queen Anne's County. He testified that he lives there and has never lived anywhere else. In addition, Mr. Shonts owns a business in Queen Anne's County and ran for, and won, a seat on the Centreville Town Council. As Mr. Shonts testified, the Town Council conducted a lengthy and thorough inquiry into the issue of his domicile and determined by a 2-1 vote that Mr. Shonts met the Town Charter requirements to serve as a councilmember and could be sworn in *if* the two week "gap" in his voter registration could be retroactively corrected.

For the reasons discussed above, the retroactive correction of this "gap" is not possible. Because 374 Centreville voters cast their ballots for Mr. Shonts, however, the Town may wish to provide a remedy in this unusual situation. As counsel to the Kent County Board observed at the hearing, the outright nullification of these 374 votes is highly troubling in light of the heavy constitutional weight given to the fundamental right of citizens to vote, and vote for the candidate of their choice, in our democracy. *See e.g., Reynolds v. Sims*, 377 U.S. 533, 555 (1963) ("[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government"); *Liddy v. Lamone*, 398 Md. 233, 254 (2007) (recognizing voting as "the most fundamental right granted to Maryland citizens as members of a free society"). I have found that Mr. Shonts did not intend to change his voter registration by filling out the NCOA form and was not aware that filling out the form would impact his voter registration. I have also found that Mr. Shonts did not intend to, and in fact did not, confirm the change of his voter registration to Kent County. It is my view that the finding of Mr. Shonts's intent to be domiciled in Queen Anne's County should outweigh the prospect of summarily invalidating the votes of the 374 town residents who exercised their basic constitutional right by voting for him, but that determination is beyond the purview of this proceeding.²²

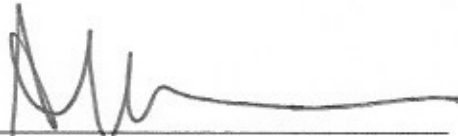
²² For example, the Town may wish to interpret the Charter provision to require that a councilmember be a registered voter for six months preceding the election, but *not necessarily the six months immediately preceding the election*. The Charter provides that "Councilmembers shall . . . have resided in the town for at least two years *immediately preceding* their election and shall be registered voters of the town for at least six months *preceding* their election," Centreville Town Charter Art. II § 202 (emphases added). It further provides that a councilmember "who ceases to *reside* in the town during his or her term of office shall immediately resign," *id.* (emphasis added), but does not require the same of a councilmember who ceases to be a registered voter of the Town. Thus, the Charter itself expressly treats residency and voter registration as different qualifications for holding office, and a legal arbiter should strive to give effect to those express differences. *See Stanley v. Stanley*, 175 Md. App. 246, 260 (2007) (holding that courts, in interpreting statutes, should "construe the statute as a whole so that no word, clause,

Disposition

I dismiss Mr. Shonts's complaint against the Kent County Board of Elections. The preponderance of the evidence presented at the hearing shows that the Kent County Board at all times acted properly and in accordance with all applicable practices and procedures regarding the voter registration activity raised by Mr. Shonts in the complaint.

Date:

February 5, 2020



AMANDA S. LA FORGE
Designee of the State Administrator

APPEAL RIGHTS

Pursuant to Md. Code Ann. §3-602(c)(1)-(2) of the Election Law Article, a final determination issued under the procedures governing administrative complaints is generally not subject to judicial review, except with regard to any final determination regarding the eligibility of an individual to register to vote or remain registered to vote. A petition for judicial review must be filed with the Circuit Court for Anne Arundel County and must be filed no later than the third Tuesday preceding the next succeeding election, April 6, 2020.

sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory"). The record shows that Mr. Shonts has been a registered voter of the Town (*i.e.*, Queen Anne's County) for at least six months preceding the election, even if not for the six months *immediately preceding* the election. *See Complainant Exhibit 5 (Voter Profile Report)*.