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2 **BEFORE THE PEND OREILLE COUNTY AUDITOR**

3 **In Re Challenge to the Voter Registration of: ) FINDINGS OF FACT, CONCLUSION OF**  
4 **Jeff Jurgensen ) LAW AND ORDER DENYING CHALLENGE**  
5 )  
6 )  
7 )

8  
9 I. INTRODUCTION

10 THIS MATTER came before the Pend Oreille County Auditor pursuant to RCW chapter  
11 29A.08 and upon challenge filed by Kenneth Wharton to the voter registration of Jeff Jurgensen.<sup>1</sup>  
12 In his challenges, Mr. Wharton alleges that Mr. Jurgensen does not reside at the address listed on  
13 his voter registration. Mr. Wharton was present at the hearing. Mr. Jurgensen was not present at  
14 the hearing.

15  
16 II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 17 1. This voter registration challenge was initiated in writing and was filed by Mr. Wharton  
18 on June 14, 2019. See, Exhibit 1.
- 19 2. A letter to Mr. Jurgensen with a copy to Mr. Wharton was sent on June 24, 2019, setting  
20 the hearing for July 10, 2019 at 9:00 a.m. See, Exhibit 2.
- 21 3. A Declaration was received from the challenged voter, Mr. Jurgensen by the Pend Oreille  
22 County Auditor Office on July 1, 2019, as provided by RCW 29A.08.840(3) in response  
23 to voter registration challenge. See, Exhibit 3.

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28 <sup>1</sup> This challenge was filed more than forty-five days prior to the next election and pursuant to RCW 29A.08.820(1),  
is therefore decided by the Pend Oreille County Auditor, rather than the Pend Oreille County Canvassing Board.

- 1 4. Mr. Wharton alleges that Mr. Jurgensen does not maintain a legal voting residence at the  
2 address shown on his voter registration record, 102 Open Skies, Newport, Washington  
3 (“Newport Address”). See, Exhibit 4.
- 4 5. Mr. Wharton alleges that Mr. Jurgensen lives at 13012 W. Greenfield Road, Nine Mile  
5 Washington. (“Nine Mile Address”). See, Exhibit 1.
- 6 6. Mr. Wharton presented testimony and argument at the hearing. Mr. Wharton was placed  
7 under oath before providing his testimony.
- 8 7. Mr. Rick Rice presented testimony and argument at hearing on behalf of Mr. Wharton.  
9 Mr. Rice was placed under oath before providing his testimony.
- 10 8. This challenge was brought pursuant to RCW 29A.08.810 (1)(c)(i) which allows a voter’s  
11 residential address to be challenged if the challenger submits evidence of the challenged  
12 voter’s actual residence on the challenge form.
- 13 9. As provided in RCW 29A.08.840 (4), the person challenging another’s voter registration  
14 has the burden to prove by clear and convincing evidence that the registration is  
15 improper.
- 16 10. In the present case, therefore, Mr. Wharton has the burden to prove by clear and  
17 convincing evidence that Mr. Jurgensen does not reside at the Newport Address on his  
18 voter registration card. RCW 29A.08.840. The Washington Supreme Court has  
19 described clear and convincing evidence as sufficient to convince the trier of fact “that  
20 the fact in issue is ‘highly probable.’” *Colonial Imports v. Carlton N.W.*, 121 Wn. 2d 726,  
21 735 (1993). Therefore, the ultimate question to be answered in this matter is whether Mr.  
22 Wharton has proven, based on the evidence that it is highly probable that Mr. Jurgensen  
23 does not residence at the Newport Address for voter registration purposes.  
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1 11. For purposes of voter registration, RCW 29A.04.151 defines “residency” as “a person’s  
2 permanent residence where he or she physically resides and maintains his or her abode”  
3 and “absence from the state on business shall not affect the question of residence of any  
4 person unless the right to vote has been claimed or exercised elsewhere.” Analogous  
5 case law provides that residence requires physical presence plus intention to make that  
6 place one’s home. *In re Lassin’s Estate*, 33 Wn.3d 163, 204 P.2d 1071 (1949); *Fiske v.*  
7 *Fiske*, 48 Wn.2d 69, 290 P.2d 725 (1955); *Freund v. Hastie*, 13 Wn. App. 731, 537 P.2d  
8 804 (1975); *Marriage of Strohmaier*, 34 Wn. App. 14, 659 P.2d 534 (1983); *Camarata v.*  
9 *Kittitas County*, 186 Wn. App. 695, 346 P.3d 822 (2015). If either physical residence or  
10 intent to presently make that place a permanent home is lacking, residence will not be  
11 established. *Id.*

12 12. In support of his case, Mr. Wharton testified that the Mr. Jurgensen does not live at the  
13 102 Open Skies, Newport as his permanent residence and that he actually resides in Nine  
14 Mile Falls.

15 13. Mr. Rice testified on behalf of Mr. Wharton that Mr. Jurgensen does not live at the 102  
16 Open Skies, Newport address as his permanent residence. He Believes he is only there  
17 about 60 days a year.

18 14. Mr. Jurgensen provided a sworn declaration that provided that he owns two homes in the  
19 City of Spokane as well as Nine Miles Falls (“Nine Mile Address”) and in Ponderay  
20 Shore (“Newport Address”). *See*, Exhibit 3.

21 15. Mr. Jurgensen further provided that he is at the Nine Mile Address and Newport Address  
22 fifty-fifty. He is in Newport more in the winter as he snow ski (sic). *See*, Exhibit 3.

1 Mr Jurgensen provided that he works long hours and is rolling in to Newport late and up  
2 early to travel for work. Mr. Jurgensen further provided that due to his odd hours in  
3 Newport, Mr. Wharton would be unable to track his daily whereabouts. See, Exhibit 3.

4  
5 16. Lastly, Mr. Jurgensen provided that he gets his mail at PO Box 111 in Spokane as he  
6 does not want to miss mail being in one place or the other and that has been his mailing  
7 address for years since we built the cabin as he knew it would be fifty-fifty (sic). See,  
8 Exhibit 3.

9  
10 17. Mr. Wharton's and Mr. Rice's testimony and evidence that Mr. Jurgensen does not reside  
11 at the address listed on his voter registration as he is only there part-time may be true, but  
12 that alone is insufficient to establish that Mr. Jurgensen does not live at the Newport  
13 address in light of Mr. Jurgensen's sworn declaration.

14  
15 18. Based on the evidence presented and the high burden of proof set forth in RCW  
16 29A.08.840, I find that Mr. Wharton has failed to meet his burden to prove that Mr.  
17 Jurgensen's voter registration is improper. Mr. Jurgensen states that he is at this address  
18 50 percent of the time in his sworn declaration. Though Mr. Wharton's allegations may  
19 raise some doubt as to Mr. Jurgensen's physical residence and how much time he spends  
20 there, those allegations do not establish by clear and convincing evidence that Mr.  
21 Jurgensen's registration at the Newport address is improper.

22 III. ORDER

23 For the reasons set forth above, the challenge is DENIED.

24 ENTERED this 18 day of July 2019.

25  
26   
27 MARIANNE NICHOLS, Auditor  
28 Pend Oreille County

LXhibit 1

# Voter Registration Challenge Form

## who are you?

Wharton, Kenneth Edward  
last name first middle

72 OpenSkies Newport 99156  
address city / ZIP

509-550-5028 yogiman@rocketmail.com  
phone email

## who are you challenging?

Jurgensen, Jeff  
last name first middle

102 OpenSkies Newport 99156  
address (as registered to vote) city / ZIP

## basis of challenge *provide evidence to support your challenge*

The challenged voter:

- is not a U.S. Citizen
- will not be at least 18 years old by the next election
- was convicted of a felony and has not yet had his or her rights restored
- has been judicially declared ineligible to vote due to mental incompetency
- does not reside at the address listed on his or her voter registration. *Provide voter's actual residential address if known*

**RECEIVED**

JUN 14 2019

PEND OREILLE COUNTY AUDITORS OFFICE

**RECEIVED**

JUN 14 2019

PEND OREILLE COUNTY AUDITORS OFFICE

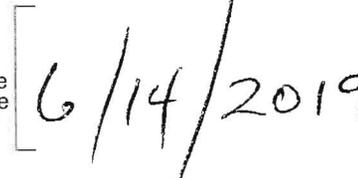
13012 W. Greenfield Rd Nine Mile  
address city / ZIP

## oath

I, Kenneth E. Wharton, declare under penalty of perjury under the laws of the State of Washington that I:

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

sign here 

date here 

# How to Challenge a Voter Registration

## general information

A voter registration is presumptive evidence of a person's right to vote. A challenge may be dismissed if proper evidence isn't supplied. A challenge may only be filed for the reasons listed on this form. Any other reason is not considered to be legitimate grounds for a challenge.

The challenge process is established in RCW 29A.08.810 through RCW 29A.08.850.

## filing a challenge

Registered voters and county prosecuting attorneys may file a voter registration challenge. A challenge must be based on the challenger's personal knowledge.

Submit a completed challenge form, and supporting documentation, to the county elections department where the challenged voter is registered. Determination of the challenge is based entirely on evidence provided.

## address based challenges

If you don't know the voter's actual residential address, provide evidence that you've taken **ALL** steps below to verify his or her residential address is incorrect.

- Send a letter with 'return service requested' to all known addresses for the voter;
- Search local telephone directories to determine whether the voter maintains a telephone listing at any address in the county;
- Search the county auditor property records to determine whether the voter owns property in the county;
- Search the statewide voter registration database to determine if the voter is registered at any other address in the state; and
- Visit the voter's listed residential address. As proof that the voter doesn't live there submit a signed affidavit from anyone who owns, manages, resides, or is employed at the address stating that, to his or her personal knowledge, the voter does not reside at the address.

A voter can maintain residency if he or she is absent due to government service, school, in prison, or because he or she is registered at a non-traditional address such as a shelter, park, motor home or marina.

## deadlines

In order to affect the validity of a ballot, challenges must be filed at least 45 days before an election.

If the challenged voter registered or moved less than 60 days before an election, a challenge must be filed at least 10 days before the election or 10 days after the voter registered, whichever is later.

## challenge process

Upon receipt of a challenge form, the county elections department will:

- review the form for completeness and factual basis;
- notify the challenged voter and interested parties of the challenge;
- post the challenge documents on the county elections department's website; and
- set a hearing time and date.

A voter registration challenge hearing is an administrative hearing, not a court proceeding, and is open to the public. The county elections official or County Canvassing Board will preside over the hearing. Final determination of the challenge may be appealed in Superior Court.

Exhibit 2



**Marianne Nichols**  
**Pend Oreille County**  
**Office of the Auditor**

Post Office Box 5015, Newport, WA 99156  
(509) 447-6474 FAX (509) 447-2475  
mnichols@pendoreille.org

June 21, 2019

Jeff Jurgensen  
PO Box 111  
Spokane WA 99210

Dear Mr. Jurgensen,

Your voter registration has been challenged by Kenneth Edward Wharton, based on the belief that you do not live at the address where you are registered to vote. The challenge process is established in the law RCW 29A.08.810 through RCW 29A.08.850.

Voter registration records show your residential address as:  
102 Open Skies  
Newport WA 99156

If this is incorrect, you may update your information by contacting our office at (509) 447-6472 and the hearing will be cancelled.

A hearing regarding the challenge to your voter registration has been scheduled for July 10, 2019 at 9:00 am at the Pend Oreille County Court House in the Commissioners Meeting Room, 625 West 4<sup>th</sup> Street, Newport. The County Auditor will preside over the hearing. We will have our legal counsel in attendance. This hearing is an administrative hearing, not a court proceeding and is open to the public.

The challenger must prove by clear and convincing evidence that your registration is invalid. You can respond by either participating in person or submitting written testimony by declaration. A sample declaration is attached. If you decide to respond by declaration, it must be received in my office prior to the hearing. If you do not participate in the hearing, a decision will be made based on all available information.

You may provide evidence that you live at the address listed above, update your residential address by calling my office, or prove that you meet one of the exceptions allowed in law. You do not lose your residency if you are:

- Absent while in government service;
- Attending school;
- Confined in a public prison; or
- Live at a non-traditional residential address. State law allows you to list the address of a shelter, park, motor home, marina, or other identifiable location that you consider to be your residence.

Copies of the documents filed by the challenger are enclosed. If you have questions, please contact our office at 509-447-6474.

Thank you.

Sincerely,



Marianne Nichols  
Pend Oreille County Auditor

Cc: Challenger  
Enclosure

I, Jeff Jurgensen am at least eighteen years old and  
please print  
competent to make this declaration. I have actual knowledge of the following:

Voter Challenge by Ken Wharton.

I personally own 2 homes in the City of Spokane as well as a mile Falls in Ponderay Shores in Newport I am in a mile Newport 50:50. I am in Newport more in winter as I snowski. Many times, because I work long hours I am rolling in to Newport late in the evening and up early to travel for work. Mr. Wharton would not be privy as he is usually ~~drinking/smoking~~ in his house and does not wake up until 10 am or so on most weekends to I arrive early. I get my mail at a PO. Box in Spokane as I do not want to miss mail by being in one place or the other. Regardless of the decision I am still able to serve as a water & sewer district commissioner per RCW 57.12.035. Also per the RCW it is the duty of complainant to prove beyond reasonable doubt his accusation which would require him to track my whereabouts daily and as I am in Newport in odd hours he would not be able to do it. See the back of page

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and that I executed this declaration at:

Jeff Jurgensen  
Newport 99156  
city / ZIP

sign here



date here

6/27/19

RECEIVED  
JUL - 1 2019  
PEND OREILLE COUNTY  
AUDITOR'S OFFICE

PO Box 111 in Spokane has been my mailing address for years. Since we built the cabin as ~~it~~ knew it would be 50:50. Just because I am able to own multiple homes does not keep me from voting. If it does I would like to know where a 50:50 resident votes.

Also the real reason for Mr. Wharton being a ~~2<sup>nd</sup>~~<sup>3<sup>rd</sup></sup> in rear is because he thinks folks that have multiple homes cannot be a sewer/water commissioner. Again his smoking has once again clouded his judgement.

Registrant ID 3763389

JURGENSEN, JEFFREY

County Pend Oreille

Status ACTIVE

DOB 07/18/1968 (Age 50)

Status Reason ACTIVE

- Registrant Info
- Ballot Info
- Provisional
- Voting History
- Validations
- Attachments
- Activity
- Correspondence

Residence Address

102 OPEN SKIES RD  
NEWPORT, WA 99156

Mailing Address

PO BOX 111  
SPOKANE, WA 99210

Update Record Add To Race

SSN4:  
 WA DL/ID #:  
 Registration Date: 5/13/2019  
 Effective Date of Change: 5/13/2019  
 Source of Registration: Online Registration

Gender: M  
 Form  
 Language:  
 Phone: (509) 290-9239  
 Mobile:  
 Email: jjurgensen@oacsvcs.com  
 Previous Name:

Reason: Flag Record :

Save

District Type	District Name
Cemetery	Cemetery District - 01
Judicial	Court of Appeals, Division 3, District 1
Judicial	Ferry, Pend Oreille, Stevens Superior Court
Judicial	Supreme Court
Other	Conservation District
Commissioner	Commissioner - 03

Exhibit 4

(H)

<u>District Type</u>	<u>District Name</u>
Congressional	Congressional District 5
Fire	Fire District - 06
Legislative	Legislative District 7
Library	Library District - 01
PCO	PRECINCT 06 FURPORT
Port	Port District (ALL)
Port	Port District - 03
PRECINCT	Furport
Public Hospital	Hospital District - 01
Public Utility	Public Comm District - 03
Public Utility	Public Utility District (ALL)
School	Newport School District 56
Water	Ponderay Shores W/S District
PRECINCT SPLIT	0006.2

Default Signature:

A handwritten signature in black ink, appearing to be a stylized name, possibly "W. J. ...".